NEW JERSEY REGISTER

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MOST RECENT UPDATE TO NEW JERSEY ADMINISTRATIVE CODE: NOVEMBER 18, 1991
See the Register Index for Subsequent Rulemaking Activity.

NEXT UPDATE: SUPPLEMENT DECEMBER 16, 1991

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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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RULE PROPOSALS

COMMUNITY AFFAIRS

(a)

DIVISION OF HOUSING AND DEVELOPMENT
Uniform Construction Code
Mechanical Subcode; Indoor Air Quality Subcode
Proposed Amendments: N.J.A.C. 5:23-1.1, 3.4, 3.11 and 3.20.
Proposed New Rule: N.J.A.C. 5:23-3.20A.

Authorized By: Melvin R. Primas, Jr., Commissioner, Department of Community Affairs.
Authority: N.J.S.A. 52:27D-123 and 124.
Proposal Number: PRN 1992-49.

A public hearing on the proposed Indoor Air Quality Subcode will be held on February 11, 1992, at 10:00 A.M. at the offices of the Construction Code Element, 3131 Princeton Pike, Building 3, Lawrenceville, New Jersey.

Submit written comments by February 20, 1992 to:
Michael L. Ticktin, Esq.
Chief, Legislative Analysis
Department of Community Affairs
CN 802
Trenton, New Jersey 08625
FAX Number (609) 633-6729

The agency proposal follows:

Summary

The American Society of Heating, Refrigerating, and Air Conditioning Engineers (ASHRAE) standards 62-1989, entitled "Ventilation for Acceptable Indoor Air Quality," and 55-1981, entitled "Thermal Environmental Conditions for Human Occupancy" are regarded as the state-of-the-art standards for ventilation systems. The Department has already adopted them as standards to be used in existing buildings occupied by public employees (see N.J.A.C. 5:23-11.3 published elsewhere in this issue of the New Jersey Register).

The Department is now proposing to incorporate the ventilation rates contained in ASHRAE 62-1989 into the Uniform Construction Code as an indoor air quality subcode applicable to the design of new and altered buildings. This will ensure consistency with the requirements for existing buildings and prevent the sort of problems that have been found in some recently constructed buildings where there has been inadequate ventilation. Certain technical amendments to the mechanical subcode have been made to avoid inconsistency.

Social Impact

Incorporation of the ASHRAE 62-1989 ventilation standards into the Uniform Construction Code will result in greater comfort and a more healthful environment for those who will occupy the buildings.

Economic Impact

It has been estimated that, in a typical office building, the increased requirements for the circulation of outside air established by ASHRAE 62-1989 will increase heating and cooling costs by about five percent. Heating and cooling systems designed to meet the outside air circulation requirements are likely to be larger, and therefore incrementally more expensive, than systems that meet current minimum ventilation standards. The extent of such increased cost will vary with the nature and size of the building. Buildings utilizing natural ventilation, mainly single-family homes, low rise multiple dwellings and other small buildings, will not be affected by these requirements.

Regulatory Flexibility Analysis

The proposed amendments and new rule apply to ventilation systems in all new or altered buildings. The proposed amendments and new rule are intended to protect the health of building occupants by upgrading ventilation standards to those established by ASHRAE 62-1989. Therefore, the Department has provided no differential treatment of buildings constructed by or for entities qualifying as "small businesses" under the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq.

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

5:23-1.1 Title; division into subchapters
(a) (No change.)
(b) The chapter consists of the following subchapters:
1.-11. (No change.)
12. [(Reserved)] **"Indoor Air Quality Standards and Procedures for Buildings Occupied by Public Employees" which may be cited throughout the rules as N.J.A.C. 5:23-11 and, when referred to in subchapter 11 of this chapter, may be cited as this subchapter.**
13. (No change.)

5:23-3.4 [Responsibility] **Allocation of enforcement responsibility**
(a)-(f) (No change.)
(g) Responsibility for enforcement of the indoor air quaility subcode shall be the exclusive province of the building subcode official, except as otherwise specified in N.J.A.C. 5:23-3.11(h).
Redesignate (g)-(h) as **(h)-(i).**

5:23-3.11 Enforcement activities reserved to the Department
(a)-(h) (No change.)
(i) The Department of Community Affairs shall be the sole agency responsible for the enforcement of N.J.A.C. 5:23-11, the Indoor Air Quality Procedures and Standards for Buildings Occupied by Public Employees. Any complaint of noncompliance with that subchapter shall be forwarded to the Department. This subsection notwithstanding, the Department of Health may enforce the standards contained in N.J.A.C. 5:23-11 when such standards have been adopted by the Department of Labor.

5:23-3.20 Mechanical Subcode
(a) (No change.)
(b) The following articles, sections or pages of the BOCA National Mechanical Code/1990 are amended as follows:
1.-6. (No change.)
7. Article 16 of the mechanical subcode, entitled "Ventilation Air" is amended as follows:
i. Section M-1602.0 is deleted in its entirety.
ii. Section M-1603.0 is deleted in its entirety.
iii. Section M-1604.1, is amended to delete the words "of Table M-1603.1" and "Section M-1603.0" and substitute in lieu thereof "N.J.A.C. 5:23-3.20A" and "indoor air quality procedure specified in N.J.A.C. 5:23-3.20A" respectively.
Recodify existing 7.-10. as **8.-11.** (No change in text.)
(c) The following [section] **sections** of the 1991 supplement to the Mechanical Subcode [is] **are** modified as follows:
1. Section M-1602.0 is deleted in its entirety.
Recodify existing 1. as **2.** (No change in text.)

5:23-3.20A Indoor air quality subcode
(a) Pursuant to authority of P.L. 1975, c.217, as amended, the Commissioner hereby adopts the nationally-recognized standard of the American Society of Heating, Refrigerating and Air Conditioning Engineers, Inc. known as ASHRAE 62-1989 (Ventilation for Acceptable Indoor Air Quality), including all subsequent revisions and amendments thereto, as the standard for building ventilation and indoor air quality in all buildings or portions of buildings subject to this chapter in which mechanical ventilation is utilized. This standard is hereby adopted by reference as the indoor air quality subcode for New Jersey.
1. Copies of this standard may be obtained from the sponsor at: ASHRAE Publications Sales Department, 1791 Tullie Circle NE, Atlanta, GA30329.

(a)

DIVISION OF HOUSING AND DEVELOPMENT

Uniform Construction Code
Municipal Enforcing Agencies
Proposed Amendment: N.J.A.C. 5:23-4.5

Authorized By: Melvin R. Primas, Jr., Commissioner, Department of Community Affairs.
Authority: N.J.S.A. 52:27D-124.
Proposal Number: PRN 1992-32.

Submit comments by February 20, 1992 to:
Michael L. Ticktin, Esq.
Chief, Legislative Analysis
Department of Community Affairs
CN 802
Trenton, New Jersey 08625-0802

The agency proposal follows:

Summary

This proposed amendment changes the information that is recorded on the UCC Standard Forms that are used by municipalities. These forms are to be changed because of the adoption of the Elevator Subcode; most of the proposed changes are specifically for that subcode. Since these changes affect many of the forms, the Department is also proposing changes that will make the forms more useful, both for the inspectors and contractors and for the reporting of more accurate and useful information to the Department.

It is intended that this amendment become operative on July 1, 1992. Municipalities were notified in September, 1991 that these forms were to be changed and they were advised to order only those forms they would need until July 1, 1992.

Copies of these forms may be obtained for review by writing to the Department of Community Affairs, Bureau of Technical Services, CN 816, Trenton, N.J. 08625-0816.

Social Impact

This proposed amendment will benefit municipalities and the Department by including elevator device and other data in standard forms. Collecting accurate data is vital to municipal and state construction code enforcement. It enables a code official to be responsive to applicants and their questions and concerns. It also allows the Department to gather accurate construction data, to better plan to properly administer the code.

Economic Impact

There should be no adverse economic impact from this proposed amendment. Municipalities received nine months' advance notification that the standard forms were to be changed. In addition, the majority of the forms may still be used after the effective date of these proposed amendments by inserting the required information in the spaces marked OTHER. The changes will not increase the cost of the forms.

Regulatory Flexibility Statement

The proposed amendment will not have any effect on small businesses. The forms required are completed by municipal code enforcement officials; therefore, a regulatory flexibility analysis is not required.

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

5:23-4.5 Municipal enforcing agencies; administration and enforcement

(a) (No change.)

(b) Forms:

1. The construction official shall ensure that all necessary forms and applications are available to the public at the central permit office.

2. The following standardized forms established by the Commissioner are required for use by the municipal enforcing agency:

Form No.	Name
F-100[A]**B**	Construction Permit Application
F-110[A]**B**	Building Subcode Technical Section
F-120[A]**B**	Electrical Subcode Technical Section
F-130[A]**B**	Plumbing Subcode Technical Section
F-140[A]**B**	Fire Subcode Technical Section
F-150	**Elevator Subcode Technical Section**
F-155	**Elevator Subcode Multiple Devices**
F-160[A]**B**	Application for a Variation
F-170[A]**B**,[B]**C**	Construction Permit, Required Inspections
F-180[A]**B**	Construction Permit Notice
F-190[A]**B**	Permit Update
F-210A	Notice of Violation and Order to Terminate/ Notice Order to Pay Penalty
F-[220]**221A**	Inspection Sticker Approval for Building
F-222A	Inspection Sticker Approval for Electric
F-223A	Inspection Sticker Approval for Plumbing
F-224A	Inspection Sticker Approval for Fire Protection
F-225	**Inspection Sticker Approval for Elevator**
F-230[A]**B**	Inspection Sticker—Not Approved
F-240A	Notice of Unsafe Structure/Imminent Hazard
F-245A	Unsafe Structure Notice
F-250A	Stop Construction Order
F-255A	Stop Construction Notice
F-260[A]**B**	Certificate
F-270[A]**B**	Application for Certification
F-310[A]**B**	Elevator Inspection
F-320A	Elevator Notice
F-330A	Application to Construction Board of Appeals
F-340A	Decision of Construction Board of Appeals
F-350[A]**B**	Cut-in Card
F-360A	Denial of Permit

3. The following standardized forms established by the Commissioner are optional for use by the municipal enforcing agency; provided, however, that where they are not used, equivalent forms or mechanisms are used by the enforcing agency to accomplish the same purpose:

Form No.	Name
[F-150A]	[Tickler/X-Ref Card]
F-200A	Inspection Notice
F-280[A]**B**	T.C.O. Control Card
F-290A	Ongoing Inspection Control Card
F-300A	Ongoing Inspection Schedule
F-370	**Tickler/X-Ref Card**

4.-5. (No change.)

(c) Logs:

1. The following standardized logs established by the Commissioner are to be maintained by the municipal enforcing agency:

Log No.	Name
L-700[A]**B**	Permit Fee Log
L-710A	Inspection Log
L-720[A]**B**	Certificate Log
L-730A	Ongoing Inspection Log

2. (No change.)

(d) Reports:

1. The following standardized forms established by the Commissioner are required to be completed by the municipal enforcing agency and transmitted to the Department as required by N.J.A.C. 5:23-4.19 by the tenth business day following the end of each calendar month:

Report No.	Name
R-811[A]**B**	Municipal Monthly Activity Report Certificate
R-812[A]**B**	Municipal Monthly Activity Report Permits

2.-3. (No change.)

(e)-(h) (No change.)

(a)

DIVISION OF HOUSING AND DEVELOPMENT
Uniform Construction Code Enforcing Agencies Municipal Enforcing Agency Fees
Proposed Amendment: N.J.A.C. 5:23-4.17

Authorized By: Melvin R. Primas, Jr., Commissioner, Department of Community Affairs.
Authority: N.J.S.A. 52:27D-124.
Proposal Number: PRN 1992-31.

Submit comments by February 20, 1992 to:
Michael L. Ticktin, Esq.
Chief, Legislative Analysis
Department of Community Affairs
CN 802
Trenton, NJ 08625-0802

The agency proposal follows:

Summary

Prior to 1991, all municipal budgets have had to be prepared on a calendar year (January 1 to December 31) basis. A recent statutory amendment (P.L. 1991 c.75) now requires certain larger municipalities to budget according to the State fiscal year (July 1 to June 30), while other municipalities have the option of preparing their budgets either way.

The Uniform Construction Code rules have required an annual budget report from construction officials on or before February 10, or approximately 40 days after the beginning of a new budget year. Municipalities operating on the State fiscal year should, therefore, have until August 10 to make this submission to the Department.

Social Impact

This amendment will bring reporting requirements for construction officials into conformity with the new budget schedule in those municipalities in which it is in use, thereby allowing current budget information to be used by the construction official.

Economic Impact

Local enforcing agencies may avoid some duplication of effort through use of reports already prepared for purposes of budget preparation.

Regulatory Flexibility Statement

This amendment will have no effect on large or small businesses, as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. It does not concern reporting requirements in the private sector, but regulates reporting by Uniform Construction Code officials, who are municipal employees.

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

5:23-4.17 Municipal enforcing agency fees

(a) (No change).

(b) [Report:

1.] On or before February 10 of each year, **in a municipality that budgets according to the calendar year (January 1 to December 31), or on or before August 10 of each year, in a municipality that budgets according to the State fiscal year (July 1 to June 30),** the construction official shall, with the advice of the subcode officials and in consultation with the municipal finance officer, prepare and submit to the governing body a report detailing the receipts and expenditures of the enforcing agency and indicating his recommendations for a fee schedule, based on the operating expense of the agency.

1. The report shall be structured in accordance with (c) below and with such guidelines as shall be issued from time-to-time by the Commissioner so as to accurately portray true enforcing agency expenses in general and for structures of different use groups. This report shall serve as the basis for the ordinance to be enacted by the municipality, as it may deem appropriate, establishing the fee schedule.

2.-3. (No change.)

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

(b)

DIVISION OF HOUSING AND DEVELOPMENT
Uniform Construction Code Enforcing Agencies; Fees
Proposed Amendments: N.J.A.C. 5:23-4.18 and 4.20

Authorized By: Melvin R. Primas, Jr., Commissioner, Department of Community Affairs.
Authority: N.J.S.A. 52:27D-124.
Proposal Number: PRN 1992-33.

Submit comments by February 20, 1992 to:
Michael L. Ticktin, Esq.
Chief, Legislative Analysis
Department of Community Affairs
CN 802
Trenton, NJ 08625

The agency proposal follows:

Summary

It has come to the attention of the Department that the practice of charging minimum fees has evolved in such a way that it no longer serves its original goal. The reason for minimum fees was to compensate an enforcing agency for the time, travel and clerical expense involved in performing a relatively small-scale inspection of one or of just a few devices. Many agencies have developed multiple minimum fees, one for each subcode, that have resulted in charges for small-scale inspections that are not representative of the scope of work involved. In addition, some enforcing agencies that employ third party agencies for certain inspections have found it difficult to fairly charge and apportion municipal and third party minimum fees.

Dedicated fees now allow a municipality to base its fee schedule on the office's costs and expenditures over a period of three to five years. Whether an office makes or loses money on a single inspection is no longer an issue.

To alleviate the problems due to minimum fees, the Department proposes to require all enforcing agencies to eliminate them. Following adoption of these proposed amendments, municipalities will have one year to study the impact of minimum fees on their budgets and to adjust other fees if necessary in order to enable dedicated budgets to properly cover expenses, as required by law.

In the near future, but after the adoption of these amendments, the Department anticipates proposing a mechanical certification. Available on a voluntary basis, inspectors in other subcode areas will be able to test for a mechanical certification. It will enable **one** official to perform necessary inspections for mechanical equipment: thus a furnace which now requires a building, a fire protection and a plumbing inspection, would only require one mechanical inspection. This will further reduce the municipality's cost of performing inspections for many devices.

Social Impact

These proposed amendments to eliminate minimum fees should have a beneficial, if minor, social impact. Where multiple minimum fees unrelated to the scope of inspection have troubled the public, their objections should be put to rest. Resultant amendments in other fees should make totals collected over time roughly equivalent.

Economic Impact

The overall economic impact of these amendments on the municipality should be negligible. However, the relative amounts of fees charged for small-scale inspections, and the amounts of fees paid to third party agencies, should more accurately reflect the magnitude of inspection work performed. Without minimum fees, which in many instances have become inflated where charged in multiples, it is expected that municipalities will raise other fees to compensate for necessary revenue lost through the elimination of the minimum fees. The Department believes that it is fairer to charge fees that are more directly proportional to inspection tasks performed, and that this will have a beneficial impact on the permit applicants who benefit from these services.

Regulatory Flexibility Statement

The proposed amendments eliminate minimum fees charged by municipal enforcing agencies for inspections by code officials or third party inspection agencies. The rules apply to governmental agencies, and not to businesses, although businesses may experience an effect. These

amendments would not have any differential effect on small businesses, as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., unless it is assumed that they are more likely to be involved in small projects that are more likely to be subject to the impact of multiple minimum fees. If so, then small businesses will benefit from these amendments.

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

5:23-4.18 Standards for municipal fees

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

(e) No minimum fee may be charged for a permit or for any subcode or other portion of a permit.

Recodify existing (e)-(k) as **(f)-(l)** (No change in text.)

5:23-4.20 Departmental fees

(a) (No change.)

(b) Departmental plan review fee: The fees listed in (c) below shall be in addition to a Departmental plan review surcharge in the amount of 40 percent of each listed fee. Where the Department performs plan review only, the plan review fee shall be in the amount of 25 percent of the new construction permit fee which would be charged by the Department pursuant to these regulations. [The minimum fee shall be $43.00.]

(c) Departmental (enforcing agency) fees shall be as follows:

1. (No change.)

2. The basic construction fee shall be the sum of the parts computed on the basis of the volume or cost of construction, the number of plumbing fixtures and pieces of equipment, the number of electrical fixtures and devices, and the number of sprinklers, standpipes, and detectors (smoke and heat) at the unit rate provided herein plus any special fees. [The minimum fee for a basic construction permit covering any of all of the builing, plumbing, electrical, or fire protection work shall be $43.00.] **No minimum fee shall be charged for a permit or portion of a permit.**

i.-iv. (No change.)

3. Certificates and other permits: The fees shall be as follows.

i. (No change.)

ii. The fee for a permit to construct a sign shall be in the amount of $1.11 per square foot surface area of the sign, computed on one side only for double-faced signs. [The minimum fee shall be $43.00.]

iii.-ix. (No change).

4.-8. (No change).

(a)

DIVISION OF HOUSING AND DEVELOPMENT

Uniform Construction Code
Building Subcode; Elevator Safety Subcode
Proposed Amendments: N.J.A.C. 5:23-2.23, 3.4, 3.11, 4.24, 12.4, 12.5 and 12.6

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

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

Proposal Number: PRN 1992-41.

Submit comments by February 20, 1992 to:
Michael L. Ticktin, Esq.
Chief, Legislative Analysis
Department of Community Affairs
CN 802
Trenton, NJ 08625

The agency proposal follows:

Summary

When the Department, earlier this year, promulgated its Elevator Safety Subcode, it exempted elevator devices in structures classified R-3 and R-4, that is, in single-family residences. These structures themselves are ordinarily exempt from periodic inspections of many types.

The New Jersey Builders Association has objected that some structures classified as R-2, those that are under a condominium form of ownership, are similar to R-3 and R-4 structures. These R-2 units may contain an elevator device within the unit, to which the general public does not have access. These R-2 units, however, are single family units, just as much as R-3 and R-4 units.

The Department agrees that a further limited exemption for some R-2 classified structures is warranted. This exemption does not apply to elevators in common areas of R-2 structures, nor does it apply to any elevator to which the public would have access.

Because several of the sections in N.J.A.C. 5:23-12 concerning fees were worded in terms of use group, these sections are also amended to conform to this amendment.

Social Impact

By extending the Elevator Subcode's exemption for R-3 and R-4 structures to some R-2 structures, the Department will ensure that the owners of all private residential units with elevators in the unit are treated equally. Where R-2 structures have units which wholly contain elevator devices to which the public does not have access, these devices should be exempt from registration and periodic inspection requirements.

Economic Impact

These proposed amendments will not have any direct economic impact. While the exemption from registration and inspection requirements of some elevator devices in certain types of R-2 units may modestly decrease the workload of some inspectors, the overall economic impact on the private sector and municipalities should be minimal. Those living in residential units classified as R-2, like those in R-3 and R-4 residences, will be saved a minimal amount in fees.

Regulatory Flexibility Statement

These proposed amendments will have no effect on large and small businesses, as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., since they apply only to owners of certain residential units; therefore, a regulatory flexibility analysis is not required.

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

5:23-2.23 Certificate of Occupancy requirements

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

(j) Elevator devices as defined in N.J.A.C. 5:23-12, have been found by the Department to pose a significant potential hazard to public health and safety and shall therefore be tested or reinspected periodically in accordance with N.J.A.C. 5:23-12. A device shall be granted a certificate of compliance by the construction official for the time period specified. No device shall be operated unless a valid certificate of compliance has been issued. Any violation shall be corrected before a new certificate may be issued. A temporary certificate of compliance may be granted to keep in service a device on which repairs are being diligently performed, if the elevator subcode official finds that no hazard to the public is thereby created. A temporary certificate of compliance may be issued for no longer than 180 days. The elevator subcode official shall provide written notice to the construction official whenever temporary approval is granted.

1. No certificate of compliance shall be issued for any elevator device in use on or before July 1, 1991 that is subject to these rules and is not registered with the Department in accordance with N.J.A.C. 5:23-12, except that elevator devices in structures classified as Use Group R-3 and R-4 shall be exempt from registration. **Elevator devices wholly within R-2 residences, not accessible to the general public, shall also be exempt.**

2. No certificate of occupancy shall be issued for any new structure [in any Use Group other than R-3 or R-4] that contains an elevator device until each such device is registered in accordance with N.J.A.C. 5:23-12**, except that structures classified as R-3 or R-4, and R-2 structures in which all elevator devices are wholly within dwelling units and not accessible to the general public, shall be exempt.**

3. (No change.)

4. Elevator devices in structures classified as Use Groups R-3 and R-4, excepting those elevator devices accessible to the public, shall be exempt from periodic inspection requirements. **Elevator devices wholly within dwelling units in R-2 structures and not accessible to the general public shall also be exempt.** In addition, signed statements and supporting inspection and acceptance test reports, filed by an approved qualified agent or agency, for elevator devices in such structures, other than elevator devices accessible to the

public, may be accepted by the construction official, in accordance with N.J.A.C. 5:23-2.19 and 2.20, in lieu of inspections performed by, and acceptance tests witnessed by, the enforcing agency.

(k)-(l) (No change.)

5:23-3.4 Responsibility

(a) Responsibility for enforcement of specific provisions of the building subcode shall be as follows:

1. Plan review functions of sections 513.0, 514.0, 601.0 through 604.0, 606.0, 607.0, 609.0 through 620.0, and 624.0 articles 8 and 9; sections 2002.0, 2301.0 and 2302.0 articles 24 and 25; sections 2606.0 through 2611.0 for elevator devices not accessible to the general public in structures classified as Use Groups R-3 [or], R-4, **or in R-2 structures in which the elevator devices are wholly within dwelling units and not accessible to the general public,** and 3018.0 and 3020.0 shall be enforced jointly by the building subcode official and fire protection subcode official.

i. Plan review functions of 2606.0 through 2611.0 for elevator devices in any Use Group other than R-3 [or], R-4, **or in R-2 structures in which the elevator devices are wholly within dwelling units and not accessible to the general public,** and for elevator devices that are accessible to the general public in structures classified as Use Groups **R-2,** R-3 [,] **or** R-4, shall be enforced jointly by the building, elevator, and fire protection subcode officials.

2.-9. (No change.)

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

5:23-3.11 Enforcement activities reserved to the Department

(a) (No change.)

(b) The Department of Community Affairs shall be the sole plan review agency for elevators, escalators, and moving walks in Use Groups other than R-3 [or], R-4, **or R-2 structures in which the elevator devices are wholly within dwelling units and not accessible to the general public,** in all buildings and structures other than those that:

1. Are in a municipality that has an elevator subcode official; and
2. Are otherwise within the plan review jurisdiction of the local enforcing agency.

(c)-(g) (No change.)

5:23-4.20 Department fees

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

(c) Departmental (enforcing agency) fees shall be as follows:

1.-5. (No change.)

6. The fee for plan review for elevator devices in structures in Use Groups R-3 [and], R-4 **and for elevator devices wholly within dwelling units in R-2 structures** shall be $50.00 for each device.

7. The fee for plan review for elevator devices in structures in Use Groups other than R-3 [and], R-4 **and devices in R-2s exempted by (c)6 above** shall be $260.00 for each device.

8. (No change.)

5:23-4.24 Plan review; Department of Community Affairs

(a) Rules concerning establishment are:

1. (No change.)

2. Plan review:

i. (No change.)

ii. Special or hazardous uses and types of construction:

(1)-(4) (No change.)

(5) Installations of elevators, escalators, and moving walks, except **devices** in structures of Use Groups R-3 [or], R-4 and [except as otherwise provided] **those devices in R-2 structures that are otherwise exempted** in N.J.A.C. 5:23-3.11(b), shall require Departmental plan review and release.

(b) (No change.)

5:23-12.4 Registration of elevator devices

(a) On or before July 1, 1992, and thereafter as required by (e) below, the owner of every existing structure containing one or more elevator device[s], other than a structure in Use Group R-3 or R-4, **or other than an elevator device wholly within a dwelling unit in an R-2 structure that is not accessible to the general public,** shall register each elevator device with the Department on a form provided by the Commissioner.

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

(e) If the ownership of a structure containing one or more elevator devices, other than a structure in Use Group R-3 or R-4, **or a device in an R-2 structure exempted under (a) above,** is transferred, whether by sale, gift, assignment, interstate succession, testate devolution, reorganization, receivership, foreclosure or execution process, the new owner shall file a notice of change of ownership, with the appropriate re-registration fee, with the Department within 60 days of the date of transfer. **A device in an R-2 structure exempted by (a) above, which, because of alterations in design or changes in ownership or management, is no longer wholly within one residential unit, or which otherwise becomes accessible to the general public, shall be registered within 60 days of its change in status.**

5:23-12.5 Registration fee

The initial registration fee for each elevator device in any structure that is not in Use Group R-3 or R-4 **or that is not in an exempted R-2 structure** shall be $50.00. A re-registration fee of $50.00 shall be required for each structure containing one or more elevator devices, upon change of ownership.

5:23-12.6 Test and inspection fees

(a) The Department fees for witnessing acceptance tests and performing inspections shall be as follows:

1. The basic fees for elevator devices in structures not in Use Group R-3 or R-4, **or in an exempted R-2 structure,** shall be as follows:

i.-vi. (No change.)

2. (No change.)

3. The Department fee for elevator devices in structures in Use Group R-3 or R-4, **or otherwise exempt devices in R-2 structures,** shall be $150.00. This fee shall be waived when signed statements and supportive inspection and acceptance test reports are filed by an approved qualified agent or agency in accordance with N.J.A.C. 5:23-2.19 and 2.20.

4. (No change.)

(b) The Department fees for routine and periodic tests and inspections for elevator devices in structures not in Use group R-3 or R-4, **or otherwise exempt devices in R-2 structures,** shall be as follows:

1.-4. (No change.)

(c) (No change.)

HEALTH

(a)

PARENTAL AND CHILD HEALTH SERVICES

Birth Defects Registry

Live Births; Reporting Requirements

Proposed Amendment: N.J.A.C. 8:20-1.2

Authorized By: Frances Dunston, M.D., M.P.H., Commissioner, Department of Health.

Authority: N.J.S.A. 26:8-40 et seq., specifically 26:8-40.26.

Proposal Number: PRN 1992-34.

Submit comments by February 20, 1992 to:
Pamela Costa, Chief
Birth Defects Registry
Special Child Health Services
New Jersey Department of Health
CN 364
Trenton, NJ 08625

The agency proposal follows:

Summary

Pursuant to N.J.S.A. 26:8-40.20 et seq., the Department of Health is required to establish and maintain a birth defects registry which shall contain a confidential record of all birth defects that occur in New Jersey. It shall also contain any other information that the Department deems necessary and appropriate in order to conduct thorough and complete

epidemiological surveys of birth defects that occur in the State, and to plan for services needed by the children and their families. Although some birth defects can be attributed to specific factors, such as genetics, infections, and medications taken during pregnancy, the vast majority of birth defects are of unknown etiology. There has been, and continues to be, a growing Statewide and national concern about the possible reproductive effects of occupational and environmental exposures in the etiology of birth defects. In New Jersey, awareness of these issues led to the introduction of legislation by the then State Senator Daniel Dalton requiring the establishment of a birth defects registry. The legislation was signed into law by Governor Thomas Kean on August 4, 1983. The law, N.J.S.A. 26:8-40.20 et seq., revised and strengthened the State's commitment to collect data on children with birth defects and to develop a system for the surveillance of adverse reproductive outcomes, and thus plan for services needed by the children and their families.

Through investigative research conducted by the Centers for Disease Control, it has been identified that there are certain conditions present at birth, which, although deemed congenital birth defects, do not pose a significant public health problem. The removal of the requirement to report certain congenital anomalies will enable the Department to concentrate on those significant anomalies which have a serious impact on the child and the child's family unit. The proposed amendment will identify to those registering congenital birth defects the conditions which do not require registering, and will clarify the reporting process, thus providing a process for a more accurate reporting and recording of congenital birth defects.

Pursuant to N.J.S.A. 26:8-40.20 et seq., the Department of Health is required to establish and maintain a birth defects registry, which contains a confidential record of all birth defects that occur in New Jersey. N.J.A.C. 8:20, which contains the requirements for the maintenance of the Registry, became effective March 4, 1985 and incorporated by reference, a listing of reportable conditions, portions of the International Classification of Diseases (see 16 N.J.R. 3118(a) and 17 N.J.R. 591(a)). The chapter was amended by R. 1987 d.361, effective September 8, 1987, which added a requirement for the reporting of congenital anomalies and other conditions not included in Diagnostic Codes 740.00 to 759.90 of the International Classification of Diseases, Clinical Modification (see 21 N.J.R. 3636(a), 22 N.J.R. 1134(c)).

The proposed and adopted changes in 1991 to N.J.S.A. 26:8-40 et seq. inadvertently omitted 20 minor conditions from the proposal and adoption. The Department is therefore proposing to add these conditions to the reporting requirement at N.J.A.C. 8:20-1.2(a)ii.

Social Impact

It is estimated that three percent of infants born each year in this State have a birth defect. Approximately 2,000, or two percent of infants, are expected to have a defect which affects the survival or physical well-being of the affected children. Birth defects are the second most common cause of infant deaths in the State and the leading cause of death, next to accidents, in children age one to four years.

With the growing public concern about birth defects and questions about possible environmental causes, a complete and accurate birth defects registry will enable the Department to monitor rates of birth defects that occur in this State and, when indicated, to conduct epidemiological surveys in order to effectively address this public health problem.

Effects of birth defects are not limited only to deaths in early childhood; there are life long health effects among those children who survive. The Birth Defects Registry enables the Department to provide for timely identification of affected children, and to promptly plan for and provide services to these children and their families. Children who have a birth defect are frequently in need of special health and educational services which can assist them to develop to their fullest potential as productive members of society.

The timely, accurate and consistent reporting of birth defects is vital to the Department's work and to those individuals directly affected. The amendment to N.J.A.C. 8:20-1.2 makes clear which defects must be reported and which defects are not to be reported. The data thus obtained is expected to have a positive social impact on specific individuals, who can be assisted with early intervention programs offered through various sources.

While the regulated public has been utilizing the adopted minor exclusions, the proposed 20 conditions, inadvertently omitted, will complete the list of all minor exclusions, and thus clarify the requirements in the New Jersey Administrative Code.

Economic Impact

The economic value of the Birth Defects Registry should be measured according to its impact on the lives and health of the residents of this State. The Registry serves as a tool for the search of etiology of birth defects, and study of mechanism to prevent and treat those malformations. Early identification of affected children through the Birth Defects Registry ensures the provision of appropriate health care and other support services for these children. Appropriate and prompt medical treatment can prevent the development of complications, longterm illness, disability or death which, economically, are unfavorable outcomes.

Administrative costs for the operation of the Birth Defects Registry have been budgeted at $250,000 per year. The proposed amendment, adopted, would not cause any significant financial burden to the State or health care system. To the contrary, early identification and intervention strategies can lead to significant savings in public health and family dollars. The specific amount saved cannot be determined, due to the multiplicity of factors involved.

Regulatory Flexibility Analysis

The proposed amendment will affect numerous small businesses, as the term is defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. Physicians, dentists, certified nurse midwives, and certain health care facilities and clinical laboratories will be affected by a reduction in required reporting due to the addition of 20 more minor exclusions from the reporting requirement. Since requirements are reduced for all concerned, no differentiation in requirements based upon business size is necessary or provided.

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

8:20-1.2 Reporting requirements

(a) Any infant who is born to a resident of the State of New Jersey, or who becomes a resident of the State before one year of age, and who is diagnosed as having a birth defect, either at birth or any time during the first year of life, shall be reported to the State Department of Health, Special Child Health Services as follows:

1. The conditions listed as Congenital Anomalies (Diagnostic Codes 740.00 through 759.90) in the most recent revision of the International Classification of Diseases, Clinical Modification, shall, except as specified in (a)1ii below, be reported to the Special Child Health Services. In addition, there are several other conditions considered to be defects that are not listed under Diagnostic Codes 740.00 through 759.90 which describe Congenital Anomalies. The birth defects listed in (a)1i below shall also, in every case, be reported to the Special Child Health Services. The minor conditions listed in (a)1ii below shall not be reported to the Special Child Health Services in every case, but only as required in (a)1iii, iv and v below.

i. (No change.)

ii. Minor conditions as follows:

...

Pixie-like ear
Pneumothorax
Pointed ear
Polydactyly (postaxial, type B)—skin tags on hands or feet
Posteriorly rotated ears
Preauricular sinus
Pylorospasm (intermittent)
Ranula—never a defect
Rectal fissure
Redundant foreskin
Rockerbottom feet
Sacral dimple
Sebaceous cysts
Simian crease (transverse palmar crease)
Single umbilical artery
Skin cysts
Small fontanel
Small lips
Splenomegaly
Thymic hypertrophy

...

iii-v. (No change.)

(b)-(j) (No change.)

(a)

DIVISION OF HEALTH PLANNING AND RESOURCES DEVELOPMENT

Certificate of Need Moratorium; Exceptions

Proposed Amendment: N.J.A.C. 8:33-5.1

Authorized By: Frances J. Dunston, M.D., M.P.H., Commissioner, Department of Health (with approval of the Health Care Administration Board).
Authority: N.J.S.A. 26:2H-1, 26:2H-5, 26:2H-8, 26:2H-9.
Proposal Number: PRN 1992-55.

Submit comments by February 20, 1992 to:
John C. Scioli, Director
Health Policy, Planning and
Certificate of Need, Room 604
New Jersey Department of Health
CN 360
Trenton, New Jersey 08625-0360

The agency proposal follows:

Summary

The proposed amendment will expand the types of certificate of need applications which will continue to be processed by the Department of Health during the certificate of need moratorium, effective until December 31, 1992. The amendment also specifies that these categories of applications, listed at N.J.A.C. 8:33-5.1(b), will follow the administrative review process. The Commissioner has determined, consistent with the provision of N.J.A.C. 8:33-4.1(a)3, that flexibility of the review process is critical until all local advisory boards, envisioned by P.L. 1991, c.187, are designated, fully operational and, able to provide regional representation on the State Health Planning Board.

The rule creating the certificate of need moratorium was adopted on an emergency basis, effective August 22, 1991. The rule was formally adopted on October 21, 1991 in compliance with the normal rulemaking requirements of the Administrative Procedures Act, N.J.S.A. 52:14B-1 et seq. The purpose of the moratorium is to permit the development of the State Health Plan required by the Health Care Cost Reduction Act, P.L. 1991, c.187, by enabling Department staff to concentrate their efforts on the formulation of the new Plan and review system and, most importantly, to avoid the possibility of the Department taking any action which may be inconsistent with the requirements to be imposed by the Plan.

The moratorium rule, as it stands, contains a list of types of certificate of need applications which are to be processed during the moratorium, since they are not expected to be affected to any degree by the State Health Plan. Since the development of Phase I of the State Health Plan, referenced at N.J.A.C. 8:33-5.1(d), is now well underway, the Commissioner proposes to expand the list of categories of certificate of need applications noted at N.J.A.C. 8:33-5.1(b) that will be processed during the moratorium to include additional categories of applications, which are not expected to be affected to any degree by the State Health Plan.

The proposed changes would allow for the processing of the following additional types of certificate of need applications during the pendency of the current moratorium: basic life support services; studies, surveys, architectural drawings; continuing care retirement communities; applications for changes in site and for the relocation of some existing facilities; some changes in licensed bed capacities; and applications for the discontinuance of a health care service or closure of a facility. These types of applications are not expected to be affected in any significant way by the development of the State Health Plan. As an example, continuing care retirement communities are included among those types of applications which will continue to be processed, since the skilled nursing beds approved as part of a continuing care retirement community are not counted against the need methodology described at N.J.A.C. 8:33H-3.10 and the State Health Plan is not expected to limit the growth of continuing care retirement communities in the State.

Additionally, the Health Care Cost Reduction Act mandates significant changes both in the organization for reviewing certificate of need applications and in the processing of applications. Examples of these changes include the designation of a State Health Planning Board and a network of local advisory boards to conduct reviews of applications, and the requirement that the Commissioner must limit the approval of certain types of certificate of need issuances to an annual capital limit.

Not all the local advisory boards required to be established throughout the State are fully operational and in two regions of the State the local advisory boards have yet to be designated and to be represented on the State Health Planning Board. Additionally, the statutory changes require changes in the rules guiding the processing of certificate of need applications specified at N.J.A.C. 8:33. Changes in the procedural rules for processing certificate of need applications are currently being developed and the Commissioner anticipates a proposal of these rule changes in the near future.

Until these organizational and procedural changes are accomplished during the pendency of the current certificate of need moratorium, flexibility of the review process is essential to process the list of applications specified at N.J.A.C. 8:33-5.1(b). The Commissioner, therefore, proposes that notwithstanding any other provision of N.J.A.C. 8:33, the categories of applications added to the moratorium exceptions be processed administratively, pursuant to N.J.A.C. 8:33-4.1(a)3.

Social Impact

The expansion of the types of certificate of need applications which will be processed during the moratorium will benefit the public in allowing previously approved certificate of need applications which require approval of only minor changes, and other categories of applications which are expected to be unaffected by the State Health Plan to be implemented without delay, thereby reducing the time it will take to make these facilities and services available to the public they will serve. In addition, the amendment benefits the public by fostering the orderly transition to the new State Health Plan made possible by the moratorium without imposing additional costs that may result from a delay in the processing of several types of applications that are not expected to be affected by the Plan.

Economic Impact

The proposed amendment will not have a negative economic impact on any person or entity. In allowing for the processing of additional categories of certificate of need applications, the proposed amendment avoids any further delay in approving additional certificate of need applications which are not expected to be affected to any degree by the State Health Plan. In so doing, they avoid any economic loss that might result from delayed approval for these categories of applications.

Regulatory Flexibility Analysis

The certificate of need moratorium affects only those persons and entities that choose to apply for certificates of need. Some of these entities may be considered small businesses as the term is defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. However, neither the moratorium rule as adopted nor the amendment to that rule proposed herein impose recording, recordkeeping, or other compliance requirements on small businesses as defined by the Regulatory Flexibility Act. Accordingly, a regulatory flexibility analysis is not required by N.J.S.A. 52:14B-19.

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

8:33-5.1 Moratorium

(a) (No change.)

(b) The purpose of the moratorium is to permit the development of the State Health Plan required by the Health Care Cost Reduction Act, P.L. 1991, c.187, by enabling Department staff to concentrate their efforts on the formulation of the new Plan and review system and to avoid the possibility of the Department taking any action which may be inconsistent with the requirements to be imposed by the Plan. The following types of certificate of need applications will continue to be processed **administratively** while the moratorium is in place, since they are not expected to be affected to any degree by the State Health Plan:

1.-5. (No change.)

6. Certificate of need applications for the provision of basic life support services including invalid coach, transport ambulance, and emergency ambulance services. The moratorium shall apply to all other emergency medical services including, but not limited to, mobile intensive care services, helicopter ambulance services, and trauma services.

7. Certificate of need applications to undertake studies, surveys, architectural or other design studies and drawings except for projects which would be affected by the capital cap implemented by P.L. 1991, c.187.

8. Certificate of need applications related exclusively to the development or implementation of continuing care retirement communities.

9. Certificate of need applications for the relocation of an existing health care facility or service within the same county or in the instance of a health care facility which was conditioned by certificate of need approval to be located in a specific city, relocation of the facility or service to another site in the same city. However, applications for relocation of existing health care facilities or services will not be processed during the moratorium, where the resultant approval would impact Chapter 83 reimbursement, as determined by the Commissioner of Health.

10. Certificate of need applications to change the site of a previously approved but not yet implemented certificate of need where the new site is within the same county as the previously approved site or in the case of a certificate of need conditioned on the basis that the facility or service be located in a specific city, where the proposed new site is within the same city as the previously approved site. However, applications for a change of site will not be processed during the moratorium, where the resultant approval would impact on Chapter 83 reimbursement, as determined by the Commissioner of Health.

11. Certificate of need applications for the replacement of an existing health care facility which is not an acute care hospital or specialized hospital, where the replacement will not increase the total number of beds licensed at the facility or change the number of beds in a given category as represented on the facility's most current license issued by the Department of Health.

12. Certificate of need applications for any decrease in the total licensed bed capacity of a facility or in the number of beds licensed in a given category, where the reductions can occur with no associated costs. The moratorium remains in effect, however, for bed additions and conversions.

13. Certificate of need applications for the discontinuance of a health care service or closure of a health care facility.

14. Certificate of need applications for facilities and services which are substantially within the realms of the above categories.

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

(a)

DIVISION OF HEALTH FACILITIES EVALUATION AND LICENSING

Controlled Dangerous Substances
Physical Security Controls for Practitioners; Employment of Persons with Revoked or Surrendered Registration

Proposed Amendment: N.J.A.C. 8:65-2.5

Authorized By: Frances J. Dunston, M.D., M.P.H., Commissioner, Department of Health.

Authority: N.J.S.A. 24:21-9.

Proposal Number: PRN 1992-35.

Submit comments by February 20, 1992 to:
Lucius A. Bowser, R.P., M.P.H.
Chief
Drug Control Program
CN 367
Trenton, New Jersey 08625-0367
(609-984-1308)

The agency proposal follows:

Summary

The Department of Health proposes to amend the section on physical security for practitioners and non-practitioners conducting research or chemical analysis under another registration, in order to bring the State rules into conformity with Federal regulations. This proposed amendment will prohibit a controlled drug registrant from employing any person who has had a registration denied or revoked at any time or who has been convicted of a crime related to a controlled drug, or who has had a registration surrendered as a consequence of a controlled substance investigation.

The amendment will bring N.J.A.C. 8:65 into conformity with Federal Statutes, cited as 21 C.F.R. 1308.76(a), which became effective on August 1, 1991, as published in the Federal Register at 56 F.R. 36727 and 36728. These amendments will affect approximately 28,000 firms and individuals registered to handle controlled dangerous substances in this State.

Social Impact

The proposed amendment will have an impact on all controlled drug registrants in this State because they will have to screen their employees who would come into direct contact with controlled drugs to ensure those potential employees have never been denied a registration to handle controlled drugs themselves, never had a registration surrendered or had surrendered a registration for cause because of a controlled drug investigation. The proposed amendment will ensure that those handling controlled drugs can be entrusted with access to those substances.

Economic Impact

The proposed amendment to N.J.A.C. 8:65-2.5 would not impose any additional financial burden on a controlled drug registrant other than the need to ask a potential employee whether he or she has had a controlled drug registration surrendered for cause because of a controlled drug investigation. The potential employer should already have in place methods to investigate the denial or revocation of a license to an applicant and the same methods would be used to determine whether a registration was surrendered for cause. It would not have any impact upon any segment of the public, other than registrants.

Regulatory Flexibility Analysis

In accordance with the New Jersey Flexibility Act, N.J.S.A. 52:14B-16 et seq., the Department has determined that the proposed amendment will not impose any significant recordkeeping or other compliance requirements on small businesses. Although practitioners, physicians and pharmacists are "small businesses" as defined by the Act, there will be little, if any, additional paperwork involved in complying with the proposed change. The practitioners, or non-practitioners, authorized to conduct research or chemical analysis are prohibited from employing any person as an agent or employee with access to controlled substances when such person has surrendered his or her registration, for cause.

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

8:65-2.5 Physical security controls for practitioners

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

(c) This section shall also apply to nonpractitioners authorized to conduct research or chemical analysis under another registration. The registrant shall not employ as an agent or employee who has access to controlled substances any person who has had an application for registation denied, [or] has had his **or her** registration revoked, at any time **or has had a registration, whether issued by any state or by the Federal Drug Enforcement Administration, surrendered for cause. For the purposes of this section, the term "for cause" means a surrender, in lieu of, or a consequence of, any Federal or state administrative, civil or criminal action resulting from an investigation of the individual's handling of controlled substances.**

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

TREASURY-TAXATION

(a)

DIVISION OF TAXATION

Corporation Business Tax
Indebtedness Owing Directly or Indirectly; Entire Net Income, How Computed

Proposed Amendments: N.J.A.C. 18:7-4.5 and 5.2

Authorized By: Leslie A. Thompson, Director, Division of Taxation.
Authority: N.J.S.A. 54:10A-27.
Proposal Number: PRN 1992-47.

Submit comments by February 20, 1992 to:
Nicholas Catalano
Chief Tax Counselor
Division of Taxation
50 Barrack Street
CN 269
Trenton, New Jersey 08646

The agency proposal follows:

Summary

The proposed amendments would delete N.J.A.C. 18:7-4.5(f) and modify N.J.A.C. 18:7-5.2(a)7 to bring the rules into conformity with the holding of *Centex Homes of New Jersey, Inc. v. Director, Div. of Taxation,* 10 N.J. Tax 473 (1989), *aff'd* 241 N.J. Super. 16 (App. Div. 1990).

N.J.S.A. 54:10A-4(d)(5) originally required the addition to a corporate taxpayer's net worth of the amount of indebtedness owing directly or indirectly to holders of 10 percent or more of the aggregate outstanding shares of the taxpayer's capital stock of all classes. (Subsection 4(d)5 was repealed, effective July 1, 1984, by P.L.1982 c.55, §1.) Under N.J.A.C. 18:7-4.5(f) and Examples, the Division interpreted the statute to require, for purposes of determining the degree of stock ownership of a corporate creditor, the aggregation of all the shares of the taxpayer's stock held by all corporations bearing the relationship of parent, subsidiary or affiliate of the corporate creditor. In *Centex,* however, the Tax Court declared the rule *ultra vires* and held that the Division may not aggregate stock ownership in affiliated groups for purposes of the indebtedness provision of N.J.S.A. 54:10A-4(d)(5). The Superior Court affirmed and ruled that the word "holders" as used in N.J.S.A. 54:10A-4(d)(5) was restricted to the actual record holders of stock. The Court issued a similar ruling when it affirmed the Tax Court opinion in *Troster Singer v. Director, Div. of Taxation* (App. Div. Docket A96-89T3, May 11, 1990).

The Division did not appeal the *Centex* holding to the New Jersey Supreme Court because the decision was based largely on a prior New Jersey Supreme Court case, *Fedders Financial Corp. v. Director, Div. of Taxation,* 96 N.J. 376 (1984). While *Centex* involved a determination of the net worth computation of the taxpayer's Corporation Business Tax liability, the Supreme Court in its *Fedders* ruling, on which *Centex* was based, indicated that its analysis of the indebtedness requirement would be equally applicable to both the net worth and the net income provisions of the statute (N.J.S.A. 54:10A-4(k)(2)(E)). For this reason, the Division also proposes to amend N.J.A.C. 18:7-5.2(a)7, entire net income computation, to eliminate the inclusion of a corporate stockholder's subsidiaries in the determination of ownership for purposes of the indebtedness provision. The internal codification of N.J.A.C. 18:7-5.2 is also revised through this proposal, to provide each paragraph with appropriate reference.

Social Impact

The proposed amendments should have a positive social impact because they will clarify the Division's position in the rules on indebtedness and the *Centex* case. By bringing the rules into conformity with case law, the Division will eliminate any potential concern among taxpayers and tax practitioners about the Division's position on the ruling.

Economic Impact

The proposed amendments should not cause further revenue loss to the State, since the court has already struck down that portion of the rule which the proposal would repeal. The *Centex* holding was affirmed by the Superior Court and was likely to have been affirmed by the New Jersey Supreme Court, in light of its prior holding in *Fedders.* Any further action or modification of the *Centex* holding would have to be taken through legislation.

Expenses for tax preparation may be reduced for taxpayers, due to increased certainty over the Division's position on the *Centex* holding and resulting conformity of the rules with the holding of the case.

Regulatory Flexibility Statement

The proposed amendments 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. The amendments would bring the rules interpreting the indebtedness provisions of the Corporation Business Tax Act into conformity with the *Centex* case.

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

18:7-4.5 Indebtedness owing directly or indirectly

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

[(f) For the purpose of determining the degree of stock ownership of a corporate creditor all the shares of the taxpayer's capital stock held by all corporations bearing the relationship of parent, subsidiary, or affiliate of the corporate creditor shall be aggregated.

Example 1: L corporation owns 100 percent of the stock of M Corporation which in turn owns 100 percent of N Corporation. L Corporation made loans or otherwise provided funds directly to N Corporation. The indebtedness from N Corporation to L Corporation is indebtedness owing directly or indirectly to a 10 percent stockholder.

Example 2: P Corporation owns 30 percent of the stock of Q Corporation, which in turn owns 30 percent of R Corporation. P Corporation made loans or otherwise provided directly to R Corporation. The indebtedness from R Corporation to P Corporation is not indebtedness owing directly or indirectly to a 10 percent stockholder since P Corporation only owns 9 percent of the stock (30 percent x 30 percent) of R Corporation.]

18:7-5.2 Entire net income; how computed

(a) "Taxable income before net operating loss deduction and special deductions," hereinafter referred to as Federal taxable income, is the starting point in the computation of the entire net income. After determining Federal taxable income, it must be adjusted as follows:

[(a)]**1.** Add to Federal taxable income:

Recodify existing 1-6 as **i.-vi.** (No change in text.)

[7. The amount deducted, in computing Federal taxable income, for interest on indebtedness (whether or not evidenced by a written instrument) directly or indirectly owed to an individual stockholder or members of his immediate family who, in the aggregate, own beneficially ten percent or more of the taxpayer's outstanding shares of capital stock or to a corporate stockholder, including its subsidiaries, which owns beneficially, directly or indirectly, ten percent or more of the taxpayer's outstanding shares of capital stock minus ten percent of the amount so deducted or $1,000.00, whichever is larger.]

vii. The amount deducted, in computing Federal taxable income, for interest on indebtedness whether or not evidenced by a written instrument. To be added back, such interest must be owed directly or indirectly either to an individual stockholder or members of his or her immediate family who, in the aggregate, own beneficially 10 percent or more of the taxpayer's outstanding shares of capital stock or to a corporate stockholder which owns 10 percent or more of the taxpayer's outstanding shares of capital stock. The amount deducted shall be reduced by 10 percent of the amount so deducted or $1,000, whichever is larger. Thus, if the amount of such interest is $1,000[.00] or less, then none of said amount need be added back. **(For definition of "directly" and "indirectly" see N.J.A.C. 18:7-4.5(d) and (e).)** However, there shall be allowed as a deduction:

Recodify existing i.-iv. as **(1)-(4)** (No change in text.)

[8.]**viii.** Recoveries with respect to war losses, regardless of whether such war losses were deducted in any return previously made for the purpose of computing the New Jersey Corporation Business Tax;

[9.]**ix.** All income from sources outside the United States which has not been included in computing Federal taxable income less all

allowable deductions to the extent that such allowable deductions were not taken into account in computing Federal taxable income. See [(b)3 of this section] **(a)2iii below** for limitations respecting foreign tax deduction;

[10.]**x.** In any year or short period which ends after 1981, any depreciation or cost recovery (ACRS) which was deducted in arriving at Federal taxable income and which was determined in accordance with Section 168 of the Federal Internal Revenue Code in effect after December 31, 1980. See [(b)4] **(a)2iv** below for depreciation allowable in computing entire net income.

[11.]**xi.** In any year or short period ending after 1981, any interest, amortization or transactional costs, rent, or any other deduction which was claimed in arriving at Federal taxable income as a result of a "safe harbor leasing" election made under Section 168(f)8 of the Federal Internal Revenue Code; provided, however, that for a fiscal year or short period which begins in 1981 and ends 1982, any such amount which relates to property placed in service during that part of the return year which occurs in 1981 shall be allowed as a deduction in arriving at entire income for that year only; and provided further that any such amount with respect to a qualified mass commuting vehicle pursuant to Federal Internal Revenue Code Section 168(f)(8)(D)(v) (formerly 168(f)(8)(D)(iii)) shall be allowed in any event.

[i.]**(1)** Where the "user/lessee" of qualified lease property which is precluded from claiming a deduction for rent under this rule would have been entitled to cost recovery on property which is subject to such "safe harbor lease" election in the absence of that election, it may claim depreciation on that property under the provisions of [(b)4 and 5] **(a)2iv and v** below. See [(b)6] **(a)2vi** below for the treatment to be accorded related income on such "safe harbor lease" transactions.

[12.]**xii.** All income, from whatever sources derived not included in computing Federal taxable income and not otherwise required to be added back under [(a)1 through 9] **(a)1i through ix** above, less all allowable deductions attributable thereto, to the extent that those allowable deductions were not taken into account in computing Federal taxable income.

[(b)]**2.** Deduct from Federal taxable income:

[1.]**i.** 100 percent of all dividends included in Federal taxable income which were received from subsidiaries meeting the definition of a subsidiary under [Section] **N.J.A.C. 18:**7-4.11 (Subsidiary corporations; definition) [of this Chapter] and 100 percent of all dividends from those subsidiaries which were added to Federal taxable income in accordance with (a)**1** above;

[2.]**ii.** Fifty percent of all other dividends included in Federal taxable income or added to Federal taxable income in accordance with (a)**1** above. Dividends received from a regulated investment company which are treated as interest for purposes of the Internal Revenue Code and/or which are not considered qualifying dividends for Internal Revenue purposes are not eligible for deduction or exclusion from entire net income under this subsection.

[3.]**iii.** Income, war-profits, and excess profits taxes imposed by foreign countries or possessions of the United States, allocable to income included in Federal taxable income subject to the following limitations:

[i.]**(1)** To the extent that these income, war-profits and excess profits taxes were allowed as a credit against the Federal income tax under the applicable provisions of the Internal Revenue Code;

[ii.]**(2)** Provided, that such taxes were not reflected in deductions made in computing Federal taxable income or taken under [paragraph 9 of subsection (a) of this Section] **(a)1xi above**; and

[iii.]**(3)** Also provided that the amount of the deductible income, war-profits and excess profits taxes paid to each foreign country or possession of the United States shall not exceed the net income earned by the taxpayer in such foreign country or possession.

[(4)]**iv.** Depreciation on property placed in service after 1980 on which ACRS has been disallowed under [(a)10] **(a)1x** above using any method, file and salvage value which would have been allowable under the Federal Internal Revenue Code at December 31, 1980. A method, once adopted, must be used for all succeeding years for purposes of computing depreciation on that particular recovery property, except only that a taxpayer may make a change in method which would not have required the consent of the Commissioner of Internal Revenue. Personal property placed in service during any year after 1980 must be treated using the half year convention by claiming a half year of depreciation in the year that property is placed in service. No depreciation is allowable in the year of disposal. Aggregate depreciation claimed under this paragraph for all years is limited to the basis for depreciation under the Federal Internal Revenue code at the date the property is placed in service less whatever salvage value would have been required to be considered under the Federal Internal Revenue Code at December 31, 1980.

[5.]**v.** Gain or loss on property sold or exchanged is to be determined with reference to the amount properly to be recognized in determination of Federal taxable income. However, on the physical disposal of recovery property, whether or not a gain or loss is properly to be recognized under the Federal Internal Revenue Code, there shall be allowed as a deduction any excess or there must be restored as an item of income any deficiency of depreciation disallowed under [(a)10] **(a)1x** above over related depreciation claimed on that property under [(b)4] **(a)2iv** above. A statutory merger or consolidation shall not constitute a disposal of recovery property.

[6.]**vi.** In any year or short period ending after 1981, any item of income included in arriving at Federal taxable income solely as a result of a "safe harbor leasing" election made under Section 168(f)(8) of the Federal Internal Revenue Code; provided, however, that for the accounting period which begins in 1981 and ends in 1982, such income which relates to property placed in service during 1981 is not to be excluded; and provided, further, that any such income which relates to qualified mass commuting vehicle pursuant to Federal Internal Revenue Code Section 168(f)(8)(D)(v) (formerly 168(f)(8)(D)(iii)) shall be included in entire net income in any event.

[i.]**(1)** Where income relating to such safe harbor leasing election would have been included in Federal taxable income whether or not the election is made, no exclusion is permitted.

Example: A corporation which finances the acquisition of machinery and equipment is not permitted to exclude interest income merely because it is one of the parties to a "safe harbor lease" whereby it agreed that all parties to the transaction characterize it as a lease for Federal income tax purposes.

[ii.]**(2)** For treatment of deductions relating to such safe harbor lease transactions, see [(a)11] **(a)1xi** above.

[7.]**vii.** Any banking corporation which is operating an international banking facility (IBF) as part of its business may exclude the eligible net income of the IBF, as herein described, from its entire net income, as follows:

[i.]**(1)** Any deductions under this section can only be claimed to the extent that they are not deductible in determining Federal taxable income, or not deductible under N.J.S.A. 54:10A-4(k)(1) through (3).

[ii.]**(2)** The eligible net income of an IBF is the amount of income remaining after subtracting the applicable expenses, as defined by **(a)2vii(4)** [(b)7iv] below.

[iii.]**(3)** Eligible gross income is the gross income derived from an IBF. This will include gross income derived from the following:

[(1)]**(A)** Making, arranging for, placing or carrying loans to foreign persons, provided, however, that in the case of a foreign person which is an individual, or which is a foreign branch of a domestic corporation (other than a bank), or which is a foreign corporation or foreign partnership which is controlled, by one or more domestic corporations (other than banks), domestic partnerships or resident individuals, all the proceeds of the loan are for use outside of the United States.

[(2)]**(B)** Making or placing deposits with foreign persons which are banks or foreign branches of banks (including foreign subsidiaries) or foreign branches of the taxpayers or with other international banking facilities; or

[(3)]**(C)** Entering into foreign exchange or hedging transactions relating to any transactions under [(1) and (2) above or (4)] **(a)2vii(3)(A) and (B) above or (D)** below.

[(4)](D) Any other activities which an IBF may be, at any time, authorized to engage in by Federal or state law, the Board of Governors of the Federal Reserve, the Comptroller of the Currency, the New Jersey Banking Commission, or any other authority.

[iv.](4) Applicable expenses are any expenses or deductions which are directly or indirectly attributable to eligible gross income as defined in [iii] **(a)2vii(3)** above.

(See: [Subchapter] **N.J.A.C. 18:**7-16 regarding international banking facilities.)

(a)

DIVISION OF TAXATION

Gross Income Tax

Reporting of Interest on Certain Obligations

Proposed Amendment: N.J.A.C. 18:35-1.9

Authorized By: Leslie A. Thompson, Director, Division of Taxation.

Authority: N.J.S.A. 54A:9-17(a).

Proposal Number: PRN 1992-29.

Submit comments by February 20, 1992 to:
Nicholas Catalano
Chief Tax Counselor
Division of Taxation
CN 269
Trenton, NJ 08646

The agency proposal follows:

Summary

In an effort to increase taxpayer awareness and further compliance with the New Jersey Gross Income Tax Act, the proposed amendment requires resident taxpayers to provide the Division with the amount of exempt interest income received during the taxable year. Such income is derived from tax exempt Federal and New Jersey State obligations. It also includes interest income from certain qualified investment funds. The reporting requirement will not affect a taxpayer's final tax liability.

Social Impact

The rule amendment should result in many resident taxpayers accurately reporting taxable interest income on their New Jersey gross income tax returns. Additionally, the new reporting requirement may serve to make taxpayers more aware of the statutory treatment of various interest income earned on various government obligations. It will also provide the Division with data which may be used for 1099 information matching and audit activity. The Division's authority to require taxpayers to report tax exempt interest is predicated on N.J.S.A. 54:9-17, which empowers the Division to require such facts and information to be reported as are deemed necessary to enforce the provisions of the Gross Income Tax Act.

Economic Impact

The rule amendment does not affect the tax liability of resident taxpayers. It merely requires the reporting of information not previously available without inquiry by the Division. It is unlikely that State revenue will be greatly affected. There may be a small increase in tax collections due to better taxpayer compliance in reporting taxable interest income, as well as the Division's ability to better reconcile a taxpayer's return with other information sources upon audit.

Regulatory Flexibility Statement

A regulatory flexibility analysis is not required because the proposed amendment does not impose mandatory reporting, recordkeeping or other compliance requirements upon small businesses within the meaning of the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The New Jersey Gross Income Tax rules apply to individuals, estates and trusts other than corporations.

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

18:35-1.9 **Reporting of interest on certain obligations;** [Taxable] **taxable** status of State and Federal securities

(a) (No change.)

(b) Under the authority of N.J.S.A. 54A:9-17, which empowers the Division to require such facts and information to be reported as are deemed necessary to enforce the provisions of the Gross Income Tax Act, every person required to file a resident New Jersey gross income tax return (NJ-1040) for a taxable year shall report on such return the amount of interest received or accrued during the taxable year which is exempt from the gross income tax.

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

OTHER AGENCIES

(b)

NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY

Direct Loan Program

Proposed Amendment: N.J.A.C. 19:31-3.1

Authorized By: New Jersey Economic Development Authority, Anthony R. Coscia, Executive Director.

Authority: N.J.S.A. 34:1B-1 et seq., specifically 34:1B-5 (k) and (l).

Proposal Number: PRN 1992-27.

Submit comments by February 20, 1992 to:
Gary Nadler, Mgr. of Administration
New Jersey Economic Development Authority
CN 990
Trenton, N.J. 08625

The proposed amendment follows:

Summary

The proposed amendment to N.J.A.C. 19:31-3.1 will establish a minimum interest rate which the New Jersey Economic Development Authority ("Authority") will apply to loans made under its direct loan program. The existing rule states that the interest rate on such loans is equal to the Federal Discount Rate at either the time of loan approval or the time of closing, whichever is lower. The Authority is proposing to establish a minimum rate for such loans at five percent, which would then be the rate charged in circumstances where the Discount Rate has dropped below five percent.

The purpose of the Authority's direct loan program is to provide financing at rates below conventional market rates, in order to assist businesses who are unable to obtain or cannot afford conventional financing. At the same time, the Authority's loan portfolio should generate a capital base through incoming interest, which will enable it to expand the program to assist more businesses in need of such assistance. With the decline in the Discount Rate over the past year, it has become difficult to maintain a stable program which can continue to provide financing at rates substantially below market to all worthy businesses which may apply.

Social Impact

This amendment will enable the Authority to stabilize and strengthen its base of lending capital to assist an expanding number of firms in need of its affordable financing. Without that expanding capital base, the Authority may not be able to lend to all worthy applicants, with the result that many of these businesses would likely not be able to obtain the financial assistance they need. This amendment will aid the Authority in carrying out its mandate to strengthen the State and local economies through the economic growth that this program encourages.

Economic Impact

During times when the Federal Discount Rate is below five percent, recipients of Authority direct loans will pay a slightly higher rate of interest under the proposed rule amendment than they would have under the existing rule. However, the proposed minimum rate of five percent that they would pay is still substantially less than conventional lending rates, and would generally be considered a very affordable rate.

This amendment will have a beneficial economic impact on the State generally by enabling the Authority to continue to stimulate economic growth through expanded use of its program.

Regulatory Flexibility Analysis

Many recipients of Authority direct loans are small businesses, as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. They will be affected by the proposed amendment by having to pay slightly higher interest rates during times when the Federal Discount

Rate is less than the proposed minimum Authority lending rate of five percent. At other times, there is no effect, as the rate on Authority direct loans will be the same as the Discount Rate. The Authority believes that the proposed minimum rate is so significantly less than rates available from other sources, that small businesses will not be deterred from applying for Authority assistance because of the amendment. Additionally, the difference between a minimum rate of five percent and a rate resulting from a Federal Discount Rate below five percent will not be so great as to make the Authority's assistance unaffordable or a hardship on businesses paying the five percent rate. Therefore, no special exemption for small businesses is proposed.

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

19:31-3.1 Program description

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

(e) Interest on fixed asset or working capital loans is equal to the lower of the Federal Discount Rate at the time of approval or at the time of the loan closing, **with a minimum of five percent**.

(f) (No change.)

(a)

CASINO CONTROL COMMISSION

Accounting and Internal Controls Procedures for Granting Credit

Proposed Amendment: N.J.A.C. 19:45-1.27

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

Authority: N.J.S.A. 5:12-69(a) and 5:12-101.

Proposal Number: PRN 1992-39.

Submit written comments by February 20, 1992 to:
Mary S. LaMantia, Assistant Counsel
Casino Control Commission
Tennessee Avenue and the Boardwalk
Atlantic City, New Jersey 08401

The agency proposal follows:

Summary

Casino Control Commission rules require that a casino licensee verify a patron's address, current casino credit limits and balances, outstanding indebtedness and personal checking account information before approving the patron's credit limit. The proposed amendment to N.J.A.C. 19:45-1.27(i) makes clear that, consistent with current practice, any changes in a patron's address or personal checking account information must likewise be verified by the licensee.

In addition, the proposed amendment deletes N.J.A.C. 19:45-1.27(p), since the phase-in period established therein expired in 1986.

Social Impact

The proposed amendment to N.J.A.C. 19:45-1.27(i) will ensure that patron credit information is properly updated and verified, in accordance with a policy of strict regulation of credit set forth in the Casino Control Act, N.J.S.A. 5:12-1 et seq., and Commission rules. The amendment to N.J.A.C. 19:45-1.27(p) merely deletes an outdated provision, and thus will have no social impact.

Economic Impact

The proposed amendments should not have any significant economic impact, since the proposed amendments codify current practice and delete a superfluous provision.

Regulatory Flexibility Statement

The proposed amendments affect only the operations of casino licensees, none of which qualifies as a small business as defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. A regulatory flexibility analysis is therefore not required.

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

19:45-1.27 Procedures for granting credit, and recording checks exchanged, redeemed or consolidated

(a)-(h) (No change.)

(i) The casino licensee's credit department shall:

1.-3. (No change.)

4. Verify the information required by (a)2 and (a)6 above, in accordance with the procedures in (d) above, whenever the casino licensee has reason to believe that this information has changed.

(j)-(o) (No change.)

[(p) Notwithstanding any other provisions of this section to the contrary, the requirements of (a)1, 2, 3, 4, 5, 7, 8, 9, 10, 11, (b), and (i)1.i, ii and v above shall not apply to the patron credit files of a casino licensee which are in existence on the operative date of this section if the casino licensee has submitted a plan for the phased application of the above enumerated subsections to such files in accordance with this subsection. The plan must be filed with the Commission and Division at least 90 days prior to the operative date of this section and shall provide for the phased application of the above enumerated subsections to all patron cedit files in existence on the operative date of this section within nine months of such operative date. Such plan shall further provide for the suspension of the credit privileges of any patron whose credit file has not been subjected to the requirements of the above enumerated subsections in accordance with the terms of the approved plan. In addition, the plan shall provide that if any event takes place which would subject a patron credit file which was in existence on the operative date of this section to any requirement of subsections (g), (h), (i)1iii, or iv, then that credit file shall be subject to all the requirements of this section, including (a)1, 2, 3, 4, 5, 7, 8, 9, 10, 11, (b) and (i)1.i, ii and v above. Any plan which is not timely received pursuant to this subsection shall not be considered by the Commission until all timely received submissions have been finally reviewed and, unless and until such untimely plan is reviewed and approved, the submitting casino licensee shall not grant or issue any credit subsequent to the operative date of this section except in accordance with all the requirements of this section.]

ENVIRONMENTAL PROTECTION AND ENERGY

(b)

OFFICE OF POLLUTION PREVENTION

Pollution Prevention Program Requirements

Pre-Proposed New Rules: N.J.A.C. 7:1K

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

Authority: P.L. 1991, c.235 (to be codified at N.J.S.A. 13:1D-35 to 13:1D-50 and N.J.S.A. 34:5-1 et seq.); 13:1B-1 et seq., and 13:1D-9.

DEPE Docket Number: 053-91-12.

Pre-Proposal Number: PPR 1992-2.

Take notice that the Department of Environmental Protection and Energy (Department) is preparing to propose a new chapter, N.J.A.C. 7:1K, to implement the provisions of the Pollution Prevention Act (Act), P.L. 1991, c.235. The Act, which authorizes the Department to implement a comprehensive program for making pollution prevention a primary technique in the control of hazardous substances and their environmental and health effects throughout the State, was signed on August 1, 1991 by Governor Florio. The goals of the Act include: reductions in the use of hazardous substances, reduction in the generation of hazardous substances as nonproduct output, and reductions in the multi-media environmental release of hazardous substances at each step of an industrial process. P.L. 1991, c.235, Section 2. Among other mandates, Section 6(a) of the Act requires the Department to adopt by February 1, 1993 rules and regulations necessary for the implementation of the Act.

This pre-proposal is the first step toward meeting the February 1, 1993 deadline. Following the close of the public comment period, the Department will consider all comments received (both in writing and during the public meetings) and use them to develop a formal rule proposal on the seven issues that are presented below. At the same time, the Department will be drafting rules for any remaining issues for which

rulemaking is required by the Act to meet the February 1, 1993 deadline. The Department anticipates publishing a formal rulemaking proposal in the summer of 1992 for the Pollution Prevention Program Requirements, N.J.A.C. 7:1K. These program requirements will be available for public comment in accordance with the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and the Department will hold additional public meetings at that time. The Department will then respond to comments received on the formal rulemaking proposal and anticipates adopting a final rule early in 1993.

The Department will hold **public meetings** to provide opportunity for discussion of this pre-proposal as follows:

Monday, March 2, 1992
10:00 A.M. to 3:00 P.M.
N.J. Department of Personnel
3131 Princeton Pike, Building 6
Lawrenceville, N.J.
and
Wednesday, March 4, 1992
3:00 P.M. to 9:00 P.M.
N.J. Law Center
1 Constitution Square (off Ryders Lane)
New Brunswick, N.J.

Because of the limited seating capacity at these locations, the Department is requesting that individuals interested in speaking at these sessions pre-register before February 14 by calling Debra Milecofsky of the Office of Pollution Prevention at (609) 777-0518.

Interested persons may submit, in writing, views, proposed regulatory language, or arguments relevant to this pre-proposal by March 19, 1992 to:

Samuel A. Wolfe, Esq.
Administrative Practice Officer
Department of Environmental Protection and Energy
CN 402
Trenton, New Jersey 08625-0402

This notice of pre-proposal is being published in order to obtain comments of interested persons on several of the subjects to be included in the Department's rulemaking under the Act. Although the Department will be developing and proposing a comprehensive set of new rules to implement all provisions of the Act (and comments may be submitted on any aspect of the Act through this process), at this time it is seeking comments on the topics identified below because these issues are expected to have the broadest impact on the scope and development of pollution prevention plans under the Act.

1. Pollution Prevention Plans

A key provision of the Act requires priority industrial facilities to prepare pollution prevention plans and submit information on the use and release of "hazardous substances," "hazardous wastes" and "nonproduct output" as defined by the Act. P.L. 1991, c.235, Section 7. A priority industrial facility is defined by Section 3 of the Act as "any industrial facility required to prepare and submit a toxic chemical release form pursuant to 42 U.S.C. §11023" or any other facility designated as a priority industrial facility by the Department through rules and regulations to be developed in the future. The term "hazardous substance" is defined in Section 3 of the Act to include "any substance on the list established by the United States Environmental Protection Agency for reporting pursuant to 42 U.S.C. §11023," (commonly known as the Federal Right-to-Know list), and any other substance defined by the Department through the process described in Section 2 of this pre-proposal. At the present time, there are approximately 330 chemicals and chemical compounds on the Federal Right-to-Know list. However, this list can be expanded at any time by the United States Environmental Protection Agency through rulemaking, which would automatically expand the list of hazardous substances regulated by the Act. "Hazardous wastes" are defined by Section 3 of the Act as "any solid waste defined as hazardous waste by the department pursuant to P.L. 1970, c.39." The term "nonproduct output" is defined by Section 3 of the Act to include "all hazardous substances or hazardous wastes that are generated prior to storage, recycling, treatment, control, or disposal and that are not intended for use as a product."

Pollution prevention plans are the primary mechanism to be used by industrial facilities to achieve the goals of the Act. Pollution prevention plans are to be prepared in two parts, as follows:

Part I of a pollution prevention plan will consist of a comprehensive inventory of the use, generation and release of hazardous substances and the generation of hazardous waste and nonproduct output at each source and production process at an industrial facility.

Part II of a pollution prevention plan will consist of a detailed analysis of targeted production processes and sources including descriptions of each targeted production process and targeted source that is identified by the facility, identification of available pollution prevention options, a feasibility analysis of potential pollution prevention options, goals for reduction of use and generation of nonproduct output per unit of production, and descriptions of the methods to be used to achieve stated goals for reductions in the use and generation of hazardous substances and nonproduct output.

A. Criteria for Grouping Sources or Processes

Section 7(k) of the Act requires the Department to establish criteria under which it will "consider sources or production processes that use **similar ingredients** to produce **one or more similar products** as a single source or production process" for the purpose of reporting information in Part I of a pollution prevention plan. (emphasis added)

The Department believes that the most accurate way to develop all of the process information required in a pollution prevention plan would be for an industrial facility to complete a process materials accounting analysis. A process materials accounting analysis is a detailed quantitative analysis of the chemicals used at each step in each production process, including quantities of raw materials used, non-product output generated, and products manufactured. Such an analysis can be an extremely beneficial tool for industries because it allows them to analyze the details of each step in their manufacturing operations to develop a detailed accounting of the use and cost of materials, labor and energy. A close inspection of these quantitative costs generally results in some fine-tuning of processes to yield higher process efficiencies.

Completing a process materials accounting analysis is expected to be a resource-intensive process for most industrial facilities because of the considerable amount of sampling and engineering calculations that are involved. Theoretically, the concept of grouping sources or processes would reduce the amount of effort required by a facility to complete this analysis by reducing the number of quantitative analyses that need to be completed. However, based on the limited experience in New Jersey and in other states with similar statutory provisions for grouping sources or processes, there may be few instances where a process materials accounting analysis that groups ingredients or products will provide any meaningful quantitative results at an individual facility. Therefore, while the goal of this section is to allow facilities to group sources or processes to maximize their planning resources and reduce reporting requirements, it is not clear whether this can be achieved in practice.

The Department is seeking specific comments on how to define criteria that would be used by priority industrial facilities to group similar ingredients and/or similar products in a meaningful way for the purposes of reporting pollution prevention inventory information, as follows:

(i) "Similar ingredients"

What criteria could be used to describe "ingredients" (hazardous substances) that are similar? Should they be hazardous substances that have similar chemical properties? If chemical properties are to be used as a basis for grouping, should the Department use the classification scheme used by the New Jersey Right to Know program, N.J.A.C. 7:1G-2.2?

Should similar hazardous substances be defined as those that are used in a similar manner during the manufacturing operations, for example, catalysts? Should they be hazardous substances used in processes that generate nonproduct outputs having similar environmental impacts or chemical properties, for example, volatile organic substances emissions?

(ii) "One or more similar products"

What criteria should the Department use to define "one or more similar products?" Should they be one or more products that are manufactured using the same production apparatus? Should they be a class of products, for example, fragrances, that have the same manufacturing method but vary slightly in the mixtures of hazardous substances used? Should there be any similar ingredients or any similar products provided that the grouping results in no statistically significant changes in the calculation of nonproduct output per unit of product?

The Department encourages commenters to give examples of how these methods of grouping (or others) will or will not work for particular industries or processes.

B. Criteria for Identifying Targeted Sources or Processes

The Department is seeking comments on how to define criteria that would be used by priority industrial facilities to target production processes and sources in Part II of a pollution prevention plan.

The Department is developing criteria pursuant to Section 7(d) of the Act by which industrial facilities may identify targeted production processes and targeted sources for the purpose of focusing pollution prevention strategies on these targeted production processes and targeted sources in Part II of a pollution prevention plan. Section 3 of the Act defines a "targeted production process" as "any production process which significantly contributes to the use or release of hazardous substances or the generation of hazardous waste or nonproduct output" as determined by the industrial facility pursuant to criteria established by the Department. In addition, Section 3 of the Act defines a "targeted source" as "any source which significantly contributes to the generation of nonproduct output" as determined by the industrial facility pursuant to criteria established by the Department.

Section 7(c) of the Act requires Part II of a pollution prevention plan to contain numeric goals for reducing the use of hazardous substances per unit of product and for reducing the generation of nonproduct output per unit of product for targeted processes/sources. In addition, industrial facilities must include in Part II a pollution prevention planning analysis which identifies available reduction options, assesses the full-cost accounting of the options, and describes the valuation methods used by the industrial facilities in selecting pollution prevention options.

The Department is considering one specific and two general approaches to defining criteria for the identification of targeted production processes and targeted sources. It is hoped that some combination of these approaches can be adapted by all industrial facilities to meet the requirements of the Act, which states that criteria for identification of targeted processes/sources must be based on a consideration of toxicity of hazardous substances used, generated or released at a facility and that such processes/sources should make a "significant contribution to the use and release of hazardous substances, the generation of hazardous waste, and the generation of nonproduct output" at an industrial facility.

a. Specific Approach—Toxicity—Chemical-specific Targets

The Department is considering identifying specific hazardous substances and requiring that all facilities regulated by the Act target any process or source using the substance where it has been shown that the specific hazardous substance poses a significantly higher risk to human health or the environment than other hazardous substances regulated by the Act. Procedurally, the Department would document the basis for its findings that such a targeted substance poses a higher risk and would publish a notice of its findings in the New Jersey Register.

b. General Approaches—"Significant Contribution"

The more difficult criterion to define is what constitutes making a "significant contribution" to the use, generation and release of hazardous substances. There are two general approaches that should result in significant reductions for most facilities:

(i) Minimum approach

The Department may require an industrial facility to target any process or source that contributes any one of the following:

>10% of the use or release of a hazardous substance;
>10% of the generation of a hazardous waste; or
>10% of the generation of a nonproduct output.

(ii) Maximum approach

The Department may require an industrial facility to select any processes or sources or combination of mutually exclusive processes and sources where the total of these processes or sources results in targeting 90 percent or more of the use of hazardous substances or 90 percent or more of the generation of nonproduct output at the facility.

In addition to one of the two methods above, a facility would have the option of selecting any processes or sources or combination of mutually exclusive processes and sources where the total of these results in targeting 90 percent or more of the generation of hazardous wastes.

If an industrial facility does not select targeted production processes and sources using one of the methods in paragraph a or b above for the purpose of focusing pollution prevention strategies in Part II of a Pollution Prevention Plan, the Department intends to require the facility to perform a complete Part II analysis for all processes and sources at its facility. Therefore, targeting is expected to have significant benefits for facilities.

C. Criteria for Identification of Production Processes Requiring Plan Revisions

The Department is developing criteria pursuant to Section 6(f) of the Act for the identification of production processes that are established after January 1, 1992 for which owner/operators do not have to "report information pertaining to improvements in pollution prevention" until the first five-year revision of the pollution prevention plan. The legislative intent of this section appears to have been to set up reporting requirements for facilities in such a way that they do not present an additional burden on new product development or other research and development activities. The Department intends to require facilties to report all pollution prevention inventory information for new processes established after January 1, 1992 in Part I of their pollution prevention plans and submit this information in their progress reports. However, it will not require facilities to perform a Part II analysis, including information pertaining to improvements in pollution prevention, until the first five-year revision of the plan. To enable it to develop meaningful criteria, the Department is seeking comments on how to differentiate between (1) production processes that may be altered after January 1, 1992 (by changing chemical mixtures or some other manufacturing variables) and called new or modified processes, for which changes **will** need to be made in a pollution prevention plan or summary, and (2) new production processes that are introduced after January 1, 1992 for which revisions or additions to the pollution prevention plan **will not** need to be made until the first five-year revision of the pollution prevention plan. For example, should the Department require an owner/operator to update a pollution prevention plan when changes to a production process result in **any** increase in the use of hazardous substances per unit of production, the generation of nonproduct output per unit of production, or releases to environmental media per unit of production?

D. Standardized Reporting for Pollution Prevention Plan Progress Reports and Summaries

Under Section 6(b) of the Act, the Department is charged with developing rules to specify which information required in pollution prevention plan summaries and progress reports may be reported in an environmental survey, which is the reporting mechanism for information submitted pursuant to the New Jersey Worker and Community Right to Know Act, N.J.S.A. 34:5A-1 et seq. The Department is seeking comments on both the format and substance of how to combine environmental survey information with the specific pollution prevention information required by the Act.

Additionally, the Department is considering requiring that pollution prevention plan summaries and progress reports be submitted in a form compatible with the Department's electronic information storage and retrieval system. Since the summaries and progress reports will be available to the public, and since they will be important sources of information for the Department in determining pollution prevention trends, the Department is particularly concerned about ensuring clarity and consistency of information.

The Department is seeking comments on both the electronic format of the information to be submitted and on ways to guarantee uniformity and comparability of information received, as follows:

(i) Electronic Format

If the Department determines that submission of summaries and reports must be in a form compatible with an electronic storage and retrieval system, what form would maximize both ease of submission and public and Departmental access? Should the Department develop personal computer-based application software which industrial facilities could use? If so, would it be useful if this software were designed to run on IBM-compatible PC's and generated data files that are dBase compatible? Should other formats, perhaps including non-PC-based networks, be considered? How could integrity of electronic data be guaranteed? What sort of certification procedures should be employed?

(ii) Uniformity and Comparability of Information

Should the Department develop standardized categories encompassing processes and methods to ensure the uniformity and comparability of information reported by different facilities? Section 7 of the Act requires owner/operators to include the following in their pollution prevention plan progress reports and summaries: identification of production processes; descriptions of products; method(s) used to achieve reductions; and the impacts of pollution prevention techniques on multi-media releases. The Department is concerned that without standardized reporting, the identifications, descriptions, methods and impacts in one facility's

progress report or summary may not be directly comparable to those in another. Moreover, similar methods may be utilized in different industries and in different situations which reflect underlying similarities in the type of process or operation, but the descriptions of these actions in the pollution prevention plans may seem quite different. The Department envisions developing some type of catalog of categories of processes, sources, methods, etc., which industrial facilities would use for their progress reports and summaries. This catalog would have to be broad enough to encompass all likely source and production scenarios, but narrow enough to facilitate the collating and comparison of data. The Department is seeking input on what such categories should be and how a catalog of categories should be organized to facilitate reporting and data access.

2. Criteria for Adding New Hazardous Substances

The Department is developing criteria pursuant to Section 8(h) of the Act to require facilities to include in pollution prevention plans, pollution prevention plan summaries, and pollution prevention plan progress reports information on hazardous substances other than those hazardous substances that are currently regulated by the Act. Currently, the Act regulates approximately 330 substances on the Federal Right-to-Know list established pursuant to 42 U.S.C. §11023.

At this time the Department is considering using the three criteria listed in Section 8(h) of the Act for inclusion of a new hazardous substance, as follows:

(i) Prior regulation as a hazardous substance pursuant to 42 U.S.C. §11023; the Spill Compensation and Control Act, N.J.S.A. 58:10-23.11 et seq.; Section 4 of the Toxic Catastrophe Prevention Act, N.J.S.A. 13:1K-9 et seq.; or the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. §9601;

(ii) Consideration of the toxicity of a hazardous substance; and

(iii) Evidence of the production of the substance in commercial quantities.

Since one of the goals of the Act is to coordinate reporting of pollution prevention information and information required pursuant to the New Jersey Worker and Community Right to Know Act, the Department anticipates adding several hazardous substances that meet these criteria in a proposal during the next year. There are several substances which are currently regulated under the New Jersey Worker and Community Right to Know Act but are not regulated under Federal Right to Know reporting (and therefore not regulated by the Act) which will be added, provided that they meet these three criteria.

3. Input-use Exemption Reporting

Section 6(e) of the Act contains a very specific and narrow exemption whereby an industrial facility may demonstrate to the Department that there is no "reasonably available and economically viable alternative" to not reducing the input-use of a particular hazardous substance. The Department anticipates that facilities who are applying for this exemption for a particular hazardous substance will have to complete virtually all other pollution prevention plan reporting, including, but not limited to: an inventory of the use and generation of the hazardous substance; a comprehensive financial analysis of costs associated with the use, generation, release or discharge of the hazardous substance; an analysis of the production process(es) in which the hazardous substance is used or generated to determine available reduction options (other than use reduction); and a description of the valuation methods used by the facility in determining not to utilize each pollution prevention method or option. The Department is seeking input on the procedure that facilities should use when demonstrating that they qualify for this exemption.

Since pollution prevention plans will be kept at facilities and will not routinely be submitted to the Department, it is critical that any demonstrations made under this section be made in writing for the Department's approval. Therefore, it seems that the most expeditious method would be for facilities to submit demonstrations for input-use exemptions along with their pollution prevention plan summary. In addition, the Department would like to require facilities to include an input-use exemption list in their pollution prevention plan progress reports. This list would include all hazardous substances for which facilities have submitted input-use demonstrations to the Department as well as the status of the request, that is, whether or not the exemptions have been approved.

4. Incentives

The Department is seeking comments on a broad issue affecting pollution prevention planning, namely, what kind of incentives exist (or can be developed by the Department) to encourage industrial facilities to set aggressive goals for reducing the use and generation of hazardous substances in their pollution prevention plans? The Act, particularly the Part II planning requirements section, was designed to be a non-prescriptive regulatory approach which gives industrial facilities the primary role in setting their goals and determining the methods used to achieve them. However, the success of the program is therefore dependent upon facilities taking some degree of risk upon themselves when setting their own goals. This risk is heightened by the fact that the Act provides the Department with several broad authorities to make pollution prevention plan provisions into enforceable conditions of a permit or other approval. For example, Section 9(d) authorizes the Department to include pollution prevention strategies developed by a facility in its pollution prevention plan into facility-wide permits, and Section 9(c) authorizes the Department to include pollution prevention strategies in a single media permit.

The Department is also concerned about a potential conflict between a facility's willingness to include detailed trade secret information in a pollution prevention plan and a facility's concern that this information will not remain confidential during the permit issuance process. Specifically, the Department is seeking input on (i) what types of information should definitely not be considered confidential in pollution prevention reporting, and (ii) what specific types of information (as opposed to general descriptions such as "trade secrets") should be considered confidential in pollution prevention reporting.

The Department is seeking comments on how to encourage facilities to be aggressive in their pollution prevention planning in light of these potential conflicts.

(a)

WATER TECHNICAL PROGRAMS

Ground Water Quality Standards

Proposed Repeal and New Rules: N.J.A.C. 7:9-6.

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

Authority: N.J.S.A. 13:1D-1 et seq., 58:10A-1 et seq. and 58:11A-1 et seq.

DEPE Docket Number: 056-91-12.

Proposal Number: PRN 1992-44.

Public hearings concerning this proposal will be held on:

Thursday, February 20, 1992 beginning at 10:00 A.M. at:
Freeholders Public Meeting Room
Morris County Records and Administration Building
Court and Washington Streets
Morristown, New Jersey

Wednesday, February 26, 1992 beginning at 10:00 A.M. at:
Cherry Hill Municipal Building
Council Chambers
Mercer Street
Cherry Hill, New Jersey

Submit written comments by March 21, 1992 to:
Samuel A. Wolfe, Esq.
Administrative Practices Officer
Office of Legal Affairs
Department of Environmental Protection and Energy
CN 402
Trenton, New Jersey 08625

A detailed discussion of the proposed new rule comprising the State's Ground Water Quality Standards (Standards) is contained in the "Basis and Background for the Proposed Ground Water Quality Standards" (October 1991) which can be obtained by writing to:
Daniel J. Van Abs, Ph.D.
Bureau of Water Supply Planning & Policy
NJDEPE, Water Technical Programs
CN 029
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The New Jersey Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq., at N.J.S.A. 58:10A-4, authorizes the Commissioner of the Depart-

ment of Environmental Protection and Energy (Department) to adopt and enforce "the classification of the . . . ground waters of the State and the determination of water quality standards for each such classification." The Standards are used in the context of Department regulatory programs to achieve the policy of the Act, which is "to restore, enhance and maintain the chemical, physical and biological integrity of its waters, to protect public health, to safeguard fish and aquatic life and scenic and ecological values, and to enhance the domestic, municipal, recreational, industrial and other uses of water." (N.J.S.A. 58:10A-2)

Ground Water Quality Standards (N.J.A.C. 7:9-6) were first adopted in 1981. The standards were readopted in January, 1991 as part of the readoption (without change) of N.J.A.C. 7:9 (see 23 N.J.R. 406(c)). By the time of the readoption, the Department had given considerable thought to promulgating new Standards that would be more comprehensive and more consistent with recent scientific and technological advances than the existing Standards.

The Department determined that many aspects of the existing Standards do not reflect current knowledge of hydrogeology, pollution control, toxicology and laboratory analysis of ground water contaminants. Further, the Water Pollution Control Act was amended in 1990 by the Clean Water Enforcement Act, P.L.1990, c.28. Some of the amendments need to be reflected in the Standards. Also, regulations used to implement the Standards (for example, the New Jersey Pollutant Discharge Elimination System, or NJPDES) have been revised over the years, and modifications in the Standards are needed to improve consistency and coordination among the various regulations. Finally, the Department intends to integrate these Standards with the Cleanup Standards that will be proposed in the very near future at N.J.A.C. 7:26D, to ensure that the two bodies of rules are fully compatible and complementary.

The nature and scope of the required modifications are extensive. Therefore, the Department is proposing to repeal the existing Standards and adopt these new rules. Improvements include: (1) a mapped classification system; (2) a much more comprehensive set of water quality criteria; (3) more explicit and measurable antidegradation policies; (4) better protection of ground water in the Pinelands Protection Area; (5) the definition and derivation of Practical Quantitation Levels (PQLs); and (6) improved consistency and coordination with other rules.

By July 1, 1991, the Department had prepared a draft of the new Standards and published a notice in the New Jersey Register that the draft was available for interested party review (see 23 N.J.R. 1988(a)). The Department distributed nearly 1,000 copies of the draft Standards and Basis and Background document, and received nearly 30 written responses. Most of the comments were from industry, consultants and environmental organizations. They focused on three primary areas of concern: (1) the classification of ground waters and exceptions to the classifications; (2) the derivation of health-based ground water quality criteria and exceptions to the criteria; and (3) the derivation and use of Practical Quantitation Levels (PQLs). The Department considered the comments and made numerous revisions to the draft document, which revisions are reflected in this proposal.

Significant modifications of the current Standards are proposed in all sections. The following is a summary of the most significant provisions and changes, with changes from the interested party review draft noted where appropriate:

(1) The Standards will be used as the basis for Department decisions regarding the protection of ambient ground water quality through the establishment of consistent standards for ground water pollutants. The Standards will apply to the regulation of permitted discharges, of ground water quality outside of contaminated sites, and of nonpoint pollution sources which affect ground water quality. The Department's enabling legislation (N.J.S.A. 13:1D-1 et seq.), the Water Pollution Control Act (N.J.S.A. 58:10A-1 et seq.) and the Water Quality Planning Act (N.J.S.A. 58:11A-1 et seq.) provide the statutory basis for promulgation of this subchapter.

The Standards will be used in Department programs that implement the Spill Compensation and Control Act (N.J.S.A. 58:10-23.11 et seq.), the Solid Waste Management Act (N.J.S.A. 13:1E-1 et seq.), the Pesticide Control Act (N.J.S.A. 13:1F-1 et seq.), the Environmental Cleanup Responsibility Act (N.J.S.A. 13:1K-6 et seq.), the Storage of Hazardous Substances Act (N.J.S.A. 58:10A-21 et seq.) and the Realty Improvement Act (N.J.S.A. 58:11-23 et seq.) (added as a result of public comments). The Department will also use the Standards in other programs for the protection of ground water quality as appropriate. By explicitly identifying regulatory programs through which the Standards will be applied and enforced, the Department intends to improve the consistency of ground water quality protection provided by these programs.

The Ground Water Quality Standards have been drafted to be closely integrated with two other sets of rules. One, the New Jersey Pollutant Discharge Elimination System (NJPDES, at N.J.A.C. 7:14A) regulates discharges to waters of the State, including ground water. The second, the Cleanup Standards, will be proposed in early 1992 (at N.J.A.C. 7:26D) to regulate the cleanup of contaminated sites, including the ground water at those sites. The three sets of rules will work in concert, along with rules promulgated pursuant to the other statutes cited above, to protect ground water and provide consistent standards for dischargers. Based upon comments to the draft Ground Water Quality Standards and the draft Cleanup Standards, the Department has attempted to reconcile any potential inconsistencies between the two sets of new rules. For example, changes have been made so that both sets of rules will use the same methods to derive health-based criteria and Practical Quantitation Levels.

(2) Definitions have been added to or refined from the existing Standards. The term "constituent standard" is defined as "the required minimum or maximum level or concentration (as applicable) for a constituent in a classification area . . . The constituent standards shall be the basis for the regulation of ground water quality effects of past, present or future dischargers to ground water . . ." A "constituent" is any substance or parameter affecting water quality. "Discharge," "pollutant," "toxic pollutant" and "hazardous pollutant" have been defined in accordance with the Water Pollution Control Act, as amended by the Clean Water Enforcement Act of 1990 (P.L.1990, c.28). The definition of "discharge" includes language clarifying that the movement of pollution in the unsaturated or saturated zones to a new part of either zone is considered an actionable discharge under the Standards. "Ground water" is defined as "the portion of water within the zone of saturation . . ." Other definitions have been added or redefined, but these seven form the basis for determining the application of the Ground Water Quality Standards through the regulatory programs of the Department.

(3) Classifications have been established and mapped for ground waters of the State. Three major classes are defined:

Class I Ground Water of Special Ecological Significance
Class II Ground Water Supporting Potable Water Supply
Class III Ground Water With Uses Other Than Potable Water Supply

The derivation of classification areas is a critical component of the Standards, because the classifications and their designated uses control the nature of the criteria and antidegradation policies that are appropriate for ground water in those areas. The proposed classification system is completely revised from the existing Standards. Most of the classifications have been mapped, whereas the classification system for the existing Standards relies primarily on site-specific data.

Class I includes select areas defined as Natural Areas by the Department, as well as the Pinelands Preservation and Protection Areas. These areas are highly sensitive to ecological disruption due to ground water quality changes. The designated use of these areas is the maintenance of special ecological resources. The existing Standards granted special protection for an area approximately overlying only the Pinelands Preservation Area. The proposed Standards add the Pinelands Protection Area to this area of special protection (that is, Class I-PL) in response to rules of the Pinelands Commission designating both areas as nondegradation areas for both surface water and ground water.

Class II includes areas in the State that are existing or potential sources of potable water supply. Two subclasses are proposed. Class II-A includes areas that are predominantly of sufficient quality and quantity for potable use, though localized pollution problems and nonpotable natural water quality may exist. Potable water supply using conventional treatment is the designated use. Class II-B includes areas that have minimal or no withdrawals for potable water supply, contain ground water that does not migrate to areas of higher classification, and have an extensive history of ground water pollution such that restoration of potable quality is technologically impracticable on a regional scale. Eventual potable water use is the designated use for Class II-B. The Department is not proposing Class II-B areas in this proposal. Rather, one or more reclassifications will be proposed by the Department as data are developed for potential Class II-B areas according to the criteria proposed in N.J.A.C. 7:9-6.5(e). In addition, interested parties may petition the Department for reclassification of ground water to Class II-B.

Class III areas are also subdivided. Class III-A areas are major aquitards. While little direct use is made of ground water in these areas for potable purposes, they do provide stream base flow and recharge to overlying and underlying ground water units. The designated use of these areas is the release or transmittal of ground water to adjacent classification areas and surface water. Class III-B areas have significant levels of natural contamination such that potable use is not reasonable without sophisticated, expensive treatment. The major Class III-B areas are saline, but additional areas exist due to natural contamination by sulphur and other constituents derived from the surrounding geologic units. Class III-B is significantly different from the existing GW-4 category, in that the threshold Total Dissolved Solids concentration is 5,000 mg/l instead of 10,000 mg/l, and Class III-B also includes consideration of natural contaminants other than Total Dissolved Solids. The Department has determined that the proposed Class III-B more closely reflects actual thresholds for water that can be used for potable purposes through conventional treatment or mixing. The Department has mapped these areas where data were available, but the precise boundaries of Class III-B areas may be identified using the narrative Class III-B characteristics.

(4) Water quality criteria for four kinds are used in the proposed Standards. For the protection of Class I ground waters in the Pinelands Preservation and Protection Areas and certain other exceptional ecosystems, narrative criteria are used. These criteria can be directly translated into numerical criteria using available scientific data or field analyses of natural quality or existing background water quality. For the remaining classes, criteria are either "specific," "interim specific" or "interim generic." Specific criteria are numerical or narrative criteria (listed in the Standards for identified constituents) by ground water classification. For example, in Class II-A the specific criterion for pH is the range of 6.5-8.5. Interim specific criteria are to be developed as needed, according to the same methodology used to derive the specific criteria. In response to comments received, the Department's new rules set forth the specific methodology to be used to derive these criteria. Finally, where a specific criterion is lacking for any constituent which is a Synthetic Organic Chemical (SOC), an interim generic criterion may be used for specified groups of constituents until an interim specific criterion is developed. The Department has modified the draft definition of SOC in response to public comments to ensure that naturally occurring organic chemicals are not included. The interim generic criteria differ depending upon whether the constituent is or is not identified as a carcinogen (five ug/l and 100 ug/l, respectively).

The interested party draft also included a generic criterion of 100 ug/l for Total SOC lacking specific or interim specific criteria. Numerous comments were received in opposition to this criterion, noting two basic points. First, the criterion for Total SOCs was the same as the generic criterion for each noncarcinogenic SOC. The result was that noncarcinogens could have been regulated more stringently than carcinogens, because 20 carcinogens at five ug/l each equals 100 ug/l. Second, the concept of using Total Organic Carbon was suggested as a surrogate to Total SOCs. The Department has decided not to adopt a Total Organic Carbon level, but has modified the Total SOC criterion. The Department has insufficient scientific evidence to correlate Total Organic Carbon levels to health risks from hazardous substances, and therefore has determined that Total SOC criteria provide a more accurate means with which to achieve the protection of human health. However, the Department agrees that the Total SOC criteria should not regulate noncarcinogens more strictly than carcinogens, and has determined that the draft Total SOC criterion allowed too much risk from carcinogens while potentially over-restricting noncarcinogens. Therefore, the Department is proposing **two** values for Total SOCs, one for carcinogens (at 25 ug/l) and one for noncarcinogens (at 500 ug/l). In a worst case scenario, only five carcinogens would be allowed at five ug/l, rather than the 20 carcinogens previously allowed in a worst case scenario. In addition, a more appropriate level is set for noncarcinogens.

Thus, the Department will develop and use interim criteria based upon the best available scientific information during the life of the Standards. This method will provide a single, consistent mechanism for the derivation of ground water criteria by the Department.

The Department also received comments on the draft language regarding the total risks from mixtures of constituents. The draft language was characterized as being vague. In response to those comments, the Department's current proposed rules provide specific thresholds for risks due to carcinogens (at an additive carcinogenicity risk of 10^{-4} regardless of the site of carcinogenicity) and due to noncarcinogens (at a threshold of one using EPA's risk assessment method for chemical mixtures). The latter threshold accounts for the site of toxicological effect (that is, the specific body organ affected).

As previously mentioned, the criteria for Class I areas generally are based upon natural water quality, and the Department recognizes that some natural water quality in such areas may not be potable. By contrast, for Class II, protection of ground water potability provides the basis for the criteria. As was also previously mentioned, there are two major subclasses for Class II. Class II-A criteria are entirely based upon potability. Class II-B includes areas with major pollution problems where restoration of potable use is not generally feasible or practicable. In response to public comments, the proposed rules have been revised to clarify the criteria applicable to Class II-B. In Class II-B areas, Class II-A criteria will apply for all constituents. However, the Department will take into account background water quality for the constituents that contravene the criteria, when establishing constituent standards for the purpose of regulating discharges. The policy for Class II-B is no further degradation where criteria are contravened, and no violation of criteria for other constituents. For Class III, criteria will be determined as necessary, based on narrative criteria for the protection of existing and downgradient water uses and resources.

(5) In the proposed N.J.A.C. 7:9-6.8, the Standards provide for the protection of high quality ground water, using numeric "antidegradation limits" which will prevent the significant deterioration of water quality by discharges. In turn, the presence of pollutants in ground water moving onto a site is taken into account in N.J.A.C. 7:9-6.9(a), so that regulated dischargers are not penalized for pollution caused by other dischargers or for natural quality.

The percentages chosen for each classification area reflect relevant protection concerns. Class I areas are to be protected against any degradation. Class II-A areas are to be protected against any significant threats to potable use. The Department has decided that degradation to the criteria is unacceptable, and that higher quality ground water should be maintained at a quality better than "minimum." It has quantified this by forbidding degradation beyond 50 percent of the difference between the background water quality concentration and the relevant criterion. Class II-B areas, because of their lack of potable water uses, are to be protected against violation of the criteria for any constituent that currently meets the criteria. This policy maintains the integrity of Class II-B ground water quality for most constituents while cleanup actions and natural attenuation address pollution problems regarding the other constituents. When Class II-B areas are reclassified to Class II-A, the Class II-A antidegradation policy will apply from that time on. Continuing or new discharges would then be subject to the Class II-A antidegradation policy, resulting in declining constituent concentrations over time as natural attenuation occurs.

By the nature of Class III ground water, no direct antidegradation policies apply. However, Class I or Class II antidegradation policies will be applied to Class III-A ground water when the criteria from those higher classification areas are applicable (see N.J.A.C. 7:9-6.7(e)).

(6) The Standards provide for exceptions to the classification system and criteria, wherein alternative constituent standards may be applied or designated water uses may be restricted on either a temporary or a permanent basis. Generally, classification areas consist of relatively extensive geographic areas or regions. However, the Department recognizes that natural quality and localized pollution may not support the designated uses (for example, potable water) in localized areas. In such cases, "Classification Exception Areas" may be defined by the Department. Where the Department finds that certain circumstances exist, such as localized natural quality insufficient to support a designated use, a permitted discharge regulated through NJPDES, or polluted ground water the cleanup of which will be regulated through the Cleanup Standards or other applicable regulatory programs, the Department may amend designated water uses and except application of the constituent standards within that area. The exception applies until the ongoing, permitted discharge ceases or until the pollution remedy is completed, at which time the pre-existing classification will apply. Opportunity is provided for public input to the process of approving Classification Exception Areas for discharges, through the standard NJPDES permit process. The Standards will apply in full at the boundaries of Classification Exception Areas, and therefore will affect the nature of regulatory actions within these areas. The Classification Exception Area boundaries will be defined pursuant to the NJPDES, Cleanup Standards and other applicable rules, which place limitations on the size of the areas that may be contaminated by ongoing discharges and the migration of contaminated ground water.

(7) The Department is proposing the use of Practical Quantitation Levels (PQLs). A PQL is the lowest concentration at which laboratories can reliably measure a given constituent. Whenever the PQL for a given constituent is higher than the relevant constituent standard, the Department is proposing to require compliance only with the PQL (except that treatment works must continue to be designed, constructed and operated to meet all constituent standards). In response to public comments on the draft Standards, the Department has included the PQL derivation method in the narrative text of the proposed Standards at N.J.A.C. 7:9-6.9(c)3. In addition, a provision was added proposing that dischargers will be able to apply to the Department for the application of alternative PQLs where the discharger proves that: (1) the Department's PQL is not valid for a site-specific ground water matrix; (2) an alternative PQL is appropriate; and (3) the alternative PQL will not mask the presence of targeted constituents, rendering them nondetectable due to the presence of other constituents.

(8) The Department proposes that petitions be allowed for the reclassification of ground waters to higher and lower classifications. The issues of standing, proof and process for reclassifications are addressed in N.J.A.C. 7:9-6.10.

(9) The Department proposes to review and reauthorize this subchapter every five years, rather than every three years as provided by the existing Standards. The proposed Standards provide sufficient flexibility to meet specific regulatory needs, such that wholesale review more frequent than the usual five-year interval (Executive Order No. 66(1978)) should not be necessary.

Social Impact

The Department expects an overall positive social impact from the proposed repeal and new rules. The rules should result in a more effective and consistent decision-making process in the Department regarding the regulation of discharges, requirements for ground water remedial actions, and the evolving control of nonpoint discharges. Also, the rules will help the Department better to protect high quality ground water from significant deterioration and to protect existing and potential ground water uses. As surface water systems (for example, fresh water streams and rivers) are often highly dependent upon ground water for flow during dry periods, the rules will also protect surface water quality from the effects of discharges to ground water. The ultimate positive impact of the rules will be that the residents of New Jersey will be able to enjoy now and in the future the many benefits of clean ground water.

The segment of the public most directly financially affected by the rules will be those responsible for discharges as defined by the Standards and regulated by various programs of the Department. The nature and scope of the regulated universe is discussed in more detail in the Economic Impact and Regulatory Flexibility Analyses, below.

As indicated there, the impact of compliance with these rules will vary with the situation of the individual discharger. The Standards' use of Practical Quantitation Levels establishes an equitable enforcement policy by protecting dischargers from being exposed to penalties in cases where their discharges contain very low concentrations of constituents that cannot be reliably measured by current laboratory methods.

After dischargers, the next most affected segment of the public will be those who withdraw ground water for a designated use. The rules are intended in part to reduce the frequency and severity of ground water pollution in New Jersey. This will make it safer, easier and cheaper to use the State's ground waters.

Economic Impact

Because the Standards are not self-executing but instead are to be implemented through a variety of regulatory programs, it is difficult to predict their economic impact. However, in general the Department believes that the citizens of New Jersey will receive economic benefit from the promulgation of these Standards, in that the Standards will help the Department to direct resources to those areas that will reap the greatest benefit from those resources. Thus, the Standards will result in lower costs for most persons using ground water, and they may result in somewhat higher costs for most dischargers to ground water. Set forth below is a more detailed discussion of the economic impacts expected to be felt by the specific classes of persons that will feel the greatest impact from the new Standards.

A wide variety of ground water users and other residents of the State will benefit economically from the improved protection of ground water quality that the proposed new rules will help to provide. An estimated 400,000 private, residential wells exist in New Jersey. Improved protection of potable ground waters will reduce the necessity and cost of providing alternative water supplies or water treatment to these users, at costs ranging from $2,000 to $30,000 per affected residence. In at least one instance, the pollution of domestic wells resulted in a cost exceeding $10 million for the provision of public water supplies. The new Standards should help to allow such occurrences and costs to be avoided. In addition, similar economic benefits will be reaped by those who use wells for public potable water systems, agricultural water and industrial water supplied by wells. Capital costs for treatment of public water supply wells and well fields can exceed $1 million in severe pollution cases.

In the short term, some ground water dischargers will face additional costs to comply with these standards. For instance, the Superfund and ECRA programs in combination have resulted in the expenditure or commitment of billions of dollars for remedial investigations and actions. An indeterminate portion of these costs can be ascribed to ground water quality concerns. Most of the costs involved in meeting the proposed Standards would be incurred in meeting the existing Standards and other Federal and State remedial requirements.

In the long term there will be some benefits to the overall regulated community as more consistent and protective ground water quality controls result in a reduced incidence of ground water remedial actions mandated due to improper discharges. These benefits accrue because the costs of ground water pollution remedies may be orders of magnitude greater than the costs of prevention. (A number of ground water pollution remedies currently approved for New Jersey sites exceed $20 million in costs per site.) Many dischargers also use ground water resources and thus will benefit from improved ground water quality protection.

Further economic benefit will be gained from the proposed Standards' clarification of the ground water uses that must be protected through ground water rules. By classifying ground water, scarce public and private cleanup resources may be applied to the most critical areas for the protection of potable water supplies and special ecological areas. Almost all of the State is classified for the protection of such areas (Class I and Class II-A). However, a large portion of the State's cases of ground water pollution are in areas that currently do not use ground water for potable supplies and have regional pollution problems, the correction of which may be beyond the abilities of currently available technology. This land area is small but includes the most urbanized parts of New Jersey, some of which may be eligible for reclassification to Class II-B. This policy would allow for the avoidance of the costs of ground water quality remedies where these remedies would be ineffective due to technological limitations. In other words, although costs will be incurred for control of pollutant sources, free product removal, control of gross contamination, and protection of potential receptors, impracticable remedies will not be required where no real environmental benefit will result.

The economic impact upon specific, permitted discharges will vary on a case by case basis, and can vary by orders of magnitude depending upon the nature of the discharge or potential discharge. In assessing this impact, it first should be noted that many of the requirements that will be imposed as a result of the adoption of these Standards are already being imposed pursuant to either the existing Standards or in the context of specific regulatory programs.

It should also be noted that a large percentage of permittees already have a "zero discharge" requirement in their permits (for example, monitoring permits and registrations for new landfills, surface lagoons, sludge drying beds, underground storage tanks). For sources that do not discharge, no actions are necessary specifically to comply with the effects of these rules (beyond the existing regulatory requirements). For sources which do have an actual discharge, these rules will in most cases cause the discharger to incur increased costs. The extent of those costs will depend upon the constituents currently discharged, their concentration within the effluent, the geologic and soils regimes, the classification area affected (and relevant antidegradation policies), background quality of ground water, and the quantity of the discharge. By contrast, in some cases, the rules may actually result in a reduction of public and private sector expenditures, due to the provisions for Classification Exception Areas. (As previously mentioned these provisions constitute an acknowledgement that certain expenditures would not result in a corresponding environmental benefit.)

If and when these Standards are applied to nonpoint pollution sources, they will impose costs on discharges not currently regulated. The Department will determine the nature and extent of those costs before it applies the Standards to such discharges.

Finally, most parties responsible for existing ground water pollution will face higher costs relative to the current requirements. Incremental

costs to these dischargers will range widely, and the universe of cases is too diverse to allow a reasonable estimate of "typical" costs.

Comments to the interested party draft noted that in many cases of existing pollution, the protection of affected receptors through well treatment will often be much less costly than the restoration of ground water quality, and that therefore it is not always prudent to protect or restore ground water quality. The Department rejects this reasoning because the Legislature has established policy in this area through the Water Pollution Control Act, which act requires the Department to "restore, enhance and maintain the chemical, physical and biological integrity of its waters . . ." Statutory law in New Jersey and at the Federal level clearly establishes a policy of protection for public water resources, where those who discharge to ground water are responsible for both protecting receptors and restoring the integrity of ground water quality (at least to the extent that the restoration is technologically feasible). The Department is committed to implementing statutory policy in this regard.

Environmental Impact

The proposed Standards will have a strongly positive impact on the environment. As previously mentioned, the main benefit will be more reasoned and consistent decisionmaking regarding ground water protection. In combination with the regulatory programs used to implement the Standards, these rules will help to satisfy the State's policy for achieving and protecting water quality as stated in the Water Pollution Control Act. No ground waters are classified for the uncontrolled discharge of pollutants or for significant degradation, while a significant percentage of the State's waters are classified for the stringent protection of ecological resources (for example, nondegradation).

The Standards also provide for carefully crafted exceptions where the expenditure of public and private funds to control and mitigate existing pollution is technologically impracticable from an engineering perspective, or where impacts are reasonable, short-term and localized results of permitted discharges. Although costs will be reduced through these exceptions, the intent is to do so only where the desired environmental benefits cannot be attained through full application of the Standards. Further, Classification Exception Areas and criteria exceptions specifically apply only to individual constituents of concern, so that the exception is the minimum necessary to attain reasonable flexibility.

The Department is proposing Practical Quantitation Levels (PQLs) to be used in measuring compliance with the Standards. It believes that whatever minimal negative impact this policy might cause to the environment is outweighed by the gross unfairness that would otherwise be involved in enforcing unmeasurable limitations. The Department will make use of more stringent analytical methods (such as biological assays) where affected ground waters discharge to surface waters, to ensure compliance with the Surface Water Quality Standards. Further, the Department will ensure that new treatment works that discharge to ground water are technologically capable of and are operated so as to fully satisfy constituent standards, and it anticipates that future improvements in laboratory techniques will result in PQLs that are closer to the constituent standards over time.

Regulatory Flexibility Analysis

The proposed new rules will apply to all ground water discharges in the State that may be regulated through the Department's various regulatory programs. The total number of affected individuals and facilities cannot be determined, due to: (1) the indeterminate number of ground water pollution incidents which are now undetected; (2) the large number of potential pollutant sources which are affected by these rules only if ground water pollution occurs (for example, underground storage tanks and ECRA cases); and (3) the indeterminate number of pollutant sources that are subject to regulation under existing programs but that have not applied for permits.

Nonetheless, some data do exist on the regulated universe. The Department has permitted nearly 1,000 facilities through the NJPDES program (ground water discharge portion), and has identified over 2,000 known or suspected ground water pollution cases. Approximately 50,000 underground storage tank facilities are regulated by the Department, a significant number of which are expected to involve ground water pollution. Hundreds of ECRA cases each year are identified as having a potential impact on ground water quality. Hundreds of accidental spills occur each year that have a potential to impair ground water quality. Rough estimates indicate that over 10,000 underground injection wells (mostly Class V) exist, some of which may degrade ground water quality, and some of which may now be classified as Class IV (prohibited in New Jersey) due to new Environmental Protection Agency testing procedures for hazardous wastes. Nonpoint ground water pollution sources will eventually be addressed by the Department, through implementation of the Nonpoint Source Pollution Assessment and Management Plan. The number of nonpoint pollution sources affecting ground water is indeterminate, but probably will exceed the number of point sources.

Some dischargers will be "small businesses" as defined in the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The Department does not expect these new rules to compel directly any new recordkeeping or reporting requirements, in that the Standards are not self-executing but instead are to be applied through existing regulatory programs.

Because of the wide variety of programs through which the Standards will be applied, it is difficult to predict the precise effect that the Standards will have on small businesses. Nonetheless, it is clear that at least some small businesses may be affected by use of the Standards through the Department's regulatory programs. For example, approximately 30 percent of New Jersey's gasoline stations are owned by small, independent retailers. Where a continuing discharge to ground water occurs (for example, through runoff or floor drains), these rules may affect the requirements regarding the discharges, most likely by making those requirements somewhat more stringent due to additional water quality criteria or more stringent antidegradation policies. In addition, the underground storage tanks at such facilities are already regulated by the Department, and the proposed Standards may cause the imposition of additional requirements regarding pollution mitigation where discharges from the tanks have occurred. Also, any other small businesses which discharge any regulated constituent to ground water through a drywell, leaching field or other discharge facility can be regulated by the NJPDES program, which would use these Standards as one basis for setting discharge controls. Finally, small businesses with nonpoint discharges to ground water may eventually be affected by the Standards as the Department develops more comprehensive programs and regulations to regulate such sources. A more detailed regulatory flexibility assessment of such rules will take place at the time of their proposal.

Businesses which are affected by these rules may require the services of hydrogeologists, professional engineers and other specialists to ascertain the effects of their ground water discharges upon ground water quality, and to design, construct and operate effluent treatment or pollution mitigation facilities to meet the requirements of the relevant regulatory programs. Total costs for compliance with ground water quality requirements may range from less than $10,000 to hundreds of thousands of dollars, depending upon the scope of the problem. Implementation of remedial actions may range in the millions of dollars. However, these requirements upon small business are essential for the protection of public health, and most of the requirements are contained in current rules and requirements of the Department. The incremental costs associated with the current proposed new rules are likely to be relatively small.

In developing these rules, the Department has considered ways to minimize the probable adverse economic impact of the proposed Standards upon small businesses. However, the Department has determined that any attempt to exempt small businesses from any of the provisions of the Standards would endanger the environment, public health and public safety, and would have the effect of transferring costs onto other parties which are not responsible for the resulting ground water degradation. Accordingly, the proposed Standards do not contain any exemptions for small businesses. However, many of the regulatory programs that will be used to implement the Standards do contain provisions designed to minimize adverse economic impacts on small businesses.

Full text of the proposed repeal may be found in the New Jersey Administrative Code at N.J.A.C. 7:9-6.

Full text of the proposed new rules follows:

SUBCHAPTER 6. GROUND WATER QUALITY STANDARDS

7:9-6.1 Scope of subchapter

(a) Unless otherwise provided by statute, the following shall constitute the rules of the Department of Environmental Protection and Energy concerning ground water classification, designated uses of ground water, and ground water quality criteria and constituent standards, pursuant to the Water Pollution Control Act (N.J.S.A. 58:10A-1 et seq.) and the Water Quality Planning Act (N.J.S.A. 58:11A-1 et seq.).

(b) This subchapter shall provide the basis for protection of ambient ground water quality, through the establishment of constituent standards for ground water pollutants. These constituent standards are applicable to the development of: ground water protection standards pursuant to the New Jersey Pollutant Discharge Elimination System (NJPDES; N.J.A.C. 7:14A); ground water cleanup standards and compliance levels beyond the boundaries of a contaminated site pursuant to applicable regulatory programs; and other requirements and regulatory actions applicable to discharges that cause or may cause pollutants to enter the ground waters of the State, including nonpoint and diffuse sources regulated by the Department. Other relevant laws through which the Ground Water Quality Standards may be applied include, but are not limited to, the Spill Compensation and Control Act (N.J.S.A. 58:10-23.11 et seq.), the Solid Waste Management Act (N.J.S.A. 13:1E-1 et seq.), the Environmental Cleanup Responsibility Act (N.J.S.A. 13:1K-6 et seq.), the Storage of Hazardous Substances Act (N.J.S.A. 58:10A-21 et seq.), the Realty Improvement Act (N.J.S.A. 58:11-23 et seq.), and the Pesticide Control Act of 1971 (N.J.S.A. 13:1F-1 et seq.).

7:9-6.2 Policies

(a) It is the policy of this State to restore, enhance and maintain the chemical, physical and biological integrity of its waters, to protect public health, to safeguard fish and aquatic life and scenic and ecological values and to enhance the domestic, municipal, recreational, industrial and other uses of water.

(b) Discharges to ground water that subsequently discharges into surface waters shall not be permitted if such discharges would cause a contravention of surface water quality standards applicable to those surface waters. That is, those discharges must meet both these standards and the surface water quality standards (N.J.A.C. 7:9-4).

(c) When existing ground water quality does not meet the constituent standards determined pursuant to N.J.A.C. 7:9-6.7, 6.8 and 6.9(a) and (b), due to human activities, the Department shall, after a review of relevant and available scientific and technical data, determine in the context of the applicable regulatory programs the management actions necessary (including, but not limited to, the requirement of remedial actions) to restore or enhance ground water quality pursuant to the policies of this subchapter.

(d) The Department shall not approve discharges or activities posing a significant risk of discharges, within the jurisdiction of and subject to regulation by the Pinelands Commission, that would contravene the rules of the Pinelands Commission with regard to the protection of ground water or surface water quality.

7:9-6.3 Construction

This subchapter shall be liberally construed to permit the Department to implement its statutory functions.

7:9-6.4 Definitions

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

"ACL" means alternative concentration limit.

"Agricultural water" means water used for crop production, livestock, horticulture and silviculture.

"Alternative concentration limit" (ACL) means a constituent standard or narrative description of actions, discharge controls and water quality requirements that is less stringent than the ground water quality requirements of N.J.A.C. 7:9-6.7, 6.8 and 6.9(a) and (b), due to a Departmental determination pursuant to NJPDES (N.J.A.C. 7:14-6.15(e)2). In order to approve an ACL, the Department must find that the relevant constituent standard(s) cannot be achieved through technologically practicable means.

"Antidegradation" means a policy to ensure that existing ground water quality (that currently is of higher quality than the water quality criteria in N.J.A.C. 7:9-6.7) is not degraded to the criteria by discharges, but rather remains at a better quality ranging from natural quality at the most stringent, to a limited allowance for degradation at the least stringent. "Nondegradation" is the most stringent case of the antidegradation policy. It prohibits any degradation of ground water quality below existing background water quality by a discharge.

"Antidegradation limit" is the numerical expression (in terms of a concentration or level of a constituent in ground water) of the antidegradation policy.

"Aquifer" means a saturated geologic formation(s) or unit(s) which is sufficiently permeable to transmit water to a pumping well in usable and economic quantities. The upper level of an unconfined aquifer may vary over time; "aquifer" applies to the full saturated zone at any time.

"Aquitard" means a hydrogeologic confining unit(s) that exhibits limited permeability, bounding one or more aquifers, that does not readily yield water to wells or springs, but may serve as a storage unit for ground water and may release this water to adjacent ground water units or surface waters. Such confining units are defined and listed in N.J.A.C. 7:9-6.5(f)1 or may be established through reclassification under N.J.A.C. 7:9-6.10.

"Background water quality" means the existing concentration of constituents in ground water which is determined to exist directly upgradient of a discharge but not influenced by the discharge, as determined using monitoring data as required by the Department.

"Classification area" means the geographic extent (lateral and vertical) of a geologic formation(s) or unit(s) wherein ground water is classified for designated uses, as described in N.J.A.C 7:9-6.5.

"Classification exception area" means an area within which one or more constituent standards and designated uses are suspended in accordance with N.J.A.C. 7:9-6.6.

"Constituent" means a specific chemical substance (that is, waste, element or compound) or water quality parameter (for example, temperature, odor, color).

"Constituent standard" means the required minimum or maximum level or concentration (as applicable) for a constituent in a classification area, as established in N.J.A.C. 7:9-6.7, 6.8 and 6.9(a) and (b). The constituent standards shall be the basis for the Department's regulation of ground water quality effects of past, present or future discharges to ground water or the land surface, pursuant to applicable authorities as defined in N.J.A.C. 7:9-6.1.

"Criteria" means water quality criteria.

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

"Designated use" means a present or potential use of ground water which is to be maintained, restored and enhanced within a ground water classification area, as determined by N.J.A.C. 7:9-6.5. Designated uses may include any human withdrawal of ground water (for example, for potable, agricultural and industrial water), the discharge of ground water to surface waters of the State which support human use or ecological systems, or the direct support of ecological systems.

"Discharge" means an intentional or unintentional action or omission resulting in the releasing, spilling, leaking, pumping, pouring, emitting, emptying or dumping of a pollutant at any time into the waters of the State, onto land or into wells from which it might flow or drain into said waters, or into waters or onto lands outside the jurisdiction of the State, which pollutant enters the waters of the State. "Discharge" includes, without limitation, the release of any pollutant into a municipal treatment works. The flow of pollutants to ground water includes, without limitation, flow through the unsaturated zone, and the movement of pollutants in ground water into new volumes of the saturated zone.

"Discharger" means any person, corporation, municipality, government agency or authority or other legal entity, who causes, induces or allows a discharge, either through action or omission.

"FW1" means those surface fresh waters defined as such in the Surface Water Quality Standards, N.J.A.C. 7:9-4, and shown on maps maintained by the Department.

"Ground water" means the portion of water beneath the land surface that is within the zone of saturation (below the water table) where the pore spaces are filled with water.

"Hazardous pollutant" means:

1. Any toxic pollutant;

2. Any substance regulated as a pesticide under the Federal Insecticide, Fungicide and Rodenticide Act, Pub.L.92-516 (7 U.S.C. §136 et seq.);

3. Any substance the use or manufacture of which is prohibited under the Federal Toxic Substances Control Act, Pub.L.94-469 (15 U.S.C. §2601 et seq.);

4. Any substance identified as a known carcinogen by the International Agency for Reseach on Cancer;

5. Any hazardous waste as designated pursuant to section 3 of P.L. 1981, c.279 (N.J.S.A. 13:1E-51) or the "Resource Conservation and Recovery Act," Pub.L.94-580 (42 U.S.C. §5901 et seq.); or

6. Any hazardous substance as defined pursuant to section 3 of P.L. 1976, c.141 (N.J.S.A. 58:10-23.11b).

"Industrial water" means water used for processing, heating or cooling in a manufacturing process.

"Natural Area" means an area of land or water, designated by the Department under N.J.A.C. 7:2-11 and shown on maps maintained by the Office of Natural Lands Management, Division of Parks and Forestry, of the Department, which is owned in fee simple or in which a conservation easement is held by the Department.

"Natural quality" means the concentration or level of constituents which occurs in ground water of a hydrologic unit without the influence of human activity, other than the effects of regional precipitation of air pollutants (for example, acid precipitation). The natural quality for SOCs is established as zero (0.0) except where the SOCs are the result of air transport from outside the State, enter the State from ground water transport of pollutants having their origins in other states, or are created entirely by natural processes. Where natural quality for other constituents is not ascertainable from generally acceptable scientific studies, the lowest concentrations known to exist within the same or a similar hydrologic unit and setting (that is, depth) within the classification area shall be used to represent the natural quality, provided, however, that for pH, corrosivity and hardness, the most representative concentration shall be used.

"NJPDES" means the New Jersey Pollutant Discharge Elimination System (N.J.A.C. 7:14A).

"NJPDES permit action" means a draft or final NJPDES permit, a permit equivalent, or a decision that a discharge is not to be regulated by NJPDES, as determined pursuant to the NJPDES regulations.

"Pollutant" means any dredged spoil, solid waste, incinerator residue, sewage, garbage, refuse, oil, grease, sewage sludge, munitions, chemical wastes, biological materials, radioactive substance, thermal waste, wrecked or discarded equipment, rock, sand, cellar dirt, and industrial, municipal or agricultural or other residue discharged into the waters of the State. "Pollutant" includes both hazardous and nonhazardous pollutants. "Industrial, municipal or agricultural or other residue" specifically included, without limitation, constituents that are not considered wastes (that is, process chemicals) prior to discharge, but which are discharged and may or do degrade natural or existing ground water quality.

"Potable water" means water suitable for household consumption, primarily as drinking water, based upon human health, welfare and aesthetic considerations.

"Practical quantitation level" (PQL) means the lowest concentration of a constituent that can be reliably achieved among laboratories within specified limits of precision and accuracy during routine laboratory operating conditions. "Specified limits of precision and accuracy" are the criteria which have been included in applicable regulations or are listed in the calibration specifications or quality control specifications of an analytical method.

"SOC" means Synthetic Organic Chemical.

"Soils" means any naturally occurring or man-made unconsolidated mineral and organic matter on the surface of the earth that has been subjected to and influenced by geologic and environmental factors. "Soils" also includes fill or overburden.

"Source water" means the supply source of water (for example, private wells, public water supply) to a discharger, where the source water becomes part of a discharge.

"Surface water" means water at or above the land's surface which is neither ground water nor contained within the unsaturated zone.

"Synthetic organic chemicals" (SOCs) means any compounds that contain at least one carbon atom and that result from purposeful chemical synthesis, whether as products, by-products, or waste, or from the purposeful refinement of naturally occurring substances. Where a chemical substance is sometimes found in nature and sometimes synthesized, it shall be considered an SOC only to the extent or in the proportion produced or isolated by human activity. Naturally occurring organic chemicals in their natural location are not considered a pollutant pursuant to the Ground Water Quality Standards.

"Toxic pollutant" means any pollutant identified pursuant to the Federal Water Pollution Control Act Amendments of 1972 (Pub.L.92-500, 33 U.S.C. §1251 et seq.), or any pollutant or combination of pollutants, including disease causing agents, which after discharge and upon exposure, ingestion, inhalation or assimilation into any organism, either directly or indirectly by ingestion through the food chain, will, on the basis of information available to the Department, cause death, disease, behavioral abnormalities, cancer, genetic mutations, physiological malfunctions, including malfunctions in reproduction, or physical deformation, in such organisms or their offspring.

"USEPA" means the United States Environmental Protection Agency.

"Unsaturated zone" (vadose zone) means the subsurface volume between the land's surface and the top of a saturated zone (water table), where moisture does not fill all the pore spaces in the formation or soil.

"Water quality criteria" means the designated levels or concentrations of constitutents that, when not exceeded, will not prohibit or significantly impair a designated use of water. Criteria may be "specific" (listed for each constituent in Table 1), "interim specific" (derived using a standard method, for constituents not listed in Table 1), or "interim generic" (as listed for carcinogenic and non-carcinogenic Synthetic Organic Compounds in Table 2).

"Waters of the State" means the ocean and its estuaries, all springs, streams and bodies of surface or ground water, whether natural or artificial, within the boundaries of this State or subject to its jurisdiction.

"Zone of Contribution" means the volume of a geologic formation or unit that directly contributes ground water to a pumping well over time, or a Well Head Protection Area as defined by the Department pursuant to the Federal Safe Drinking Water Act, Amendments of 1986.

7:9-6.5 Ground water classification system and designated uses

(a) Ground water shall be classified according to the hydrogeologic characteristics of the ground water resource and the designated use(s) which are to be maintained, restored and enhanced within the classification area. Classifications shall be regional in nature and shall not reflect localized infringements on designated uses due to natural quality or pollution incidents. Ground water users should not assume that existing ground water quality everywhere meets the criteria for classification areas established herein, in view of the potential for variations in natural quality or for localized pollution caused by human activity. Additional uses may be made of ground water in any classification area, subject to applicable Department rules, but these uses are not directly protected through this subchapter.

(b) The Department shall preferentially protect the primary designated use for each classification area, and shall protect any secondary designated uses to the extent that such uses are viable using water of sufficient quality for the primary use and that the primary use is not impaired.

(c) There shall be three major classes of ground water, as defined in (d) through (f) below. They are:

Class I Ground Water of Special Ecological Significance
Class II Ground Water for Potable Water Supply
Class III Ground Water With Uses Other Than Potable Water Supply

(d) The primary designated use for Class I ground water shall be the maintenance of special ecological resources supported by the ground water within the classification area. Secondary designated

uses shall be potable water, agricultural water and industrial water to the extent that these uses are viable using water of natural quality and do not impair the primary use, such as by altering ground water quality.

1. Class I-A—Exceptional Ecological Areas: Class I-A ground water shall consist of all ground waters within those classification areas, designated by the Department through the reclassification procedure in N.J.A.C. 7:9-6.10, which satisfy either (d)1i or ii below. In addition, ground waters within those areas listed in (d)1iii below are classified as Class I-A ground waters, because the Department has determined that they satisfy the requirements of either (d)1i or ii below. The Department may approve a Class I-A classification area if the ground water within that area:

i. Contributes to the transmittal of ground water to surface water in FW1 watersheds; and

(1) The area involved is under government ownership (fee simple or conservation easement); or

(2) Is owned by a private entity that petitions the Department for reclassification of the property to Class I-A pursuant to N.J.A.C. 7:9-6.10; or

ii. Contributes to the transmittal of ground water to the land surface or to surface water in areas of exceptional ecological value. Areas of exceptional ecological value satisfy the conditions described in (d)1ii(1), (2) or (3) below, and also satisfy the conditions described in both (d)1ii(4) and (5) below:

(1) Support threatened or endangered species as determined by the United States Department of the Interior pursuant to the Endangered Species Act or by the Department pursuant to the Endangered and Nongame Species Conservation Act.

(2) Support biotic communities within Natural Areas.

(3) Serve other exceptional ecological values such as being a part of or supporting state, nationally or internationally rare, threatened or endangered habitats where there is a significant risk that ground water pollution would impair or imperil the ecological values.

(4) The quality and transmittal of ground water is essential to the survival or maintenance of the exceptional ecological resource contained within the classification area.

(5) The area involved is under government ownership (fee simple or conservation easement), or is owned by a private entity that petitions the Department for reclassification of the property to Class I-A pursuant to N.J.A.C. 7:9-6.10.

iii. Ground water within the following areas are herein classified as Class I-A:

(1) Watersheds of FW1 surface waters;

(2) The following Natural Areas as designated by the Department pursuant to N.J.A.C. 7:2-11:

Absegami Natural Area
Allamuchy Natural Area
Batsto Natural Area
Bearfort Mountain Natural Area
Bear Swamp East Natural Area
Black River Natural Area
Cape May Point Natural Area
Cedar Swamp Natural Area
Cheesequake Natural Area
Cook Natural Area
Dryden Kuser Natural Area
Dunnfield Creek Natural Area
Farny Natural Area
Hacklebarney Natural Area
Island Beach Northern Natural Area
Island Beach Southern Natural Area
Ken Lockwood Gorge Natural Area
Manahawkin Natural Area
Oswego River Natural Area
Parvin Natural Area
Ramapo Lake Natural Area
Rancocas Natural Area
Sunfish Pond Natural Area
Swimming River Natural Area
Tillman Ravine Natural Area
Troy Meadows Natural Area
Washington Crossing Natural Area
Wawayanda Hemlock Ravine Natural Area
Wawayanda Swamp Natural Area
Whittingham Natural Area

2. Class I-PL—Pinelands: The classification area for Class I-PL consists of all ground water in the Cohansey and Kirkwood Formations located within the pinelands area as designated by the Pinelands Protection Act, N.J.S.A. 13:18A-1 et seq. (as indicated in figure 1 in the Appendix, incorporated herein by reference), other than those ground water areas classified as Class I-A.

i. Class I-PL (Preservation Area): The primary designated use is the support and preservation of unique and significant ecological resources of the Pinelands, through the restoration, maintenance and preservation of ground water quality in its natural state. Secondary designated uses include compatible, indigenous agricultural and potable water uses.

ii. Class I-PL (Protection Area): The primary designated use is the preservation of Pinelands plant and animal species and their habitats through the protection and maintenance of the essential characteristics of Pinelands ground water quality. Secondary designated uses include potable and agricultural water.

(e) Class II ground waters have a designated use of the provision of potable ground waters with conventional water supply treatment, either at their current water quality (Class II-A) or subsequent to enhancement or restoration of regional water quality so that the water will be of potable quality with conventional water supply treatment (Class II-B). Both existing and potential potable water uses are included in the designated use.

1. Class II-A shall consist of all ground water of the State, except for ground water designated in Classes I, II-B or III. The primary designated use for Class II-A ground water shall be potable water and conversion (through conventional treatment, mixing or other similar technique) to potable water. Class II-A secondary designated uses include agricultural water and industrial water.

2. Specific Class II-B areas, designated uses and constituent standards will be established through rule or through reclassification pursuant to N.J.A.C. 7:9-6.10. The designated uses of Class II-B areas generally may include any reasonable use (other than potable use). Designated uses of Class II-B ground water shall not exacerbate existing ground water pollution or impede the ability to enhance or restore the quality of the ground water so that it will be potable or convertible to potable use with conventional treatment, mixing or other similar techniques. Class II-B shall consist only of ground waters:

i. That exhibit extensive exceedance of one of more of the ground water quality criteria in N.J.A.C. 7:9-6.7(c) within the proposed Class II-B area, due to past discharges of ground water pollutants;

ii. Where restoration of the ground water, where polluted, is technologically impracticable from an engineering perspective using best available remedial technology;

iii. Where the conditions listed in (e)2(1) through (4) below exist within the proposed Class II-B area, and there is no indication in the projections of the Department, public water supply systems serving the area, or municipalities of the area that those conditions will cease to exist within the next 25 years:

(1) No public community water supply well or Zone of Contribution for such a well exists;

(2) Less than five percent of the potable water supply for the overall area is derived from ground water from within the area;

(3) Less than five percent of the potable water supply for any municipality (or portion thereof within the Class II-B area) is derived from ground water from within the area; and

(4) No significant concentration of domestic water supply wells exists;

iv. Where no significant risk of pollution migration into Class I or II-A areas exists; and

v. Where a reliance on natural attenuation processes for the restoration of ground water quality does not pose a significant risk to public health or welfare or ecological systems.

3. Class II-B Classification Areas—(Reserved)

(f) The Class III ground waters are not suitable for potable water due to natural hydrogeologic characteristics or natural water quality. Class III includes geologic formations or units that are aquitards or have a natural quality that is unsuitable for conversion to potable water (for example, saline ground water).

1. Class III-A ground water consists of those aquitards that are described below. The primary designated use for Class III-A ground water is the release or transmittal of ground water to adjacent classification areas and surface water, as relevant. Secondary designated uses in Class III-A include any reasonable uses. Class III-A ground water includes portions of the saturated zones (that meet the criteria below) of the Woodbury Formation, Merchantville Formation, Marshalltown Formation, Navesink Formation, Hornerstown Formation, aquitard formations of the Potomac-Raritan-Magothy aquifer system and the Kirkwood aquifer system, and portions of the glacial moraine and glacial lake deposits, excepting Class I areas. These aquitards (excluding glacial units) outcrop approximately in municipalities depicted in Figure 2 in the Appendix. Aquitards included within Class III-A:

i. Average at least 50 feet in thickness within the Class III-A area;

ii. Have a typical hydraulic conductivity of approximately 0.1 ft/day or less within the Class III-A area; and

iii. Have an areal extent within the Class III-A area of at least 100 acres.

2. Class III-B ground water consists of all geologic formations or units which contain ground water having natural or regional (through the action of salt-water intrusion) concentrations exceeding 3,000 mg/l Chloride or 5,000 mg/l Total Dissolved Solids, or where the natural quality of ground water is otherwise not suitable for conversion to potable uses. The designated uses for Class III-B ground water consist of any reasonable uses for such ground water other than potable water, using water of existing quality. The classification area includes ground water in parts of formations as indicated in Figures 3 through 5 in the Appendix. The precise borders of Class III-B areas shall be confirmed using site specific data in the context of applicable regulatory programs.

7:9-6.6 Exceptions to the classification system

(a) The Department may establish a Classification Exception Area where the Department determines that constituent standards for a given classification are not being met or will not be met in a localized area due to: natural quality; localized effects of a discharge approved through a NJPDES permit action; pollution caused by human activity within a contaminated site as defined by the Department in the context of an applicable regulatory program; or an ACL as approved by the Department pursuant to NJPDES. The Department shall determine or describe appropriate boundaries for each Classification Exception Area, and the constituents to which the exception applies. Violations of constituent standards for which the above considerations do not apply shall not constitute a valid purpose for a Classification Exception.

(b) Where natural quality for any constituent contravenes the criteria established in N.J.A.C 7:9-6.7 such that the primary designated use is not viable within a limited area, the Department may establish a Classification Exception Area within which the Department shall define appropriate designated uses and constituent standards, based upon the natural quality. Such Classification Exception Areas shall remain in effect as long as the primary designated use of the original classification area is not viable using ground water at natural quality.

(c) Where the Department defines, through a NJPDES permit action, an area of temporary noncompliance with specific constituent standards related to the localized effects of a permitted discharge, the ground water within that area of noncompliance shall be a Classification Exception Area for those constituents only. All designated uses in these Classification Exception Areas will be suspended during the life of the Classification Exception Area. Constituent standards of the surrounding classification area shall apply at the perimeter of the Classification Exception Area for the specified constituents. All other constituent standards shall apply within the Classification Exception Area. The Classification Exception Area shall have the same life as the approved NJPDES permit action, after which the original classification, designated uses and constituent standards shall apply.

(d) Where a discharge has resulted or will result in localized ground water quality that contravenes one or more constituent standards, the Department may define that area as a Classification Exception Area for specified constituents pursuant to (or in accordance with) a NJPDES permit action or a Department-approved remedial action in the context of an applicable regulatory program. All designated uses in each Classification Exception Area will be suspended during the life of the Classification Exception Area. Constituent standards of the surrounding classification area shall apply at the perimeter of the Classification Exception Area for the specified constituents. All other constituent standards shall apply within the Classification Exception Area. The Department shall restrict or require the restriction of potable ground water uses within any Classification Exception Area where there is or will be an exceedance of the Primary Drinking Water Quality Standards (in N.J.A.C 7:10). The regulatory action creating the Classification Exception Area shall specify the longevity of the exception, after which the original classification, designated uses and constituent standards shall be applicable.

7:9-6.7 Ground water quality criteria

(a) Ground water quality criteria for Class I-A areas shall be the natural quality for each constituent. Class I-A is a nondegradation classification where natural quality shall be maintained or restored. The Department shall not approve any discharge to ground water nor approve any human activity which results in a degradation of natural quality within a Class I-A classification area.

(b) Ground water quality criteria for Class I-PL are as follows:

1. Within Class I-PL (Preservation Area), ground water quality criteria shall be the natural quality for each constituent. Class I-PL (Preservation Area) is a nondegradation classification in which natural quality shall be maintained or restored. The Department shall not approve any discharge or any other activity which would result in the degradation of natural quality within a Class I-PL (Preservation Area) classification area. However, the provisions of this paragraph (b)1 shall not apply to indigenous agricultural activities.

2. Ground water quality criteria for Class I-PL (Protection Area) shall be the existing water quality. The Department shall not approve any discharge or any other activity which would result in the degradation of background water quality in the Class I-PL (Protection Area) classification area. However, the provisions of this paragraph (b)2 shall not apply to agricultural activities, nor shall they be deemed to prohibit to discharges or activities that would result in ground water having a concentration of nitrate (N-NO3) of 2.0 milligrams per liter (mg/l) or less, where those discharges or activities are otherwise consistent with the Class I-PL (Protection Area) criteria.

3. The Department shall not approve any discharge to ground water within the Class I-PL classification area which results in a violation of the Surface Water Quality Standards applicable to the Pinelands National Reserve, as established in N.J.A.C. 7:9-4 or successor rules.

(c) Ground water quality criteria for Class II-A are as follows:

1. Specific criteria for ground water quality in Class II-A areas are listed in Table 1 in the Appendix.

2. Where a specific criterion is not listed for a constituent in Table 1, the Department may establish interim specific criteria for Class II-A ground water based upon the weight of evidence available regarding each constituent's carcinogenicity, toxicity, public welfare or organoleptic effects, as appropriate for the protection of the potable water use. Interim specific criteria may be established case by case using the methods listed in (c)3 below, which are the same methods applied to the development of the specific criteria in Table 1. Interim specific criteria shall be replaced with specific criteria as soon as reasonably possible by rule.

3. Interim specific criteria may be derived by the Department for any constituent, in accordance with the methodologies in (c)5 below, and using the risk assessment approach in (c)4 below. The Department shall maintain and make available to the public a listing of

all interim specific criteria and the supplemental information used in their derivation.

i. The human health-based criteria are derived from the toxicity factor (carcinogenic potency slope or Reference Dose), the exposure assumptions for drinking water and a relative source contribution factor (for non-carcinogens) which is used to account for the contribution from other sources of exposure including air and food. The Department assumes a 20 per cent relative source contribution factor when sufficient quantitative data are not available on the contribution of each source of exposure. Data sources for carcinogenic potency slope or Reference Dose shall be used in the following hierarchy:

(1) Information which forms the basis for drinking water standards adopted by the Department pursuant to the Safe Drinking Water Act, N.J.S.A. 58:12A-1 et seq.;

(2) The United States Environmental Protection Agency (USEPA) Integrated Risk Information System (IRIS) data base;

(3) The USEPA's Health Effects Assessment Summary Tables (HEAST);

(4) The Department may develop health-based criteria which differ from those based on the sources cited in (c)3i (1) through (3) above if warranted by convincing scientific evidence. For contaminants which are not addressed in the sources cited in (c)3i (1) through (3) above, the Department may develop health-based criteria based on review of pertinent scientific data.

ii. The final calculations are rounded to one significant figure for deriving the criteria for each chemical.

4. The risk assessment approach for derivation of the health-based criteria for each contaminant will be determined by its strength of evidence (see 50 FR 46880, 46884-86 (1985), National Primary Drinking Water Regulations, Volatile Synthetic Organic Chemicals, and any successor documents) for human carcinogenicity, the risk levels given below, and the exposure assumptions and models listed in (c)3 above.

i. For contaminants classified in Group A or Group B, the Class II-A criteria are calculated from the potency factor based on additional lifetime cancer risk of 1×10^{-6}.

ii. For contaminants classified in Group C, the Class II-A criteria are calculated by application of an additional uncertainty factor of 10 to the chronic reference dose. If no reference dose is available from the sources cited in (c)3i above, the Class II-A criteria are calculated from the potency factor or unit risk factor based on additional lifetime cancer risk of 1×10^{-5}.

iii. For contaminants classified in Group D or Group E, the Class II-A criteria are calculated from the chronic reference dose.

iv. For lead, the Department has determined that a Class II-A criterion of five ug/L is appropriate as a conservative application of the regulations of the United States Environmental Protection Agency seeking a maximum concentration of five ug/L in drinking water subsequent to treatment.

v. For polycyclic aromatic hydrocarbons classified in Group A or Group B, the general risk assessment approach given in (c)4i above applies except that the potency factor used for benzo(a)pyrene and dibens(a.h)anthracene will be that of benzo(a)pyrene, while other such polycyclic aromatic hydrocarbons will use a potency factor of one-tenth that of benzo(a)pyrene.

5. The following equations shall be used for the derivation of interim specific criteria for each constituent:

i. For Carcinogens:

$$\text{Criterion} = \frac{(1 \times 10^{-6}) \times 70 \text{ kg} \times 1000 \text{ ug/mg}}{q_1^* \text{ (mg/kg/day)}^{-1} \times (2 \text{ L/day})}$$

Where:

1×10^{-6} = upper bound lifetime excess cancer risk (1×10^{-5} used for Group C chemicals lacking RfD)
70 kg = assumed weight of average adult
q_1^* = carcinogenic potency factor $(\text{mg/kg/day})^{-1}$
2 L/day = assumed daily water consumption
q_1^* = Risk/Dose

$$q_1^* \text{ (mg/kg/day)}^{-1} = \frac{1 \times 10^{-6}}{\text{animal dose (mg/kg/day)} \times (W_A/W_H)^{1/3}}$$

Where:

1×10^{-6} = risk level
animal dose = dose to experimental animals predicted to result in 1×10^{-6} risk
$(W_A/W_H)^{1/3}$ = factor for extrapolating from animals to humans based on body surface area
W_A = assumed weight of animal:
for mice – 0.03 kg
for rats – 0.35 kg
W_H = assumed weight of human = 70 kg
For mice $(W_A/W_H)^{1/3}$ = 0.075
For rats $(W_A/W_H)^{1/3}$ = 0.17

ii. For non-carcinogens:

$$\text{Criterion} = \frac{\text{RfD (mg/kg/day)} \times 70 \text{ kg} \times 1000 \text{ ug/mg} \times \text{RSC}}{2 \text{ L/day}}$$

Where:

RFD = Reference Dose
70 kg = assumed weight of average adult
RSC = relative source contribution
2 L/day = assumed daily water consumption

6. Where no specific criterion exists for a Synthetic Organic Chemical, the interim generic criteria for Synthetic Organic Chemicals in Table 2 in the Appendix shall apply until an interim specific criterion has been established.

(d) The ground water quality criteria for Class II-B ground waters shall be the Class II-A criteria.

(e) Ground water quality criteria for Class III areas are as follows:

1. The ground water quality criteria for Class III-A shall be the criteria of the most stringent classification for vertically or horizontally adjacent ground waters that are not Class III-A, unless the Department concludes (in the context of an applicable regulatory program) that there is no significant potential for the migration of ground water pollutants to that classification area. If there is significant potential for pollutant migration, the criteria shall be those of the classification area determined to be downgradient of the Class III-A area. Otherwise, criteria shall be determined for such Class III-A areas on a case by case basis in the context of applicable regulatory programs. In each case, the criteria shall be the least stringent criteria that will ensure that there will be no:

i. Impairment of existing uses of the ground water;

ii. Resulting violation of Surface Water Quality Standards;

iii. Release of pollutants to the ground surface, structures or air in concentrations that pose a threat to human health;

iv. Reasonable potential for a change in hydraulic gradient that could cause pollutants to migrate from the Class III-A area to any classification area other than Class III.

2. The ground water quality criteria for Class III-B shall be determined on an area by area basis in response to case by case needs, in the context of applicable regulatory programs. In each case, the criteria shall be the least stringent criteria that will ensure that there will be no:

i. Impairment of existing uses of ground water;

ii. Resulting violation of Surface Water Quality Standards;

iii. Release of pollutants to the ground surface, structures or air in concentrations that pose a threat to human health;

iv. Violation of constituent standards for downgradient classification areas to which there is a significant potential for migration of ground water pollutants.

(f) Where ground water that receives pollutants from a discharge(s) subsequently flows to surface waters, the Department shall regulate such discharges as necessary so as not to exceed the Surface Water Quality Standards applicable to that body of surface water. The discharger may request application of only the ground water quality standards by showing, to the satisfaction of the Department, and in the context of the applicable regulatory procedure, that the flow of ground water pollutants into the surface water will not cause a violation of the Surface Water Quality Standards.

(g) For constituents for which specific or interim specific criteria have been derived, the Department may evaluate potential toxicological interactions between or among contaminants in ground water by the sum of the risk levels of contaminants with health-based criteria that are based on carcinogenic risk, and by utilizing the hazard index approach described in the USEPA Guidelines for the Health Risk Assessment of Chemical Mixtures (51 FR 34014 (1986), and any subsequent revisions) for noncarcinogens. Additional actions and more stringent criteria may be required when either of the following conditions exists:

1. The total risk level for all Group A or Group B contaminants present in ground water exceeds 1×10^{-4}; or

2. There is a Hazard Index of greater than one for noncarcinogenic effects.

(h) The Department shall regulate discharges for compliance with each specific, interim specific and generic criterion applicable to the discharge pursuant to this section.

7:9-6.8 Antidegradation policy

(a) The Department shall protect from significant degradation ground water which is of better quality than the criteria in N.J.A.C. 7:9-6.7. Antidegradation limits shall be used as the basis for the development of constituent standards applicable to discharges, as modified by N.J.A.C. 7:9-6.9(a) and (b). Where the concentration of a constituent at background water quality currently contravenes the criteria in N.J.A.C. 7:9-6.7, no further degradation of ground water quality shall be allowed for that constituent.

(b) Antidegradation limits shall be determined, for the regulation of a discharge, as the background water quality concentration plus a percentage of the difference between the criterion and the background water quality concentration, for each constituent. The following percentages shall be used:

Class I-A	0%
Class I-PL	0%
Class II-A	50%
Class II-B	100% (See (c) below)
Class III	Not applicable

(c) The antidegradation limit for Class II-B is equal to the Class II-B criteria stated in N.J.A.C. 7:9-6.7(d).

7:9-6.9 Constituent standard modifications and practical quantitation levels

(a) When constituents at background water quality exceed the criteria in N.J.A.C. 7:9-6.7, the Department shall consider the following modifications in the development of constituent standards in the context of applicable regulatory programs:

1. For discharges that derive their source water from directly upgradient of the discharge, the constituent standards shall not be more stringent than the background water quality (that is, the source water quality);

2. For other discharges:

i. In areas where the criteria for the constituent are exceeded within the area due to natural quality, the constituent standards shall be established as the background water quality.

ii. In other areas, the constituent standards shall be established such that the volume and concentration of ground water exceeding the criteria are not increased by discharges.

(b) The Department may define Classification Exception Areas as provided for in N.J.A.C. 7:9-6.6 within which the provisions of N.J.A.C. 7:9-6.7, 6.8 and (a) above do not apply regarding specified constituents.

(c) Where a constituent standard (the criterion as adjusted by the antidegradation policy and applicable criteria exceptions); is of a lower concentration than the relevant PQL (Table 3 in the Appendix), the Department shall not (in the context of an applicable regulatory program) consider the discharge to be causing a contravention of that constituent standard so long as the concentration of the constituent in the affected ground water is less than the relevant PQL.

1. Where interim specific criteria are derived by the Department, interim PQLs shall also be derived for those constituents as appropriate.

2. No PQLs other than those listed in Table 3 in the Appendix are applicable to or shall be derived for interim generic criteria.

3. Selection and derivation of PQLs shall be as follows:

i. PQLs shall be rounded to one significant figure using standard methods.

ii. PQLs listed in Table 3 were, and additional PQLs shall be, derived or selected for each constituent using the most sensitive analytical method providing positive constituent identification from (c)3ii (1) through (5) below, in that order of preference:

(1) PQLs for a specific constituent and analytical method using the USEPA 500 series methods, which PQLs were derived through scientific studies conducted by the Department in support of the Safe Drinking Water Program;

(2) PQLs for a specific constituent and analytical method using the USEPA 500 series or 600 series methods (in order of preference, and provided that the method is currently in use by Department-certified laboratories), which PQLs were adopted by the USEPA in support of the Safe Drinking Water Program;

(3) PQLs derived by multiplying times a factor of five, a median, Interlaboratory Method Detection Limit (MDL). The Interlaboratory MDL is derived from verified MDL data from Department-certified laboratories for the USEPA 500 series or 600 series methods (in order of preference);

(4) PQLs derived by multiplying times a factor of 10, the MDL published by EPA for a specific constituent and analytical method for the USEPA 500 series or 600 series methods (in order of preference);

(5) PQLs for aqueous matrices published by EPA in "Test Method for Evaluating Solid Waste," Publication SW846, Third Edition, November 1986, and successor publications, incorporated herein by reference.

iii. The Department may approve an alternative PQL. An alternative PQL shall be approved when the evidence (in the context of an applicable regulatory program) establishes that:

(1) Based upon site-specific, ground water matrix considerations, a PQL listed in Table 3 for a constituent is not valid;

(2) An alternative PQL is more appropriate for that constituent with regard to compliance with this subchapter;

(3) The alternative PQL has been determined through rigorous laboratory analysis using methods appropriate to the site-specific ground water matrix and constituent(s), including, without limitation, the derivation of an MDL using the methodology specified by Appendix B of 40 CFR Part 136; and

(4) The alternative PQL does not result in nondetection of any target constituent due to masking effects of other target constituents, non-target constituents, or natural substances.

iv. The approval of an alternative PQL shall be applicable to the regulation of ground water quality affected by the discharge for which it is derived, and its approval and utilization shall be subject to the same procedural requirements as any other aspect of the regulatory decision.

4. Where ground water pollutants affect surface water quality within the meaning of N.J.A.C. 7:9-6.7(f), more sensitive analytical

techniques such as bioassays or bioaccumulation assays may be required by the Department.

7:9-6.10 Procedures for reclassification of ground water

(a) Reclassification of ground water areas shall be accomplished through rulemaking in accordance with the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq.

(b) Any interested person may seek to have a ground water area reclassified by filing a petition with the Department. For the purposes of this subsection, interested persons shall include, but not be limited to:

1. Any State, county or municipal governmental entity with jurisdiction over the area that is proposed for reclassification; and

2. Any person residing or discharging in the area that is proposed for reclassification.

(c) Petitions shall comply with and shall be reviewed in compliance with N.J.S.A. 52:14B-4 and N.J.A.C. 7:1-1.2.

(d) For purposes of this subsection, ground water areas subject to petition for reclassification shall constitute at least a significant portion of one or more geologic units or formations. In no event shall a reclassification area consist only of an area underlying property owned by a single person, an area affected only by one discharge, or an area affected only by a set of discharges owned or controlled by a single person.

(e) In setting forth the reasons for its petition, the petitioner shall describe the proposed reclassification area (both lateral and vertical), and shall include appropriate ground water quality and hydrogeologic analyses, as well as statements regarding the environmental, economic and social impacts of the proposed reclassification.

(f) In determining whether to grant a petition to propose a rule amendment to apply a more stringent classification to a ground water area, the Department shall consider whether the petitioner has established that the subject area has the characteristics of the more stringent classification.

(g) In determining whether to grant a petition to propose a rule amendment to apply a less stringent classification to a ground water area, the Department shall consider whether the petitioner has established that:

1. The designated use cannot be maintained in the subject area because of the widespread exceedance of one or more of the criteria set forth in N.J.A.C. 7:9-6.7 within the subject area;

2. The exceedances cannot be remedied using the best available demonstrated technology;

3. The reclassification will not result in significant risk or impairment to existing uses of ground water, to downgradient classification areas, to downgradient surface waters, to the source water for public water supply wells, or to public health, safety and welfare; and

4. The subject area has the characteristics of the less stringent classification.

7:9-6.11 Severability

If any provision of this subchapter or any application of any such provision is held to be invalid, such invalidity shall not affect any other provision or application, and to this end, the provisions of this subchapter are declared to be severable.

TABLE 1
SPECIFIC GROUND WATER QUALITY CRITERIA: CLASS II-A

Constituent	CASRN	Criteria (ug/L)*
Acenaphthene	83-32-9	400
Acetone	67-64-1	700
Acrylamide	79-06-1	0.008
Acrylonitrile	107-13-1	0.06
Adipates (Di(ethylhexyl)adipate)	103-23-1	5,000
Alachlor	15972-60-8	0.43
Aldicarb sulfone	1646-88-4	2
Aldrin	309-00-2	0.002
Aluminum	7429-90-5	50 to 200
Ammonia		500
Anthracene	120-12-7	2000
Antimony	7440-36-0	2
Arsenic (Total)	7440-38-2	0.02
Asbestos	1332-21-4	$7x10^6$f/L>10um[a]
Atrazine	1912-24-9	3
Barium	7440-39-3	2,000
Benz(a)anthracene	56-55-3	0.03
Benzene	71-43-2	0.2
Benzidine	92-87-5	0.0002
Benzyl Alcohol	100-51-6	2000
Benzo(a)pyrene (BaP)	50-32-8	0.003
3,4-Benzofluoranthene (Benzo(b)fluoranthene)	205-99-2	0.03
Benzo(k)fluoranthene	207-08-9	0.03
Beryllium	7440-41-7	0.008
alpha-BHC (alpha-HCH)	319-84-6	0.006
beta-BHC (beta-HCH)	319-85-7	0.2
gamma-BHC (gamma-HCH/Lindane)	58-89-9	0.2
Bis(2-chloroethyl) ether	111-44-4	0.03
Bis(2-chloroisopropyl) ether	39638-32-9	300
Bis(2-ethylhexyl) phthalate	117-81-7	3
Bromodichloromethane (Dichlorobromomethane)	75-27-4	0.3
Bromoform	75-25-2	4
Butylbenzyl phthalate	85-68-7	100
Cadmium	7440-43-9	4
Carbofuran	1563-66-2	40
Carbon tetrachloride	56-23-5	0.4
Chlordane	57-74-9	0.01
Chloride	16887-00-6	250,000
Chlorobenzene	108-90-7	5
Chloroform	67-66-3	6
2-Chlorophenol	95-57-8	40
Chlorpyrifos	2921-88-2	20
Chromium (Total)	7440-47-3^	100
Chrysene	218-01-9	0.03
Color		10 color units
Copper	7440-50-8	1,000
Corrosivity		Non-corrosive
Cyanide	57-12-5	200
2,4-D	94-75-7	70
Dalapon	75-99-0	200
4,4'-DDD (p,p'-TDE)	72-54-8	0.1
4,4'-DDE	72-55-9	0.1
4,4'-DDT	50-29-3	0.1
Demeton	8065-48-3	0.3
Dibenz(a,h)anthracene	53-70-3	0.003
Dibromochloromethane (Chlorodibromomethane)	124-48-1	10
1,2-Dibromo-3-chloropropane (DBCP)	96-12-8	0.002
Di-n-butyl phthalate	84-74-2	900
1,2-Dichlorobenzene	95-50-1	600
1,3,Dichlorobenzene	541-73-1	600
1,4-Dichlorobenzene	106-46-7	75
3,3'-Dichlorobenzidine	91-94-1	0.08
1,1-Dichloroethane	75-34-3	70
1,2-Dichloroethane	107-06-2	0.3
1,1-Dichloroethylene	75-35-4	1
cis-1,2-Dichloroethylene	156-59-2	10
trans-1,2-Dichloroethylene	156-60-5	100
2,4-Dichlorophenol	120-83-2	20
1,2-Dichloropropane	78-87-5	0.5
1,3-Dichloropropene (cis and trans)	542-75-6	0.2
Dieldrin	60-57-1	0.002
Diethyl phthalate	84-66-2	5,000
2,4-Dimethylphenol	105-67-9	100
Dimethyl phthalate	131-11-3	7,000

2,4-Dinitrophenol	51-28-5	10
2,4-Dinitrotoluene/2,6-Dinitrotoluene mixture	121-14-2	0.05
Di-n-octyl phthalate	117-84-0	100
Dinoseb	88-85-7	7
1,2-Diphenylhydrazine	122-66-7	0.04
Diquat	85-00-7	20
Endosulfan	115-29-7	0.4
alpha-Endosulfan (Endosulfan I)	959-98-8	0.4
beta-Endosulfan (Endosulfan II)	33213-65-9	0.4
Endosulfan sulfate	1031-07-8	0.4
Endothall	145-73-3	100
Endrin	72-20-8	2
Epichlorohydrin	106-89-8	4
Ethylbenzene	100-41-4	700
Ethylene dibromide	106-93-4	0.0004
Fluoranthene	206-44-0	300
Fluorene	86-73-7	300
Fluoride	16984-48-8	2000
Foaming agents (ABS/LAS)		500
Glyphosate	1071-83-6	700
Hardness (as $CaCO_3$)		50< H<250mg/L
Heptachlor	76-44-8	0.008
Heptachlor epoxide	1024-57-3	0.004
Hexachlorobenzene	118-74-1	0.02
Hexachlorobutadiene	87-68-3	1
Hexachlorocyclopentadiene	77-47-4	50
Hexachloroethane	67-72-1	0.7
Hydrogen sulfide	7783-06-4	20
Indeno(1,2,3-cd)pyrene	193-39-5	0.03
Iron	7439-89-6	300
Isophorone	78-59-1	100
Lead (Total)	7439-92-1	5
Malathion	121-75-5	200
Manganese	7439-96-5	50
Mercury (Total)	7439-97-6	2
Methoxychlor	72-43-5	40
Methyl bromide (bromomethane)	74-83-9	10
Methyl chloride (chloromethane)	74-87-3	30
Methyl ethyl ketone	78-93-3	300
Methylene chloride	75-09-2	2
4-Methyl-2-pentanone	108-10-1	400
Mirex	2385-85-5	0.01
Nickel (Soluble salts)	7440-02-0	100
Nitrate (as N)	14797-55-8	10,000
Nitrate and Nitrite (as N)		10,000
Nitrite (as N)	14797-65-0	1,000
Nitrobenzene	98-95-3	3
N-Nitrosodimethylamine	62-75-9	0.0007
N-Nitrosodiphenylamine	86-30-6	7
N-Nitrosodi-n-propylamine	621-64-7	0.005
Odor		3^b
Oil & Grease and Petroleum Hydrocarbons (PHC)		None Noticeable
Oxamyl	23135-22-0	200
PCBs (Polychlorinated biphenyls)	1336-36-3	0.02
Pentachlorophenol	87-86-5	0.3
pH		6.5-8.5
Phenol	108-95-2	4000
Picloram	1918-02-1	500
Pyrene	129-00-0	200
Selenium (Total)	7782-49-2	50
Silver	7440-22-4	20
Simazine	122-34-9	1
Sodium	7440-23-5	50,000
Styrene	100-42-5	100
Sulfate	14808-79-8	250,000
Taste		None Noticeable
TCDD (2,3,7,8-Tetrachlorodibenzo-p-dioxin)	1746-01-6	0.0000002
1,1,1,2-Tetrachloroethane	630-20-6	10
1,1,2,2-Tetrachloroethane	79-34-5	2
Tetrachloroethylene	127-18-4	0.4
Thallium	7440-28-0	0.5
Toluene	108-88-3	1,000
Total dissolved solids (TDS)		500,000
Toxaphene	8001-35-2	0.03
2,4,5-TP	93-72-1	50
1,2,4-Trichlorobenzene	120-82-1	9
1,1,1-Trichloroethane	71-55-6	30
1,1,2-Trichloroethane	79-00-5	3
Trichloroethylene	79-01-6	1
2,4,5-Trichlorophenol	95-95-4	700
2,5,6-Trichlorophenol	88-06-2	3
Vinyl chloride	75-01-4	0.08
Xylenes (Total)	1330-20-7	40
Zinc	7440-66-6	5,000
Microbiological criteria, Radionuclides & Turbidity	prevailing Safe Drinking Water Act Regulations (N.J.A.C. 7:10-1 et seq.)	

Explanation of Terms

a = Asbestos criterion is measured in terms of fibers/L longer than 10 micrometers (f/L> 10 um)
b = Odor Threshold Number
* = Criteria are expressed as ug/L unless otherwise noted.
ug = micrograms
mg = milligrams
L = liter
f = fibers
∧ = CASRN of chromium VI
H = Hardness

TABLE 2
INTERIM GENERIC GROUND WATER QUALITY CRITERIA

Interim Generic Criteria—Synthetic Organic Chemicals (SOC)*

Constituent	Water Quality Criteria
SOCs with evidence of carcinogenicity lacking specific or interim specific criteria	5 ug/l each 25 ug/l total
SOCs lacking evidence of carcinogenicity lacking specific or interim specific criteria	100 ug/l each 500 ug/l total

*SOCs are identified as having "evidence of carcinogenicity" or "lacking evidence of carcinogenicity" based upon available scientific evidence.

TABLE 3
PRACTICAL QUANTITATION LEVELS
FOR SELECTED CONSTITUENTS

Constituent	CASRN	PQL (ug/L)*
Acenaphthene	83-32-9	10
Acenapthylene	208-96-8	10
Acrolein	107-02-8	50
Acrylamide	79-06-1	NA
Acrylonitrile	107-13-1	50
Adipates (Di(ethylhexyl)adipate)	103-23-1	6
Alachlor	15972-60-8	2
Aldicarb sulfone	1646-88-4	3

Aldrin	309-00-2	0.04
Aluminum	7429-90-5	200
Ammonia	7764-41-7	200
Anthracene	120-12-7	10
Antimony	7440-36-0	20
Arsenic (Total)	7440-38-2	8
Asbestos	1332-21-4	100,000f/L<10um
Atrazine	1912-24-9	1
Barium	7440-39-3	200
Benz(a)anthracene	56-55-3	10
Benzene	71-43-2	1
Benzidine	92-87-5	50
Benzo(a)pyrene (BaP)	50-32-8	20
3,4-Benzofluoranthene (Benzo(b)fluoranthene)	205-99-2	10
Benzo(ghi)perylene	191-24-2	20
Benzo(k)fluoranthene	207-08-9	20
Beryllium	7440-41-7	20
alpha-BHC (alpha-HCH)	319-84-6	0.02
beta-BHC (beta-HCH)	319-85-7	0.04
gamma-BHC (gamma-HCH/Lindane)	58-89-9	0.2
Bis(2-chloroethyl) ether	111-44-4	10
Bis(2-chloroisopropyl) ether	39638-32-9	10
Bis(2-ethylhexyl) phthalate	117-81-7	30
Bromodichloromethane (Dichlorobromomethane)	75-27-4	1
Bromoform	75-25-2	8.0
Butylbenzyl phthalate	85-68-7	20
Cadmium (total)	7440-43-9	2
Carbofuran	1563-66-2	7
Carbon tetrachloride	56-23-5	2
Chlordane	57-74-9	0.5
Chloride	16887-00-6	3000
Chlorobenzene	108-90-7	2
Chloroform	67-66-3	1
4-Chloro-3-methyl (o-chloro-m-cresol)	59-50-7	20
2-Chlorophenol	95-57-8	20
Chlorpyrifos	2921-88-2	0.2
Chromium (Total)	7440-47-3^	10
Chrysene	218-01-9	20
Color (Platinum-Cobalt Units)	NA	20
Copper	7440-50-8	10
Corrosivity	NA	NA
Cyanide	57-12-5	40
2,4-D	94-75-7	5
Dalapon	75-99-0	10
4,4'-DDD (p,p'-TDE)	72-54-8	0.04
4,4'-DDE	72-55-9	0.04
4,4'-DDT	50-29-3	0.06
Demeton	8065-48-3	NA
Dibenz(a,h)anthracene	53-70-3	20
Dibromochloromethane (Chlorodibromomethane)	124-48-1	1
1,2-Dibromo-3-chloropropane (DBCP)	96-12-8	2
Di-n-butyl phthalate	84-74-2	20
1,2-Dichlorobenzene	95-50-1	5
1,3-Dichlorobenzene	541-73-1	5
1,4-Dichlorobenzene	106-46-7	5
3,3'-Dichlorobenzidine	91-94-1	60
1,2-Dichloroethane	107-06-2	2
1,1-Dichloroethylene	75-35-4	2
cis-1,2-Dichloroethylene	156-59-2	2
trans-1,2-Dichloroethylene	156-60-5	2
2,4-Dichlorophenol	120-83-2	10
1,2-Dichloropropane	78-87-5	1
1,3-Dichloropropene (cis and trans)	542-75-6	NA
cis-1,3-Dichloropropene	10061-01-5	5
trans-1,3-Dichloropropene	10061-02-6	7
Dieldrin	60-57-1	0.03
Diethyl phthalate	84-66-2	10
2,4-Dimethyl phenol	105-67-9	20
Dimethyl phthalate	131-11-3	10
4,6-Dinitro-o-cresol	534-52-1	60
2,4-Dinitrophenol	51-28-5	40
2,4-Dinitrotoluene	121-14-2	10
2,6-Dinitrotoluene	606-20-2	10
Dinoseb	88-85-7	2
1,2-Diphenylhydrazine	122-66-7	NA
Diquat	85-00-7	NA
Endosulfan	115-29-7	NA
alpha-Endosulfan (Endosulfan I)	959-98-8	0.02
beta-Endosulfan (Endosulfan II)	33213-65-9	0.04
Endosulfan sulfate	1031-07-8	0.08
Endothall	145-73-3	NA
Endrin	72-20-8	0.04
Epichlorohydrin	106-89-8	NA
Ethylbenzene	100-41-4	5
Ethylene dibromide	106-93-4	0.05
Fluoranthene	206-44-0	10
Fluorene	86-73-7	10
Fluoride	16984-48-8	500
Foaming agents (ABS/LAS)		0.5
Glyphosate	1071-83-6	NA
Hardness (as $CaCO_3$)		10
Heptachlor	76-44-8	0.4
Heptachlor epoxide	1024-57-3	0.2
Hexachlorobenzene	118-74-1	10
Hexachlorobutadiene	87-68-3	1
Hexachlorocyclopentadiene	77-47-4	10
Hexachloroethane	67-72-1	10
Hydrogen sulfide	7783-06-4	NA
Indeno(1,2,3-cd)pyrene	193-39-5	20
Iron	7439-89-6	100
Isophorone	78-59-1	10
Lead (Total)	7439-92-1	10
Malathion	121-75-5	5
Manganese	7439-96-5	6
Mercury (Total)	7439-97-6	0.5
Methoxychlor	72-43-5	10
Methyl bromide (bromomethane)	74-83-9	2
Methyl chloride (chloromethane)	74-87-3	2
3-Methyl-4-chlorophenol	59-50-7	20
Methylene chloride	75-09-2	2
Mirex	2385-85-5	NA
Nickel (Soluble salts)	7440-02-0	10
Nitrate (as N)	14797-55-8	400
Nitrite (as N)	14797-65-0	400
Nitrobenzene	98-95-3	10
N-Nitrosodimethylamine	62-75-9	20
N-Nitrosodiphenylamine	86-30-6	20
N-Nitrosodi-n-propylamine	621-64-7	20
Odor		NA
Oil & Grease		20000
Petroleum Hydrocarbons (PHC)		2000
Oxamyl	23135-22-0	20
PAHs (Polynuclear aromatic hydrocarbons)		NA
PCBs (Polychlorinated biphenyls)	1336-36-3	0.5
Pentachlorophenol	87-86-5	1
pH		NA
Phenanthrene	85-01-8	10
Phenol	108-95-2	10
Phosphorus	7723-14-0	80
Picloram	1918-02-1	1
Pyrene	129-00-0	20

Selenium (Total)	7782-49-2	10
Silver	7440-22-4	2
Simazine	122-34-9	0.8
Sodium	7440-23-5	400
Styrene	100-42-5	5
Sulfate	14808-79-8	5000
Taste		NA
TCDD (2,3,7,8-Tetrachlorodibenzo-p-dioxin)	1746-01-6	0.01
1,1,2,2-Tetrachloroethane	79-34-5	1
Tetrachloroethylene	127-18-4	1
2,3,4,6-Tetrachlorophenol	58-90-2	10
Thallium	7440-28-0	10
Toluene	108-88-3	5
Total dissolved solids (TDS)		10000
Toxaphene	8001-35-2	3
2,4,5-TP	93-72-1	5
1,2,4-Trichlorobenzene	120-82-1	1
1,1,1-Trichloroethane	71-55-6	1
1,1,2-Trichloroethane	79-00-5	2
Trichloroethylene	79-01-6	1
2,4,5-Trichlorophenol	95-95-4	10
2,4,6-Trichlorophenol	88-06-2	20
Vinyl chloride	75-01-4	5
Xylenes (Total)	1330-20-7	2
m&p-Xylenes	NA	2
o-Xylene	NA	1
Zinc	7440-66-6	30
Microbiological criteria,		NA
Radionuclides &		NA
Turbidity		NA

Explanation of Terms

* PQL—Practical Quantitation Level as defined in N.J.A.C. 7:9-6.3.
ug = micrograms
L = liter
f = fibers
∧ = CASRN of chromium VI
NA = Practical Quantitation Level not available for this constituent.

APPENDIX

NEW JERSEY GROUND WATER CLASSIFICATION SYSTEM
CLASSIFICATION OF SURFICIAL GROUND WATER UNITS

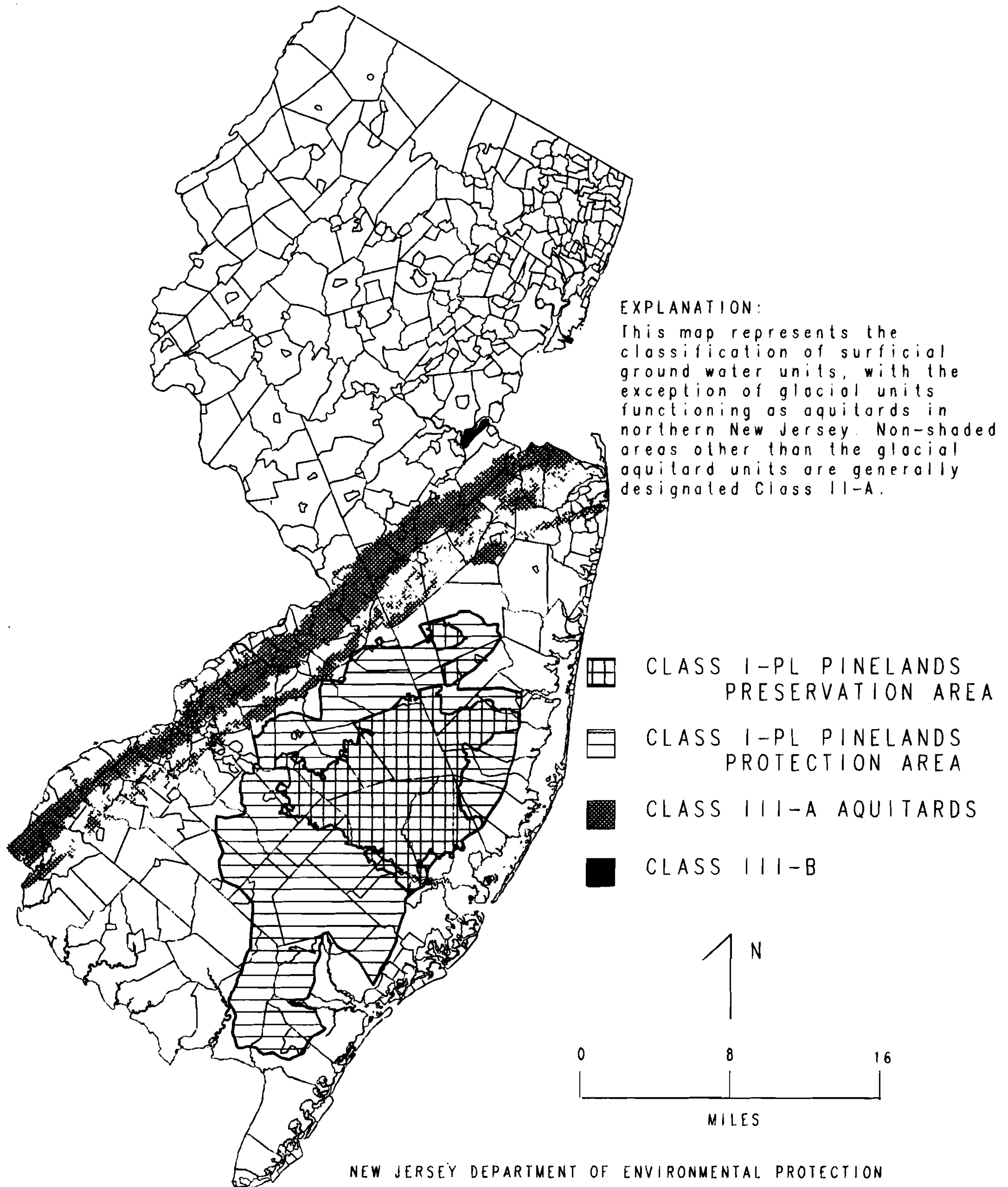
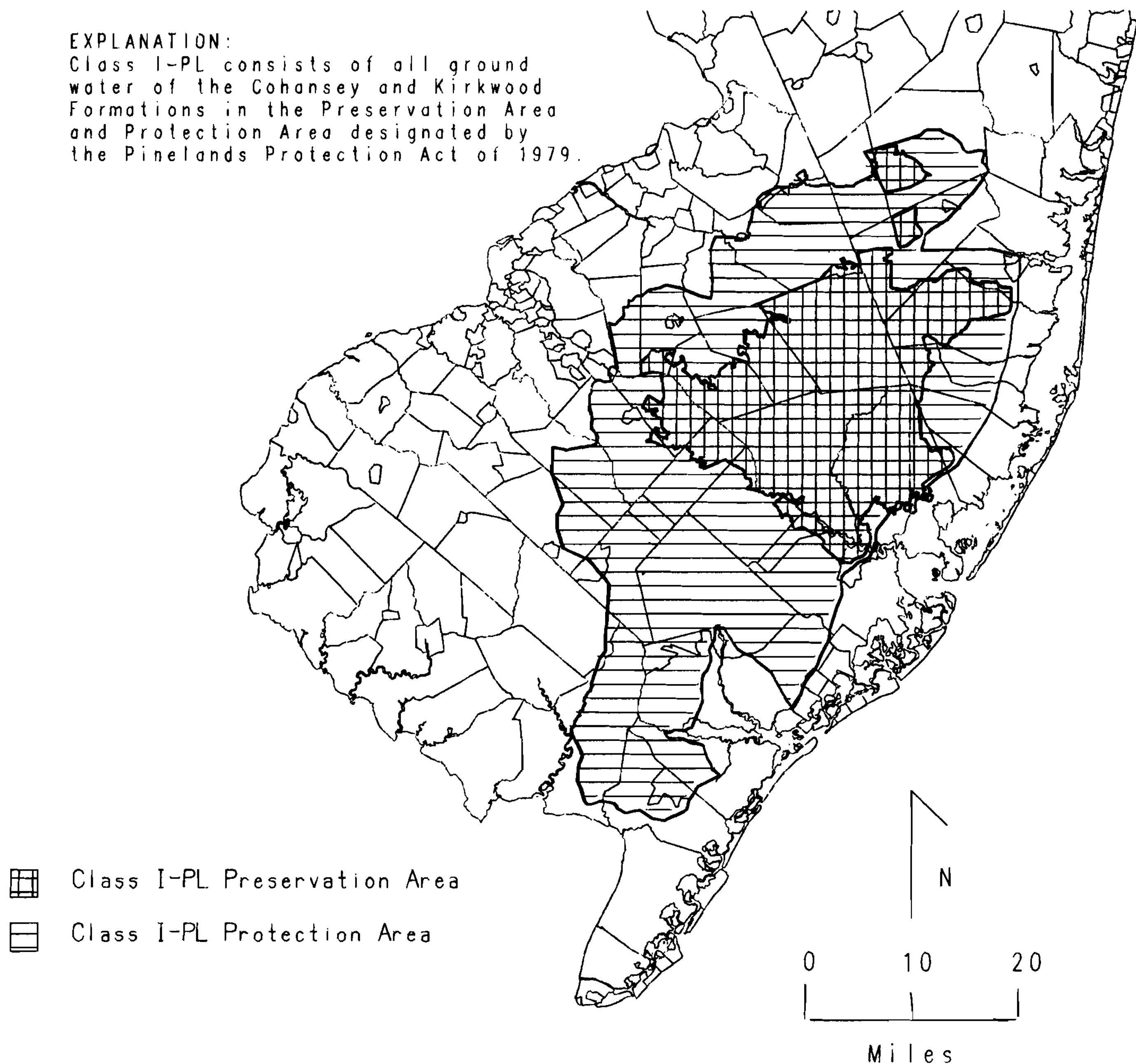


FIGURE 1

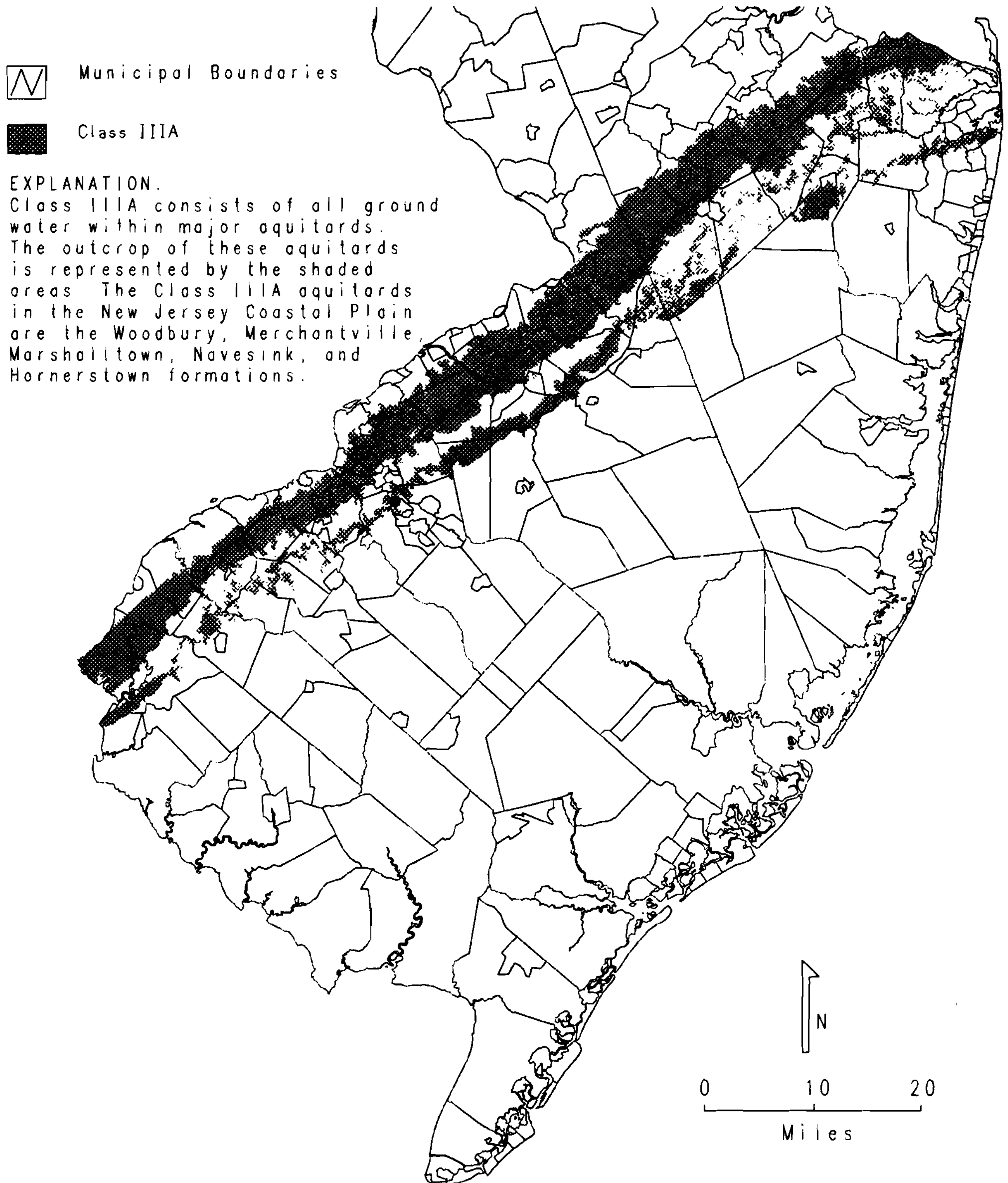
NEW JERSEY GROUND WATER CLASSIFICATION SYSTEM
CLASS I-PL—NEW JERSEY PINELANDS



New Jersey Department of Environmental Protection
1990

FIGURE 2

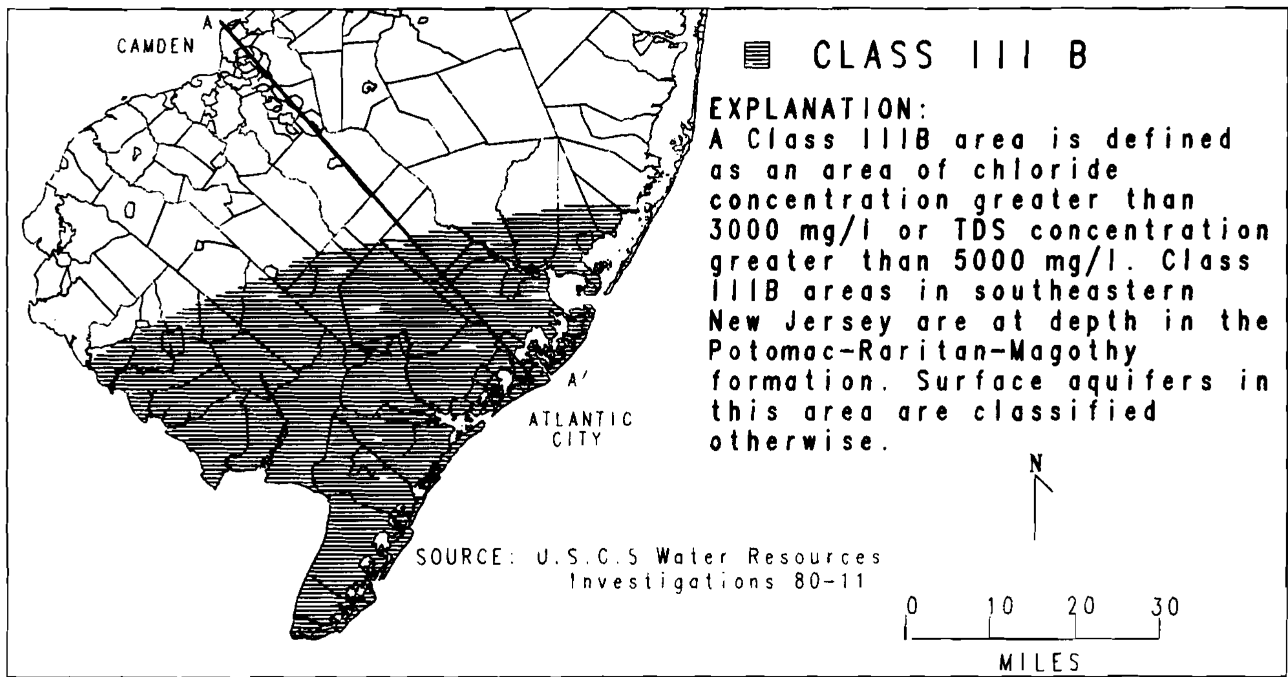
NEW JERSEY GROUND WATER CLASSIFICATION SYSTEM
CLASS IIIA—AQUITARDS OF THE NEW JERSEY COASTAL PLAIN

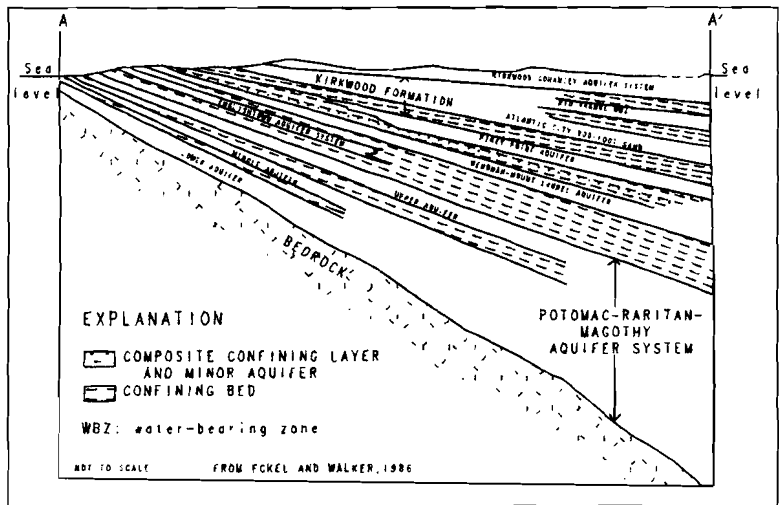


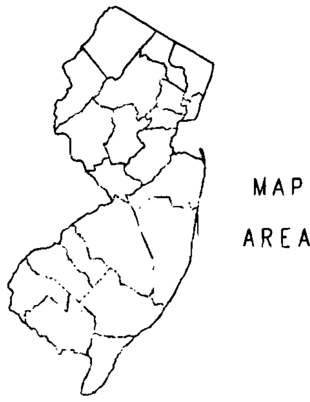
New Jersey Department of Environmental Protection
1990

FIGURE 3

NEW JERSEY GROUND WATER CLASSIFICATION SYSTEM
CLASS IIIB
CRETACEOUS POTOMAC-RARITAN-MAGOTHY FORMATION



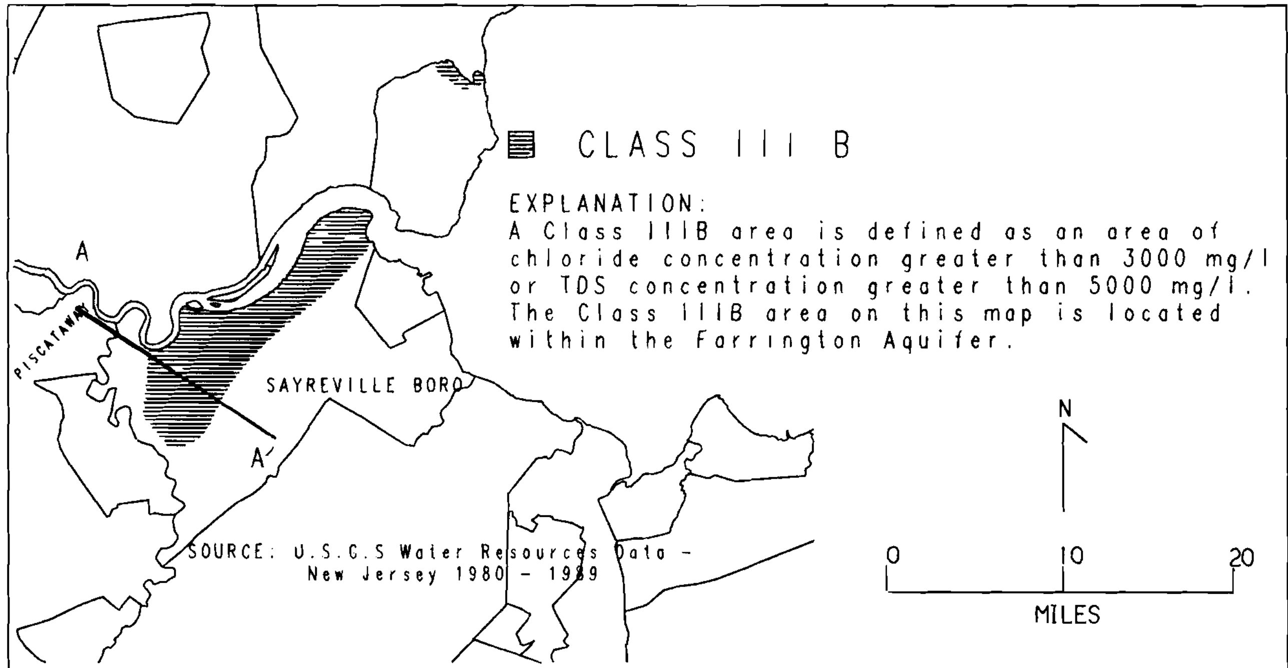


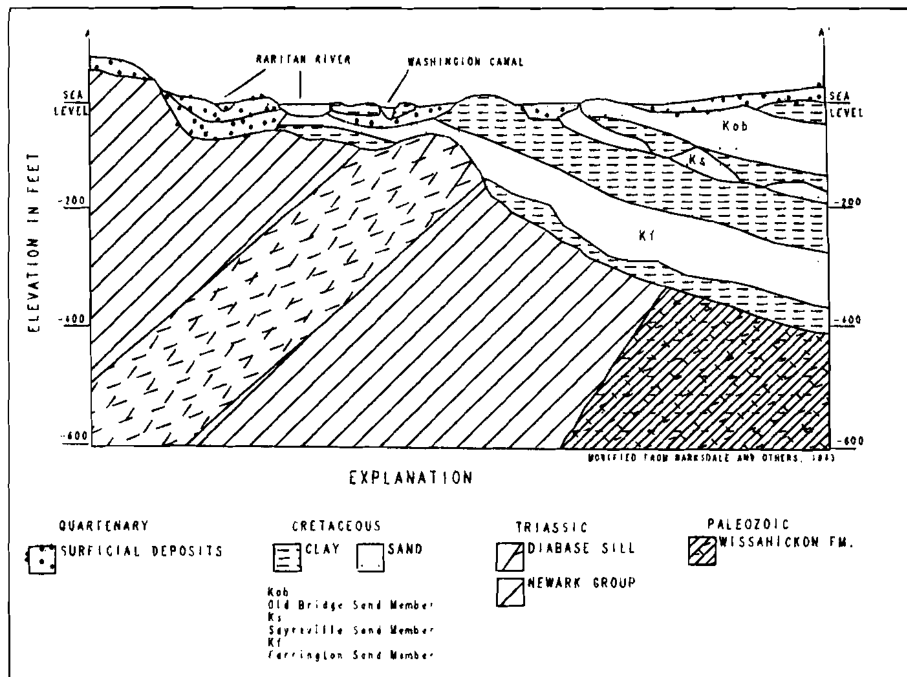


NEW JERSEY DEPARTMENT OF ENVIRONMENTAL PROTECTION
1990

FIGURE 4

NEW JERSEY GROUND WATER CLASSIFICATION SYSTEM
CLASS IIIB
FARRINGTON AQUIFER

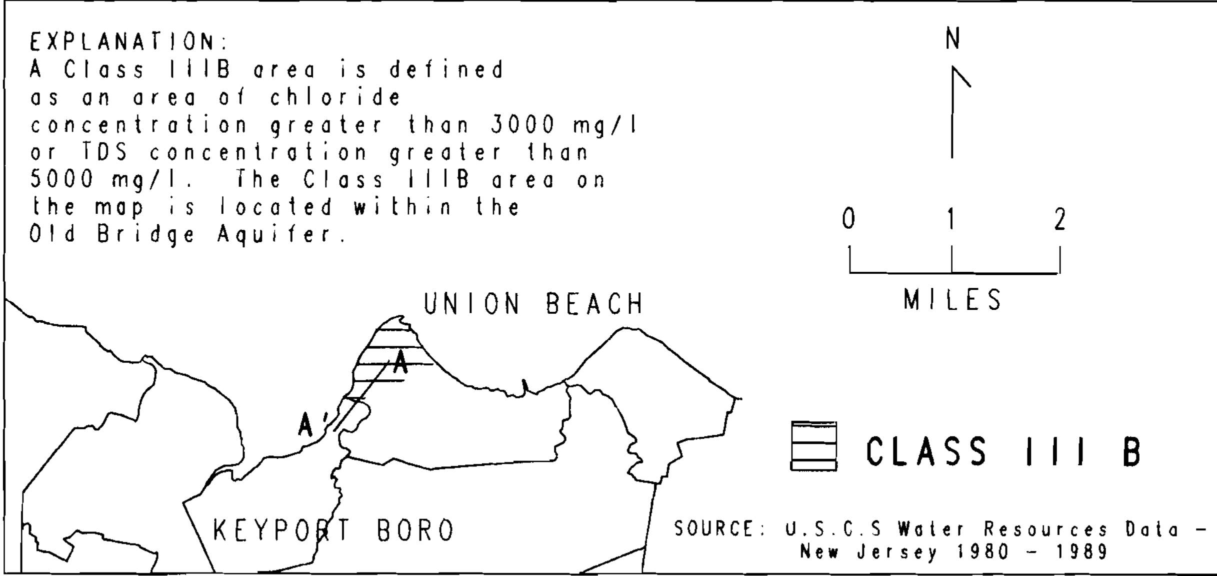


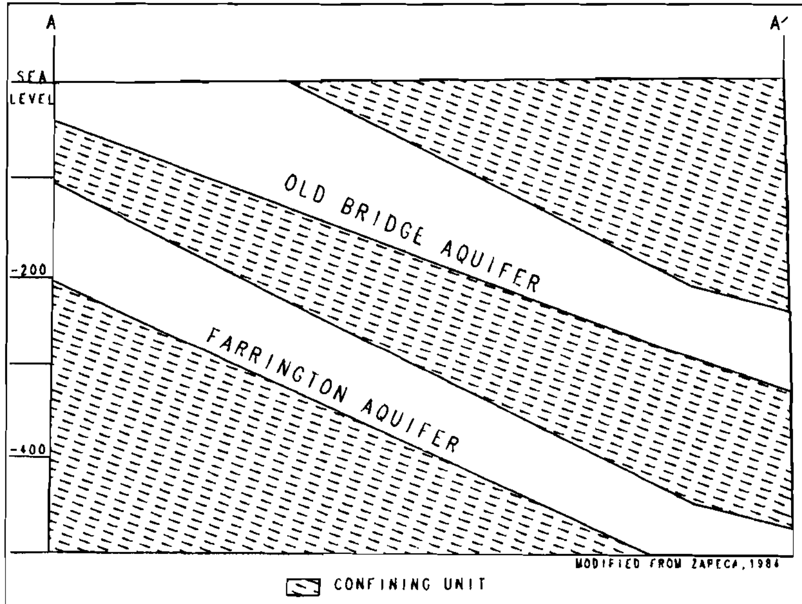


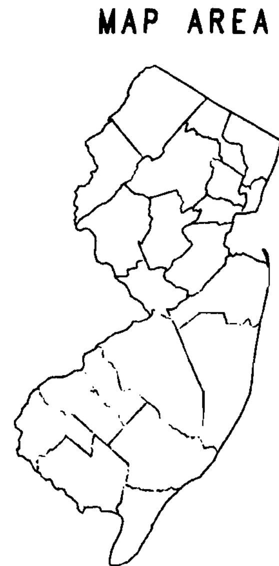
NEW JERSEY DEPARTMENT OF ENVIRONMENTAL PROTECTION
1990

FIGURE 5

NEW JERSEY GROUND WATER CLASSIFICATION SYSTEM
CLASS IIIB
OLD BRIDGE AQUIFER







NEW JERSEY DEPARTMENT OF ENVIRONMENTAL PROTECTION
1990

(a)

WASTEWATER FACILITIES REGULATION PROGRAM

Individual Subsurface Sewage Disposal Systems

Proposed Amendments: N.J.A.C. 7:9A-3.2 and 3.16

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

Authority: N.J.S.A. 58:11-23 et seq., 58:10A-1 et seq., including 58:10A-16, 13:1D-1 et seq., and 26:3A2-21 et seq.

DEPE Docket Number: 055-91-12.

Proposal Number: PRN 1992-45.

Submit written comments by February 20, 1992 to:
Samuel A. Wolfe, Esq.
Department of Environmental Protection and Energy
Office of Legal Affairs
401 East State Street
CN 402
Trenton, New Jersey 08625-0402

The agency proposal follows:

Summary

Standards for the construction of individual subsurface sewage disposal systems were first promulgated in 1954 pursuant to the Realty Improvement Sewerage and Facilities Act ("RISF Act"), N.J.S.A. 58:11-23 et seq. On July 28, 1989, the Department of Environmental Protection and Energy (Department) repealed those standards and adopted new standards. The new standards became operative on January 1, 1990. The new standards were developed to reflect current scientific knowledge and engineering practice in order to not only protect public health and safety, as originally intended through the RISF Act, but also to include provisions for the prevention of water pollution and the protection of the environment through the authority of the New Jersey Water Pollution Control Act ("WPC Act"), N.J.S.A. 58:10A-1 et seq.

During the development of the new standards, the Department endeavored to balance social and economic considerations with the protection of public health and safety and the environment. Because the new standards implemented major revisions to both administrative and technical aspects of the repealed standards, their everyday use dictated that adjustments and refinements be made to facilitate their implementation and use. This became evident with the large number of letters received by the Department from present and prospective homeowners, developers, engineers, local health departments and elected governmental officials identifying many problems associated with the new standards and their implementation.

The proposed amendment to N.J.A.C. 7:9A-3.2 clarifies and outlines the circumstances under which septic system designs which the board of health having jurisdiction or its authorized agent (administrative authority) approved before January 1, 1990 in accordance with the repealed rules may be constructed, installed and certified. This clarification is necessary because the existing rules do not mention the validity and use of septic system designs approved before January 1, 1990 in accordance with the repealed rules. Due to the variation in the period of time for which design approvals issued by local authorities are valid throughout the State, a deadline date of December 31, 1994 is being proposed after which septic system designs approved before January 1, 1990 in accordance with the repealed rules, will no longer be valid. It should be noted that municipal or county ordinances may further limit the life of septic system design approvals issued before the operative date of the new standards. Additionally, the proposed amendment to N.J.A.C. 7:9A-3.2 stipulates that septic system designs approved before January 1, 1990 according to the repealed rules may be constructed, installed and certified, pursuant to the rules in effect at the time of the approval, only if there have been no design related modifications made to the approved engineering plans.

The amendment to N.J.A.C. 7:9A-3.16 proposes to extend the period of time for which field testing, conducted before January 1, 1990 in accordance with the repealed rules, may be incorporated into septic system designs reviewed pursuant to the requirements of the new standards. The existing rule provides that such tests may be used until December 31, 1991; the amended rule extends that deadline to December 31, 1994. This is proposed so that the time period for which field testing, performed before to January 1, 1990, may be incorporated into septic system designs reviewed pursuant to the new standards corresponds with the maximum time period for which final subdivision approval may be valid pursuant to the Municipal Land Use Law, N.J.S.A. 40:55D-1 et seq.

The amendments included herein were developed by the Department in conjunction with an ad-hoc committee comprised of professional engineers, health officers, sanitarians, members of the environmental community, builders, realtors, soil scientists and others with knowledge of and experience with septic systems in different parts of the State. Proposal of these amendments is made in accordance with the recommendations of the Statutory Advisory Committee appointed by the Commissioner pursuant N.J.S.A. 58:11-35 and represents a consensus of the Committee on the issues raised in this proposal. The Committee also recommended several other amendments to the new standards but the amendments included herein are being proposed at this time because the issues are related to the expiration of deadline dates and their immediate resolution is urgent. The Department will follow-up these proposed amendments with a more comprehensive proposal document which will address the remaining issues on which the Statutory Advisory Committee has proposed rule amendments to the Commissioner.

Social Impact

These proposed amendments do not compromise or negatively impact the social benefits derived from the promulgation of the new standards. By proposing the amendments included herein, the Department anticipates that the implementation of the new standards will be simplified significantly and, as a result, the increased protection of public health and safety and the environment along with the reduced risk of septic system failure derived from the promulgation of the new standards will be facilitated.

A positive social impact will be felt by single family homeowners and small business owners, located in those portions of the State where public sewers are not available. Those individuals who have already allocated resources toward legally acquiring approvals for septic system designs, before the operative date of the new standards, will be allowed to construct previously approved septic systems until December 31, 1994 and have such systems certified by the administrative authority, provided that the conditions of the proposed N.J.A.C. 7:9A-3.2(b) can be met. Additionally, those individuals who have had soil logs, percolation tests and determinations of depth to seasonally high water table performed before January 1, 1990 in accordance with the repealed rules, may incorporate such tests into designs reviewed pursuant to the new standards for an additional three years under certain circumstances.

Economic Impact

One of the purposes of developing the proposed amendments to the new standards was to reduce any undue negative economic impact of the new standards without compromising their ability to protect public health and safety and the environment.

The proposed amendments to N.J.A.C. 7:9A-3.2 and 3.16 will positively impact landowners and homebuyers by saving them the costs, associated with additional field work, and in some cases, re-design of septic systems. Under the existing rules, the validity of septic system designs approved before January 1, 1990 in accordance with the repealed rules may be unclear, resulting in the possible unnecessary re-design of such systems; the proposed amendments address this problem by clearly specifying the conditions under which such approvals are valid. By allowing the use of soil logs, percolation tests and determinations of depth to seasonal high water table, performed before January 1, 1990 in accordance with the repealed rules until December 31, 1994 the Department is allowing those individuals, who have had designs in progress since the adoption of the new standards, to use these prior tests for a greater period of time in designs that must be reviewed pursuant to the new standards.

Environmental Impact

The proposed amendments will not compromise the overall positive environmental impact which resulted from the promulgation of the new standards. By limiting the time period for which septic system designs approved prior to the operative date of the new standards may be utilized, the Department is preventing any limitless future construction of septic systems designed according to the repealed standards. The proposal to extend the deadline for the use of soil logs, percolation tests and determinations of depth to seasonally high water table, performed in accordance to the repealed standards prior to the operative date of the new standards from two years to five years, will not have a negative environmental impact. Such prior tests may be solely relied upon only if all other aspects of the design of the septic system are in conformance with the new standards. Consequently, the design engineer or adminis-

trative authority will still be required to identify the presence of soil limiting zones, outlined in N.J.A.C. 7:9A-5, and be able to meet the soil and site related criteria specified at N.J.A.C. 7:9A-10, so that the resulting design is in conformance with the new standards. If this is not possible using prior tests, then it will be necessary to supplement such test data with new soil logs, percolation tests or determinations of depth to seasonal high water table performed in conformance with the new standards.

Regulatory Flexiblity 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 to N.J.A.C. 7:9A-3.2 clarifies and outlines the circumstances under which septic system designs approved before January 1, 1990 in accordance with the repealed rules may be constructed, installed and certified. The proposed amendment to N.J.A.C. 7:9A-3.16 extends the period of time for which pre-January 1, 1990 field testing conducted in accordance with the repealed rules, may be incorporated into septic system designs reviewed pursuant to the current rules' requirements.

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

7:9A-3.2 New [systems] **system design approvals**

(a) All aspects of the location, design, construction, installation, operation, [maintenance, and] alteration **and repair** of individual subsurface sewage disposal systems approved after [the effective date of this chapter] **January 1, 1990** shall comply with the requirements of these standards.

(b) Designs for individual subsurface sewage disposal systems approved by the administrative authority prior to January 1, 1990 may be installed and certified pursuant to the rules in effect at the time of the approval. Such approvals may be valid for up to five years following January 1, 1990 provided that the following conditions are met:

1. That those portions of the approved engineering design plans involving location, design, construction and installation of components specific to the individual subsurface sewage disposal system are not modified after January 1, 1990; and

2. That the period for which such approvals are valid is not limited by any ordinances adopted by the administrative authority.

7:9A-3.16 Prior tests

(a) Percolation test results, soil logs and determinations of seasonally high water table made prior to January 1, 1990 may be used as a basis for design and location of an individual subsurface sewage disposal system for [two] **five** years following January 1, 1990 provided that the following conditions are met:

1.-2. (No change.)

(a)

ENGINEERING AND CONSTRUCTION ELEMENT

Redelineation of East Ditch

Proposed Amendment: N.J.A.C. 7:13-7.1

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

Authority: N.J.S.A. 13:1B-3, N.J.S.A. 58:16A-50 et seq. and N.J.S.A. 58:10A-1 et seq.

DEPE Docket Number: 054-91-12.

Proposal Number: PRN 1992-46.

A **public hearing** concerning this proposal will be held on Friday, February 7, 1992 from 9:00 to 11:00 A.M. at:

Department of Environmental Protection and Energy
Engineering and Construction Element
5 Station Plaza, Second Floor
501 East State Street
Trenton, New Jersey 08609

Submit written comments by February 20, 1992 to:

Samuel Wolfe, Esq.
Administrative Practice Officer
Office of Legal Affairs
Department of Environmental Protection and Energy
CN 402
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The New Jersey Department of Environmental Protection and Energy (Department) proposes to amend N.J.A.C. 7:13-7.1, Delineated Floodways, by revising the present floodway limits, flood delineations and flood profiles of East Ditch from approximately 800 feet upstream of Sunset Road upstream 3,200 feet to the revised limit of detailed study at a location approximately 700 feet downstream of Mountain Avenue in Pequannock Township, Morris County.

This proposal to redelineate the aforementioned portion of East Ditch is based on existing field conditions, current field surveyed cross sections, reduced discharges based on flood storage-routing hydrologic models and updated hydraulic modeling. The reanalyses were performed by Boswell Engineering on behalf of Baker Firestone for a residential development. The hydrologic analysis, which is the quantity of floodwater calculated to be in the flood plain, considers the construction of Interstate 287. The hydraulic analyses, which are the determinations of flood levels and floodway limits, are based on existing field conditions without the residential development or future bridges. The development is indicated on the map entitled "Delineation of Floodway and Flood Hazard Area, East Ditch" Sheet N-11, to show the approximate location of the future construction along the stream. The proposed flood plain map and flood profiles may be viewed at the Office of Administrative Law and the Department of Environmental Protection and Energy as indicated in the Agency Note. This proposed map amendment does not exempt property owners or developers along the defined portion of East Ditch from obtaining the required local, State and Federal permits. Review of the hydrology indicates that the present State discharges should be reduced through the site to account for the flood storage and the existing drainage basin characteristics. The updated hydraulic modeling includes additional field surveyed cross sections and the reduced discharges. The survey data indicates a slightly higher channel bottom than presently indicated on the stream profile. The proposed flood levels through the reach is lower than the present State adopted flood levels, ranging from 0 to approximately 1.8 feet. The proposed flood levels are lower because of the reduced calculated discharges and more detailed field surveyed cross sections. The proposed 100-year and New Jersey Flood Hazard Area flood boundaries are generally closer to the stream, indicating a reduction in areas inundated by flooding. The flood limits shown on the proposed map amendment reflect existing field conditions and more accurate topography. Regulations delineating flood hazard areas are designed to preserve the flood carrying capacity of streams and overbank areas and to minimize the threat to the public safety, health and general welfare.

The proposed redelineation will require no change in the text of N.J.A.C. 7:13-7.1, since only a revision of the flood hazard area delineation maps is required. Review of the maps and profiles associated with this revision is recommended.

Social Impact

Regulation of delineated flood hazard areas is intended to preserve the flood carrying capacity of the waterway and their surroundings, while minimizing the threat to the public safety, health and general welfare. By delineating streams and rivers, the Department identifies the area(s) subject to the New Jersey Flood Hazard Area Control Act (FHACA), N.J.S.A. 58:16A-50 et seq., and the rules promulgated pursuant thereto at N.J.A.C. 7:13. The Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq., is also enforced through N.J.A.C. 7:13. The proposed redelineation will reduce the total area regulated by those rules, in the Township of Pequannock, Morris County.

Economic Impact

The proposed redelineation is the result of a reanalysis of the existing drainage basin characteristics, hydrology and hydraulics based on current field surveyed cross sections and detailed topographic mapping. A positive economic impact will result in favor of the property owners along the portion of East Ditch from this proposed redelineation since a more narrow floodway and lower flood levels along the site and adjacent areas

would make more favorable conditions for development. In areas where the proposed floodway limit are shown to be located closer to the stream, additional construction or development may be allowed where it was previously prohibited. Non-wetland property located outside of the floodway will have the potential to be developed.

Environmental Impact

The purpose of this proposed redelineation is to accurately define the floodway limits and flood hazard area, based on a reanalysis of the hydrology and hydraulic modeling of a portion of East Ditch in Pequannock Township. The scope of permissible development is restricted within the delineated area, thereby preventing and minimizing potential flood damage. Regulated development is permissible within the flood fringe portion of the flood hazard area, provided all necessary applications are obtained. This redelineation is not expected to have any adverse environmental impact, since the area on which development may be permitted is not considered environmentally sensitive or significant. The future residential structures are located outside the wetland areas, however, to access upland regions on the site, it will be necessary to construct a bridge along East Ditch in the flood plain and designated wetland. Since the redelineation is based on existing field conditions, the construction on the site is a separate matter from this proposal and will require compliance with the FHACA, Freshwater Wetlands Protection Act, N.J.S.A. 13:9B-1 et seq., and any other applicable law. The proposed redelineation indicates where construction is anticipated.

Regulatory Flexibility Statement

In accordance with the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., the Department has determined that this proposed redelineation would not impose compliance, reporting or recordkeeping requirements on small businesses. Any small business in the redelineated area may be economically impacted as previously discussed.

AGENCY NOTE: Maps and associated flood profiles, showing the location of the redelineated flood hazard areas, may be reviewed at the Office of Administrative Law, Quakerbridge Plaza, Building 9, Hamilton Township, New Jersey; and at the Department of Environmental Protection and Energy, Flood Plain Management Section, 5 Station Plaza, 501 E. State Street, Trenton, New Jersey. In addition, maps of the proposed redelineation have been sent to the clerk of the Township of Pequannock, Morris County.

The revised flood plain delineation and flood profiles are shown on the plates specifically identified:

State of New Jersey
Department of Environmental Protection
Division of Water Resources
Delineation of Floodway and Flood Hazard Area
East Ditch
Sheets N-11 and Profile Sheet ED-1, PR-1 & BDB-1

(a)

DIVISION OF FISH, GAME AND WILDLIFE

Defining Fishing Lines

Proposed Amendment: N.J.A.C. 7:25-16.1

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

Authority: N.J.S.A. 23:1-2, 23:3-1 and 23:9-1.

DEP Docket Number: 051-91-12.

Proposal Number: PRN 1992-36.

Submit comments by February 20, 1992 to:
Samuel Wolfe, Esq.
Office of Legal Affairs
Department of Environmental Protection and Energy
CN 402
Trenton, New Jersey 08625

The agency proposal follows:

Summary

N.J.S.A. 23:3-1 states, in part, that no person above the age of 14 may fish in the freshwaters of the State without a fishing license. This provision necessitates that the freshwaters of the State be distinguished from the State's salt waters and that the transition line between the two be defined. These lines of transition for all of the State's coastal waters are listed in N.J.A.C. 7:25-16.1.

The determination of the line of transition is now made on the basis of salinity test results. Inland tidal streams were monitored to establish the freshwater background chemical character and then they were monitored downstream, at high tide, to determine the upstream extent of salt-water influence. Determinations were made under streamflow conditions ranging from 40 to 60 percent of the average freshwater discharge and, therefore, these license lines are conservative in the upstream direction, that is, favoring upstream placement of the line. This conservative placement of the license line results in licenses being necessary in a smaller portion of the stream than would be the case if a stricter determination was made which would place the line further downstream. For purposes of reasonable and adequate notice, this transition line is adjusted upstream to the nearest readily discernible landmark. Many of the transition lines listed in N.J.A.C. 7:25-16.1 predate the establishment of this procedure and there has been a considerable number of line revisions made to the original listing on the basis of the results of subsequent testing.

Wreck Pond had become a problem area because under the existing transition line large numbers of freshwater fish were being taken in quantities and by methods which would have been illegal if this area were defined as a freshwater of the State. The presence of the large numbers of freshwater fish species indicated that the existing transition line was not accurate. Subsequent salinity sampling conducted on April 17 and 23, and May 1, 7, and 17, 1991 indicated that the upstream limit of saltwater intrusion was at the Route 71 bridge between Sea Girt and Spring Lake Heights approximately 0.75 miles downstream of the Old Mill Road Bridge in Wall Township, which is the existing transition line. The proposed amendment, therefore, is to relocate the transition line, on the basis of the scientific findings, downstream to the Route 71 bridge. This change will require that those persons fishing this 0.75 miles stretch of water obtain a freshwater fishing license and abide by the provisions of the Fish Code, N.J.A.C. 7:25-6. This change will provide the freshwater fisheries resource with the protection it requires.

Social Impact

Adoption of this proposed amendment will require that fishermen possess a freshwater fishing license on a 0.75 mile stretch of Wreck Pond which they previously could fish without such license. Also by basing the transition line on scientific determination, successful prosecution of violators will be advanced and frivolous court challenges reduced.

Economic Impact

The proposed amendment involves less than a mile of river and no significant economic impact is expected as a result of its adoption. It is highly unlikely that fishermen had restricted themselves to this short stretch of water to avoid purchasing a freshwater fishing license and, therefore, it is reasonably assumed that the vast majority of anglers will already be in possession of a fishing license.

Environmental Impact

The proposed amendment will have a positive environmental impact, because the .75 mile stretch of Wreck Pond affected by the proposed amendment will be eligible for full consideration for benefits under the State's freshwater fisheries management program. These benefits include fish stocking and protection under the provisions of the Fish Code, N.J.A.C. 7:25-6.

Regulatory Flexibility Statement

In accordance with the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., the Department has determined that this amendment would not impose reporting, recordkeeping, or other compliance requirements on small businesses, because small businesses are not regulated by N.J.A.C. 7:25-16.1. The rule defines lines upstream of which individuals must obtain a license in order to fish with handline, rod and line, or long bow and arrow.

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

7:25-16.1 Defining lines upstream of which license is required to fish with handline, rod and line, or long bow and arrow

(a) The following table defines lines upstream of which a license is required to fish with handline, rod and line, or long bow and arrow:

Name of Water License required upstream of this location:

...

MONMOUTH COUNTY

...

Wreck Pond Creek [Old Mill Road Bridge] **Route 71 Bridge**

...

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

(a)

DIVISION OF FISH, GAME AND WILDLIFE

Marine Fisheries
Atlantic Sturgeon Management
Proposed Amendment: N.J.A.C. 7:25-18.1
Proposed New Rule: N.J.A.C. 7:25-18.15

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

Authority: N.J.S.A. 23:2B-6.

DEPE Docket Number: 052-91-12.

Proposal Number: PRN 1992-37.

Submit written comments by February 20, 1992 to:
Samuel A. Wolfe, Esq.
Office of Legal Affairs
Department of Environmental Protection and Energy
CN 402
Trenton, NJ 08625

The agency proposal follows:

Summary

On April 15, 1991, the Department of Environmental Protection and Energy (Department) published a pre-proposal in the New Jersey Register (see 23 N.J.R. 1111(a) indicating the Department's intention to develop a management proposal for Atlantic sturgeon. The pre-proposal included provisions to limit entry into the sturgeon gill net fishery, establish an annual quota not to exceed 1990 New Jersey landings, increase the minimum size limit to 48 inches from 42 inches and implement a research program with participating fishermen to assess the impacts of the fishery on Atlantic sturgeon populations.

The Department received comments from four individuals concerning the pre-proposal. Two individuals indicated that consideration for participation in the fishery should be given to those persons who had recently purchased gear with the intention of entering the fishery and one individual suggested that the annual quota be allocated to fishermen based upon their historical performance in the fishery. Both of these suggestions were incorporated into this proposal.

One commenter indicated that the proposed size limit was not seven foot as recommended by the Atlantic States Marine Fisheries Commission (ASMFC) and there was no need for a limited entry system. The ASMFC recommendations regarding the management of Atlantic sturgeon included the implementation of a minimum size limit of seven foot with the monitoring of existing fisheries and the implementation of a research program to investigate migration, mortality rates, and population estimates. Scientific information on Atlantic sturgeon stocks in New Jersey upon which to base management decisions is not available. The Department does not have the financial or personnel resources to implement a research project of this nature without the cooperation of participating fishermen. The proposed new rule requires all participating fishermen to provide resource related data as a condition of their Atlantic Sturgeon Permit. To require a seven foot minimum size limit would effectively eliminate the existing fishery as well as the Department's ability to develop the biological information so essential for management. The proposed amendment and new rule effectively satisfies the ASMFC recommendations even though it does not include a seven foot minimum size limit. The proposed amendment does increase the minimum size limit to 60 inches from 48 inches specified in the pre-proposal. It should be noted that this is an interim management measure until such time as data specific to New Jersey is available and the appropriateness of a seven foot size limit can be determined. In order to mitigate for not implementing a seven foot minimum size limit, the Department recognizes the need to prevent the rapid expansion of this fishery until more information on the sturgeon resource is available. The most effective means of achieving this goal is through the implementation of an annual allocation combined with a limited entry system.

The purposes of this proposed amendment and new rule are to implement research recommendations contained in the Atlantic States Marine Fisheries Commission's Fishery Management Plan for the Atlantic Sturgeon and protect and manage Atlantic sturgeon populations in New Jersey. In order to meet the objectives of the Atlantic States Marine Fisheries Commission Fishery Management Plan for the Atlantic Sturgeon, the Department proposes interim management measures limiting the size of the directed Atlantic sturgeon gill net fishery and developing a research program through a cooperative effort with all participants in the fishery to assess the impact of the fishery on Atlantic sturgeon stocks.

Interim management measures will include individual landing quotas for the directed gill net fishery, by-catch allowances for non-directed gill net, pound net, and otter trawl fisheries, increasing the minimum size limit, limiting the entry of new fishermen into the directed gill net fishery, and requiring fishermen to cooperate in research programs. All participants in the directed Atlantic sturgeon gill net fishery will be required to obtain an Atlantic sturgeon gill net permit.

For the purpose of implementing the Atlantic States Marine Fisheries Commission's research recommendations, the Atlantic sturgeon commercial fishery will be divided into three components including established gill net fishermen, fishermen having purchased gill nets for the purpose of entering the fishery, and all other commercial fishermen including otter trawlers, pound netters and gill netters not directing their fishing effort toward Atlantic sturgeon. In order to receive an Atlantic sturgeon gill net permit and individual quota for the directed gill net fishery, each applicant must provide documented proof of the amount of dressed Atlantic sturgeon harvested by gill net during his most productive year of participation of any of the years 1988, 1989 and 1990 or the number of large mesh gill nets purchased between January 1, 1989 and January 10, 1991. The total allocation for the directed Atlantic sturgeon gill net fishery will equal the 1990 documented dressed landings provided by fishermen. Fishermen providing documentation of gill nets purchased with the intent of entering a directed Atlantic sturgeon fishery will receive a quota based upon equal shares of 10 percent of the total gill net allocation, not to exceed 3,000 pounds dressed weight each. Fishermen providing documentation of previous Atlantic sturgeon landings will receive a quota of minimum base of 3,000 pounds dressed weight plus a percentage of the remaining total allocation equal to a percentage of 1990 dressed weight landings based on landings during his most productive year of participation of any of the years 1988, 1989 and 1990. All other commercial fishermen, including otter trawlers, pound netters and non-permitted gill netters, will be allowed to retain and sell one Atlantic sturgeon per day. No one will be allowed to possess any Atlantic sturgeon less than 60 inches total length.

All permitted gill net fishermen must submit reports on forms provided by the Department listing harvest and sale of Atlantic sturgeon (dressed weight) with sales receipts or weigh out slips attached. Once a fishermen's annual quota has been harvested, no additional Atlantic sturgeon can be harvested during that year. In addition, all permitted gill net fishermen will be required to participate in collection of data necessary for the Department to monitor the fishery. Research personnel from the Department will be allowed to sail aboard any permitted vessel at any time.

The Department anticipates that the proposed amendment and new rule will protect the existing resource, provide essential data for future management decisions and minimize both the social and economic impacts on existing participants in the fishery.

Social Impact

The purpose of the proposed amendment and new rule is to implement a management program for Atlantic sturgeon. An immediate goal of this management program is to stabilize fishing mortality by restricting landings to 1990 levels. There will be a social impact on commercial fishermen. Atlantic sturgeon will no longer be subject to a totally open access fishery. Fishermen who do not have a recent history in a directed gill net fishery or did not purchase nets for the purpose of entering the fishery will be excluded. Although this will impact people who might like to enter the Atlantic sturgeon gill net fishery, it was felt that an individual quota system would provide some protection to those already having made substantial investments in terms of time, effort, and vessel and fishing gear expenses in the fishery by assuring them of the opportunity to harvest Atlantic sturgeon based on their recent catches and net purchases. The most significant social impacts would thus be felt

by those individuals who were not in the fishery in the 1988-1990 period or who did not purchase nets for the purpose of entering the fishery between January 1, 1989 and January 10, 1991.

Economic Impact

Any time the harvest of a commercial species is restricted, there is bound to be an economic impact. The purpose of these rules is to manage the Atlantic sturgeon resource, control the harvest of Atlantic sturgeon, and monitor the fishery. Because total landings are not being reduced from 1990 levels and the directed gill net fishery will be limited to those licensed gill netters already participating in the fishery or who purchased gill nets for the purpose of entering the fishery, the contemplated amendment's adverse economic effects upon those who have a substantial stake in the fishery will be minimized. Individuals never having participated in the fishery or who did not purchase nets for the purpose of entering the fishery will experience no economic impact. These individuals have never experienced an economic gain from the fishery nor have they any investment in the fishery which would be lost due to these rules.

Environmental Impact

The proposed amendment and new rule are expected to have a positive environmental impact. By controlling Atlantic sturgeon harvest and increasing the minimum size limit, any potential trend toward stock depletion by increasing harvests should be reversed. By imposing scientific data collection and reporting requirements on participants in the directed gill net fishery, the Department anticipates it will obtain valuable information directed at managing Atlantic sturgeon stocks to avoid overfishing and to enhance and restore stocks to their previous levels.

Regulatory Flexibility Analysis

The proposed amendment and new rule would apply to all commercial fishermen fishing for Atlantic sturgeon. Most of the commercial fishermen are small businesses as defined in the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. and may be impacted to some degree. Although these small businesses will have to comply with the requirements set forth in the Summary above, including some additional recordkeeping for monitoring and enforcement purposes, it is unlikely that additional professional services or capital costs will be required for compliance. In developing the amendment and new rule, the Department has balanced its environmental responsibilities against the economic impact to small businesses and has determined that to minimize the impact of the amendment and rule would adversely affect the environment and, therefore, no exemption from coverage is provided.

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

7:25-18.1 Size limits

(a) A person shall not purchase, sell, offer for sale, or expose for sale any [sea sturgeon measuring less than 42 inches in length,] codfish measuring less than 12 inches in length, bluefish or weakfish measuring less than nine inches in length, sea bass or kingfish measuring less than eight inches in length, blackfish, mackerel, or porgy measuring less than seven inches in length.

(b) No person shall take from the marine waters in the State or have in his possession any summer flounder, commonly called fluke, under 13 inches in length, winter flounder under 10 inches in length, [or] red drum under 14 inches in length, **or Atlantic sturgeon under 60 inches in length**.

(c)-(o) (No change.)

7:25-18.15 Atlantic sturgeon management

(a) An individual shall not take or attempt to take more than one Atlantic sturgeon per day for the purposes of sale or barter from the marine waters of the State, or from the marine waters outside the State and landed within the State, without a valid Atlantic Sturgeon Commercial Gill Net Permit issued by the Commissioner.

(b) Atlantic Sturgeon Commercial Gill Net Permits are not transferable.

(c) To qualify for an Atlantic Sturgeon Commercial Gill Net Permit, an applicant shall comply with the provisions below within 45 days of the effective date of this section:

1. The applicant shall complete an application provided by the Department, listing the dressed weight of Atlantic sturgeon harvested by gill net in the most recent year of participation of any of the years 1988, 1989 and 1990, or the number of nine-inch or greater stretched mesh gill nets purchased between January 1, 1989 and January 10, 1991 with the intent of entering a directed Atlantic sturgeon fishery.

2. The applicant shall attach documented proof of the dressed weight of Atlantic sturgeon harvested by gill net in the most recent year of participation of any of the years 1988, 1989 and 1990, or the number of nine-inch or greater stretched mesh gill nets purchased between January 1, 1989 and January 10, 1991. Documented proof shall consist of one or more of the following:

i. Weigh-out slips totaling the dressed weight harvested;

ii. A notarized statement from the applicant and the purchaser(s) attesting to the dressed weight harvested (records must be verifiable based upon inspection of the purchaser's business records);

iii. Sales receipts for the number of nine-inch or greater stretched mesh gill nets purchased, including date of sale, length, and stretched mesh size;

iv. A notarized statement from the applicant and the seller(s) attesting to the number of nine-inch or greater stretched mesh gill nets purchased, including date of sale, length, and stretched mesh size; or

v. Other documentation similar to that in (c)2i, ii, iii or iv above may be accepted at the discretion of the Commissioner after his or her review; and

3. The applicant shall sign an affidavit on the application certifying as to the validity of the information provided.

(d) The application period closes 45 days following the effective date of this section. Therefore, the Commissioner will determine an annual quota of Atlantic sturgeon (in pounds dressed) that may be harvested for each qualified applicant based upon the following:

1. The total allocation for the directed Atlantic sturgeon gill net fishery shall equal the 1990 documented dressed weight landings provided by applicants on their applications, to be divided in the following way:

i. Applicants providing documentation of having purchased a minimum of ten, nine-inch or greater stretched mesh gill nets between January 1, 1989 and January 10, 1991 shall receive an equal share of 10 percent of the total gill net allocation, not to exceed 3,000 pounds each or;

ii. Applicants providing documentation of landings of at least 1,000 pounds dressed weight of Atlantic sturgeon during any one of the years 1988, 1989 or 1990 shall receive a minimum base of 3,000 pounds dressed weight plus a percentage of the remaining allocation determined as follows:

(1) Each applicant shall document to the Department the dressed weight of Atlantic sturgeon landed during 1988, 1989, or 1990, whichever year he landed the greatest dressed weight. The Department will divide the individual dressed weight documented by each applicant by the total amount documented by all applicants under this sub-subparagraph (d)1ii(1) to obtain each applicant's percentage of the remaining allocation.

(e) All qualified applicants will receive an "Atlantic Sturgeon Commercial Gill Net Permit" within 75 days following the effective date of this section which shall indicate that permittee's annual (calendar year) quota of Atlantic sturgeon that may be commercially harvested.

(f) Following 75 days after the effective date of this section, not more than one Atlantic sturgeon per day may be commercially harvested unless the Atlantic Sturgeon Commercial Gill Net Permit has been issued and received.

(g) All individuals shall have their permit on their person at all times when engaged in any phase of harvesting, transporting, selling or possessing Atlantic sturgeon.

(h) All Atlantic sturgeon harvested under the Atlantic Sturgeon Commercial Gill Net Permit shall be landed in New Jersey. For the purposes of this section, landed shall mean the transfer of a catch of fish from a vessel to the land or any pier, wharf, or dock.

(i) All permittees shall be required to complete monthly reports supplied by the Department. The monthly report shall be signed by the permittee attesting to the validity of the information and be submitted so it is received by the Department no later than five

working days following the end of the reported month at the following address:

Division of Fish, Game and Wildlife
Atlantic Sturgeon Program
CN 400
Trenton, NJ 08625

1. The monthly report shall include:

i. The daily harvest and sale of Atlantic sturgeon (in pounds dressed);

ii. The buyer(s) name;

iii. The cumulative total of Atlantic sturgeon (in pounds dressed) at the beginning of the month;

iv. The cumulative total of Atlantic sturgeon (in pounds dressed) at the end of the month;

v. Weigh out slips or sales receipts verifying the amount (in pounds dressed) of Atlantic sturgeon sold; and

vi. Any other requested information pertinent to management of the Atlantic sturgeon resource including catch/effort data, length and sex data, by-catch data, and tagging information from a representative size range of Atlantic sturgeon.

(j) At any time during the calendar year that the permittee's annual quota of Atlantic sturgeon has been harvested, the permittee shall cease all harvesting of Atlantic sturgeon. A monthly report marked "FINAL" shall be forwarded to the Division at the address provided at (i) above within five working days.

(k) Adjustments in individual allocation for years subsequent to 1992 may be made annually by the Commissioner, based upon recommendations of the Atlantic States Marine Fisheries Commission, annual commercial landings data from the National Marine Fisheries Service and an individual's historical harvest performance. If no such adjustment is made, each permittee's quota shall remain at the previous year's amount.

(l) Research personnel from the Department shall be allowed to sail aboard any permitted vessel at any time.

(m) Any person violating the provisions of this section shall be subject to the penalties prescribed in N.J.S.A. 23:2B-14 in addition to the following:

1. Failure to submit the application within 45 days of the effective date of this section or to attach the required documentation to the application will result in the denial of the permit.

2. Falsification or misrepresentation of any information on the application including documentation provided to verify the amount of Atlantic sturgeon harvested or number and size of gill nets purchased shall result in the denial or revocation of the permit in addition to any civil or criminal penalties prescribed by law.

3. Failure to comply with the provisions of (i) and (j) above shall subject the violator to suspension or revocation of the Atlantic Sturgeon Commercial Gill Net Permit.

4. Prior to the suspension or revocation of the permit, the permittee shall have the opportunity to request a hearing pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. and 52:14F-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.

(a)

DIVISION OF FISH, GAME AND WILDLIFE

Marine Fisheries

General Net Regulations

Proposed Amendment: N.J.A.C. 7:25-18.5

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

Authority: N.J.S.A. 23:2B-6.

DEPE Docket Number: 050-91-12.

Proposal Number: PRN 1992-30.

Submit written comments by February 20, 1992 to:

Samuel A. Wolfe, Esq.
Office of Legal Affairs
Department of Environmental Protection and Energy
CN 402
Trenton, NJ 08625

The agency proposal follows:

Summary

The proposed amendment will reduce user conflicts by eliminating fyke netting and haul seining from certain small bodies of water where highly efficient commercial gear could dramatically reduce availability of a limited resource to the traditional recreational user group, establish minimum mesh sizes and eliminate the use of monofilament in fyke nets to reduce their effectiveness in capturing untargeted species and monitor fyke net fishing effort by requiring that licensees notify the Department of Environmental Protection and Energy (Department) of the specific estuary within which they are fishing. The amendment also stipulates that submerged anchored fyke nets shall be marked with fluorescent orange floats or flags to clearly identify the location of gear for enforcement purposes and requires that all stakes used for setting fyke nets be removed after the close of the season to remove potential navigational hazards prior to the summer boating season.

Social Impact

The main purpose of this proposed amendment is to reduce user conflicts by eliminating fyke netting and haul seining from certain small bodies of water. Conflicts over fishing space and harvesting of a limited resource by highly efficient commercial gear in small bodies of water have occurred frequently in the past. Eliminating fyke netting and haul seining in these areas would provide a positive social impact to recreational fishermen by providing a conflict-free fishing experience. The marking and stake removal requirements will also reduce conflict between fishermen and facilitate enforcement of the regulations by clearly identifying the location of the submerged gear in both daylight and poor light conditions and by the elimination of potential navigation hazards during the summer boating season. Because very few fyke netters and haul seiners would be affected by this amendment and fyke netting and haul seining opportunities remain abundant elsewhere in the State, only a minimal adverse social impact on fyke netters and haul seiners is anticipated. No adverse social impact is anticipated from requiring minimum mesh sizes, disallowing monofilament or licensing area changes, as this does not differ significantly from current practices in the fishery. Although new, the marking and stake removal requirements are not anticipated to create adverse social impacts since the marking of gear or removal of stakes can be accomplished along with gear deployment or removal.

Economic Impact

The proposed amendment should have a minimal adverse economic impact. Commercial catches of marketable species by fyke netting and haul seining in those bodies of water which will be eliminated have been small. Any economic loss by commercial fishermen could be compensated for fishing in numerous other areas in the State where fyke netting and haul seining will continue to be allowed. No significant economic impacts are anticipated by requiring minimum mesh sizes, disallowing monofilament, licensing area changes, or stake removal requirements. Requiring minimum mesh sizes and disallowing monofilament will not change current common practices in the fishery. In addition, any untargeted and unmarketable gilled fish now taken due to the use of monofilament are of limited use due to low numbers and limited value. The elimination of monofilament netting will not reduce the effectiveness of the fyke net for targeted species. Notice requirements as to specific estuary fished

in will have no significant effect on fishermen because very few switch fishing gear from estuary to estuary. Stake removal requirements will not cause any direct additional expenditures as stakes can be removed at the end of the season along with each fyke net. There would be a minimal cost associated with the purchase of floats to mark submerged anchored fyke nets. The cost of marking each fyke net with fluorescent orange floats would be approximately 50 dollars while the cost for marking with flags would be less than one half that figure.

Environmental Impact

The proposed amendment will result in a positive environmental impact. Establishing a minimum mesh size and disallowing monofilament in fyke nets will reduce their effectiveness in catching small untargeted and unmarketable fish, thus preventing the useless destruction of these fisheries resources. In addition, by requiring notice as to the specific estuary fished, the State can better monitor fishing effort and any effects that the harvest may be having on the resource.

Regulatory Flexibility Analysis

The proposed amendment applies to all fyke net and haul seine fishermen. Forty-four fishermen are affected, of which 19 are fyke netters and 25 are haul seiners. Most of these commercial fishermen would be considered small businesses as defined in the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. Although these businesses must comply with the proposed amendment, as described in the Summary above, no additional recordkeeping is involved and there will be no need for additional professional services or increased capital costs of any significance for compliance. In developing this proposed amendment, the Department has balanced its environmental responsibilities against the economic impact to small businesses and has determined that to minimize the impact of the amendment would adversely affect the environment and, therefore, no exception from coverage is provided.

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

7:25-18.5 General net regulations

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

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

1. Haul seines shall have a mesh not smaller than 2.75 inches stretched and shall not exceed 70 fathoms in length, whether used singly or in a series. Haul seines may be used for all species except those specifically protected.

i. (No change.)

ii. A person shall not use or attempt to use a haul seine for any species in Lake Takanassee, Spring Lake, Wreck Pond and Deal Lake, or in any other body of water in the State with a total area of less than 175 acres;

Recodify existing ii as **iii** (No change.)

2. Fykes shall have a length, including leaders, which shall not exceed 30 fathoms and no part of the net or leaders shall be **constructed of monofilament or** have a mesh **smaller than two and one-half inches stretched or** larger than five inches stretched. Fyke nets may be used for all species except those specifically protected.

i. (No change.)

ii. A person shall not use or attempt to use a fyke net for any species in Lake Takanassee, Spring Lake, Wreck Pond and Deal Lake, or in the area commonly known as Collins Cove off the Mullica River between a line starting at Rocky Point (latitude 39°33.29'N, longitude 74°28.48'W), bearing approximately 265°T to a point on the western shore of Collins Cove at latitude 30°33.19'N, longitude 74°28.91'W and the Garden State Parkway where it crosses the Mullica River, or in any other body of water in the State with a total area of less than 175 acres;

iii. All stakes used for the setting of fyke nets must be removed within 30 days of the close of the season;

iv. Submerged anchored fyke nets shall be marked at each end with a fluorescent orange float at least 12 inches in diameter or a fluorescent orange flag at least 12 inches by 12 inches and suspended at least three feet above the water, measured from the surface of the water to the bottom of the flag. No less than 24 square inches of any reflective material shall be attached and maintained on each marker.

[ii.]**v.** The fyke resident fee shall be $12.00 per net. **Each licensee shall notify the Department in their license application of the specific estuary in which they intend to fish the fyke net(s). Licensees shall notify the Department as to any change in the specific estuary within which the fyke net is located no later than seven days following the change in estuary. Such notice shall be in writing to:**

Division of Fish, Game & Wildlife
Marine Fisheries Administration
CN 400
Trenton, New Jersey 08625.

3.-12. (No change.)

(h) (No change.)

HUMAN SERVICES

(a)

DIVISION OF MENTAL HEALTH AND HOSPITALS
County Psychiatric Facilities
Proposed New Rules: N.J.A.C. 10:35

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

Authority: P.L. 1990, c.73.

Proposal Number: PRN 1992-42.

Submit comments by February 20, 1992, to:

Alan G. Kaufman, Director
Division of Mental Health and Hospitals
Capital Center—Third Floor
CN 727
Trenton, New Jersey 08625

The agency proposal follows:

Summary

Public Law 1990, Chapter 73, (approved July 17, 1990), provides authority to the Commissioner of Human Services "to promulgate regulations to assure that services in State and county psychiatric facilities are provided in an efficient and accessible manner and are of the highest quality. Regulations shall include, but shall not be limited to, the transfer of patients between facilities; the maintenance of quality in order to obtain certification by the United States Department of Health and Human Services; the review of the facility's budget; and the establishment of sanctions to assure the appropriate operation of facilities in compliance with State and federal laws and regulations."

As part of the delegation of legislative authority referenced above, the Department of Human Services, Division of Mental Health and Hospitals, is promulgating administrative rules regarding the transfer of patients between facilities and the maintenance of quality at county psychiatric facilities within N.J.A.C. 10:35. Additional rules are being promulgated by the Department regarding the functioning of the county adjusters at N.J.A.C. 10:7 (see 23 N.J.R. 2953(a)).

The purpose of these rules within Chapter 35 is to promote efficiency, accessibility, high quality services, and a well coordinated and integrated role within county psychiatric facilities as part of the publicly funded Statewide system of mental health services. The Department has determined that this goal may best be reached by rules requiring: (1) the submission of annual financial and management plans by the governing bodies of the counties to the Director of the Division of Mental Health and Hospitals; (2) the development of affiliation agreements between each county psychiatric facility and Division funded or operated mental health service agencies, units or hospitals; and (3) the transfer of patients between State and county psychiatric facilities within certain substantive and procedural guidelines.

These proposed new rules shall apply to the operation of the five current county psychiatric facilities or units—Bergen Pines Hospital, Buttonwood Hospital, Camden County Health Services Center Hospital, Essex County Hospital Center and Meadowview Hospital—as well as to any additional county psychiatric facilities or units which may be so designated by the Commissioner in the future.

Social Impact

By promoting efficient, accessible, standardized, coordinated and high quality service delivery by county psychiatric facilities, these proposed new rules will benefit the recipients of those specific services and the other publicly funded mental health services within those counties which operate county psychiatric facilities. By promoting the efficient utilization of State psychiatric facilities, these rules will also benefit all recipients of services at the State psychiatric facilities, including residents of counties which do not operate a County psychiatric facility.

Economic Impact

Compliance with these proposed new rules is likely to impose some administrative burden on county psychiatric facilities in the form of staff time required to submit financial and management plans, negotiate and develop affiliation agreements and comply with transfer procedures to State psychiatric facilities. The Department does not believe the amount of staff time involved is excessive, however, and the investment of these efforts should promote efficiency in operation. Compliance with these rules does not appear to require additional financial expenditures by the State or any counties or other affected parties, including the recipients of mental health services and the State. The taxpaying public is anticipated to benefit from the resultant efficiency generated by these rules.

Regulatory Flexibility Statement

Compliance with these proposed new rules will affect only certain recipients of mental health services, public employers and public employees. Thus, these proposed new rules do not impose any reporting, recordkeeping or other compliance requirements upon small businesses, as defined by the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. rendering a regulatory flexibility analysis unnecessary. The proposed new rules regard the transfer of patients between facilities and the maintenance of quality at county psychiatric facilities.

Full text of the proposed new rules follows:

CHAPTER 35
COUNTY PSYCHIATRIC FACILITIES

SUBCHAPTER 1. GENERAL PROVISIONS

10:35-1.1 Scope

These rules shall apply to the operation of the five current county psychiatric facilities at Bergen Pines Hospital; Buttonwood Hospital; Camden County Health Services Center Hospital; Essex County Hospital Center; and Meadowview Hospital. These rules shall also apply to any additional county psychiatric facilities which may be so designated by the Commissioner in the future.

10:35-1.2 Purpose

The purpose of these rules is to promote efficiency, accessibility, and high-quality services within the county psychiatric facilities as part of a publicly funded well-coordinated and integrated Statewide system of mental health services. In order to best accomplish this purpose, the Commissioner hereby delegates certain authority granted by P.L. 1990, c.73 to the Director as detailed throughout this chapter.

10:35-1.3 Definitions

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

"Commissioner" means the Commissioner of the Department of Human Services.

"Compliance with Federal standards" means meeting the Medicare certification requirements in units for patients who require a level of care consistent with such Medicare certification.

"Compliance with State standards" means meeting the applicable licensure requirements of the New Jersey Department of Health.

"County psychiatric facility" means a psychiatric hospital or unit which is operated by the governing body of a county and which participates in the State Aid Program of the Department of Human Services, Division of Mental Health and Hospitals.

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

"Director" means the Director of the Division of Mental Health and Hospitals.

"Division" means the New Jersey Division of Mental Health and Hospitals within the Department of Human Services.

"Governing body of a county" means the office of the county executive. In those counties without a county executive it shall mean the county board of chosen freeholders.

"Plan" means financial and management plan submitted by the governing body of a county.

"Regional State psychiatric facility" means those State psychiatric hospitals listed in N.J.S.A. 30:1-7 which are being utilized by the Division of Mental Health and Hospitals to treat adult psychiatric patients within designated regions of the State. Currently, these facilities are Ancora Psychiatric Hospital, Greystone Park Psychiatric Hospital, Marlboro Psychiatric Hospital and Trenton Psychiatric Hospital.

SUBCHAPTER 2. FINANCIAL AND MANAGEMENT PLAN

10:35-2.1 Purpose and deadline of plan

The governing body of each county that operates a county psychiatric facility shall submit to the Director a plan no later than December 31 of each calendar year so that the purpose articulated at N.J.A.C. 10:35-1.2 above may be achieved. In addition to the information listed at N.J.A.C. 10:35-2.2, the plan may need to include additional program or fiscal information deemed essential by the Director to fulfill the duties mandated by P.L. 1990, c.73. If any such additional information is needed, it shall be so requested in writing by the Director.

10:35-2.2 Content of plan

(a) The plan from each county facility shall minimally include the following information:

1. A statement of whether the governing body of the county intends to continue to operate a county psychiatric facility for the next calendar year;
2. A statement of any financial obligations that must be incurred in order to bring the facility into compliance with State and Federal standards, including any applicable plan of correction;
3. A statement of mission and the role of the facility within local and regional mental health systems;
4. A description of any program and facility deficiencies cited by State, Federal or private licensing, certifying or accrediting bodies and corrective action plans related to the cited deficiencies;
5. A description of target populations served, projected annual admissions and anticipated average daily population;
6. A description of admissions and discharge policies;
7. A description of hours of operation, number and types of beds licensed and in use for psychiatric services;
8. A description of methodologies and/or data utilized to determine the need for current, modified or new programs;
9. A description of current and projected use of buildings and land for mental health and/or other purposes;
10. An identification of proposals or plans external to the psychiatric facility which may impact on the facility's ability to provide services; and
11. A description, in a format specified by the Director, of budgetary information and personnel listings sufficient to reasonably identify facility, staffing and program operational costs, expected revenues, and associated financial aspects of planned facility services.

10:35-2.3 Annual Certification Process

On or before December 31 of each year, the governing body of each county shall submit written certification to the Director as to the accuracy of information submitted and that information contained in the previously submitted plan remains in effect without change, if that is so.

10:35-2.4 Modifications to the plan

(a) If changes to the plan are anticipated for the next year, the governing body of each county shall submit written notification and description of the modifications to the Director on or before December 31 of the preceeding year.

(b) If modifications occur subsequent to the annual certification, these changes must be reported immediately, in writing, to the Director.

(c) Facility or program modifications which would require a Certificate of Need (CN) as established by rules promulgated by the New Jersey Department of Health must be specified in a letter of intent to the Director, concurrent with the notification to the Department of Health.

(d) Modifications that do not require a CN but that would have an impact on the provision of services within the New Jersey mental health system, require six months advance notice to the Director prior to implementing any program or facility modification.

(e) The governing body of each county shall immediately inform the Director, in writing, of any changes in the status of the psychiatric facility's licensure, accreditation or certification, as these occur during the year.

10:35-2.5 Division review of initial and modified plans and annual certification

(a) The Director shall complete the review of each facility's plan and notify in writing the governing body of the county of his or her decision to approve, or approve with conditions, the county's plan guiding the operations of its respective psychiatric facility within 90 days of the plan's receipt.

(b) If the county's plan receives conditional approval, the governing body of the county may modify the plan or may request in writing to enter into negotiations with the Director to satisfy those conditions. The modifications made to the plan and/or the completion of negotiations shall be concluded within 90 days of notification of conditional approval.

SUBCHAPTER 3. AFFILIATION AGREEMENT DEVELOPMENT

10:35-3.1 Affiliation agreement development

(a) Each county psychiatric facility shall negotiate and develop affiliation agreements with designated screening programs (as defined at N.J.A.C. 10:31-1.3), community based short term care facilities (as defined at N.J.A.C. 10:31-1.3), Division contracted community mental health services, (for example liaison, case management, partial care, residential) and State psychiatric facilities.

(b) The purpose of these agreements shall be to effectively link the facility's services to these other services so that accessible, high quality mental health care is provided in the most clinically appropriate, least restrictive service environment consistent with an individual's needs.

(c) These agreements shall be consistent with the county psychiatric facility's mission statement, plan and license.

(d) Minimally, affiliation agreements shall include a description of each party's program components, as well as the referral and admissions process. The admission process shall specify inclusionary and exclusionary criteria. A section providing a description of the treatment planning process, length of stay objectives and the discharge planning process shall also be included in the affiliation agreement.

(e) Case managers and community mental health aftercare liaison staff shall be credentialled and privileged to participate in treatment team and discharge planning processes.

(f) Each affiliation agreement shall contain a section identifying a problem resolution process agreed to by the signatories.

(g) The process and general procedures for referrals to and transfers among affiliating system components should be specified within the agreements.

(h) Affiliation agreements, as stipulated above, shall be completed within 180 days of the adoption of these rules.

10:35-3.2 Review process

(a) The county psychiatric facility affiliation agreements and any subsequent modifications should be developed in consultation with the county mental health board's professional advisory committee.

(b) The signed affiliation agreement shall be provided to the county mental health board on an annual basis.

(c) The signed affiliation agreement(s) as approved by the county psychiatric facility or their governing body shall be submitted to the Division.

(d) County systems review committees shall review the operational aspects of the psychiatric facility affiliation agreements.

(e) Both County and Regional State psychiatric facility representatives shall attend the system review committee meetings.

SUBCHAPTER 4. TRANSFERS BETWEEN REGIONAL STATE AND COUNTY PSYCHIATRIC FACILITIES

10:35-4.1 Scope

(a) The rules within this subchapter shall apply to patients residing at county psychiatric facilities being considered for transfer to a regional State psychiatric facility and to patients residing at a regional State psychiatric facility being considered for transfer to county psychiatric facilities.

(b) Within the parameters set out within this subchapter, the specific process for transfers between Regional State and county psychiatric facilities shall be specified within their affiliation agreement.

10:35-4.2 Basis for transfers

(a) Clinical considerations shall always be paramount in any transfer decision. Any of the factors described below may serve as a basis for the transfer of a patient:

1. To place him or her in closer proximity to family members;
2. To place the patient in the appropriate facility according to the patient's residence (catchment area);
3. To participate in a specialized psychiatric service that is offered in another psychiatric facility or in the community that is more accessible from the receiving facility;
4. To spare patients the consequence of overcrowding in a specific psychiatric facility;
5. In response to a natural catastrophe, fires or other life safety concerns which necessitate transfer;
6. As a consequence of inter-regional or intra-regional consolidation of services; or
7. In response to the request of the patient.

10:35-4.3 General transfer policies and procedures

(a) Transfers over the objection of a patient are permitted when a clinical determination has concluded that the decision is in the transferee's clinical best interest or necessary for the safety of other patients or administratively necessary due to a factor listed in N.J.A.C. 10:35-4.2.

(b) Transfers occurring as a result of overcrowding, life safety concerns, natural catastrophes or consolidation of services shall require the approval of the Director.

(c) The following procedures shall be in effect for transfers of patients between facilities:

1. Facility staff should actively promote patient and family input into transfer decisions.
2. The designated sending psychiatric facility must discuss the transfer with the designated receiving psychiatric facility. If the parties agree to the transfer, they will arrange for a specific date and time for the transfer to occur.
3. Both the patients scheduled to be transferred, and their families, shall be notified by the sending psychiatric facility as soon as possible after the transfer decision has been made, but no later than 72 hours prior to the transfer. When a patient requests transfer, staff shall notify him or her of their decision promptly.
4. In the event of an emergency transfer, defined as imminent danger of serious bodily harm to self or others which less restrictive placement alternatives other than transfer cannot adequately address, the 72 hour notification requirement shall be waived.
5. The psychiatric facility initiating the transfer shall make the arrangements for the transfer, including transportation.
6. If the two psychiatric facilities do not agree on the transfer, the matter shall be referred to the chief executive officers, or their designee, of the respective facilities for resolution. The patient's attorney shall be notified of the disagreement. If the chief executive officers are unable to resolve the matter, the Director or a designee shall finally resolve the matter.

7. All transfers are to be handled in a timely manner as specified in the affiliation agreement.

10:35-4.4 Specific procedures when patients object to transfer

(a) When a patient objects to the transfer, the following procedures shall apply:

1. Each patient and their attorney shall receive notice of the proposed transfer as soon as possible but in no instance less than 72 hours prior to the proposed transfer date;

2. If a patient objects to such a transfer, he or she shall be provided an opportunity to state the basis for the objection and present any relevant facts with or through a representative as so desired before an individual who is not a member of the treatment team seeking transfer. This individual may be a member of the office of the facility's clinical director or other facility staff member capable of providing an independent review of the need for the proposed transfer; and

3. The individual who reviews the proposed transfer shall have the authority to approve or disapprove the proposed transfer.

SUBCHAPTER 5. SANCTIONS AND APPEALS PROCESS

10:35-5.1 Sanctions

(a) If the Director determines that any of the provisions of this chapter have been violated by the governing body of a county or a county psychiatric facility, administrative and financial sanctions may be imposed in writing by the Director upon the violators as warranted by the specific situation.

(b) Administrative sanctions may include, but not be limited to, notices or letters of warning to the governing body of a county and a county psychiatric facility.

(c) Financial sanctions may include, but not be limited to, fines and the withholding of funds from the governing body of a county and the county psychiatric facility.

(d) N.J.S.A. 30:4-78.4 provides that in the event a county continues to operate and maintain a county psychiatric facility, the Commissioner shall have the power to replace the chief executive officer, the chief financial officer, the medical director and other appropriate administrative personnel upon the Commissioner's determination that financial expenditures of the facility are repeatedly and substantially in excess of similar expenditures in other State and county psychiatric facilities or the quality of care provided in the facility is repeatedly and substantially below State and Federal standards.

10:35-5.2 Appeals process

(a) The governing body of a county or a county psychiatric facility may appeal any sanction imposed by the Director except that sanctions related to the plan review and approval process may only be appealed by the governing body of a county.

(b) Appeal requests must be received by the Director within 30 days of receipt of the written sanctions by the governing body of the county or the county psychiatric facility.

(c) The Director shall schedule the appeal for review within 60 days of receipt of the appeal request.

(d) The appellant may present all relevant information for consideration by the Director at the review and the Director shall communicate a determination in writing to the appellant within 30 days of the review.

(e) The appellant may appeal the Director's determination to the Commissioner in writing within 60 days of receipt of the Director's determination.

(f) The Commissioner, or a Departmental designee, shall schedule the Departmental appeal for review within 60 days of receipt of the Department appeal request.

(g) The appellant may present all relevant information for consideration by the Commissioner or Departmental designee at the review and the Commissioner or Departmental designee shall communicate a determination in writing to the appellant within 30 days of the review.

(a)

DIVISION OF DEVELOPMENTAL DISABILITIES

Determination of Eligibility

Proposed Amendments: N.J.A.C. 10:46-1.3, 2.1, 3.2, and 4.1

Poposed New Rules: N.J.A.C. 10:46-5

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

Authority: N.J.S.A. 30:4-27.2, 30:4-25.2 and 30:6D-23 et seq.

Proposal Number: PRN 1992-43.

Submit comments by February 20, 1992 to:
James M. Evanochko
Administrative Practice Officer
Division of Developmental Disabilities
CN 700
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The Division of Developmental Disabilities adopted N.J.A.C. 10:46, Determination of Eligibility, effective September 17, 1990. In implementing the provisions of this chapter, the Division has found that a number of areas require some clarification. This proposal reflects changes in residency requirements. Also, new language has been added and the definitions revised for "case management" and "resident." N.J.A.C. 10:46-5, describing procedures for discharge from services, is proposed as new rules.

The following is a summary of the proposed amendments and new rules.

Subchapter 1—The definition of case management has been replaced with a new definition. In proposing the rule for eligibility in 1989, the Division included a general definition of the term "case management." Since that rule has been adopted, a more comprehensive definition of case management has been used by the Division in various proposals to the Federal government. The proposed amendment to the definition of case management is the definition of case management the Division uses with regard to the Community Care Waiver, a Title 19 program which permits some services provided in the community to be paid for with Federal funds if the person was otherwise in danger of being placed in an institution. Also, the definition of "resident" has been expanded to indicate when an individual shall be determined incapable of indicating intent. When the Division originally adopted this chapter in 1990, it had received numerous comments regarding residency requirements. In its adoption notice, the Division indicated that it would consider additional rulemaking concerning residency; the proposed amendments to the definition of resident and the residency provisions of N.J.A.C. 10:46-2.1(a) (see below) reflect this clarification. Of particular concern was addressing the situation where persons placed by agencies outside of New Jersey subsequently apply for services.

Subchapter 2—N.J.A.C. 10:46-2.1(a) has been amended to indicate that when an agency of a state other than the State of New Jersey places an individual in New Jersey, the individual is a resident of the other state. However, an individual as a competent adult may choose to live in New Jersey. If an incompetent adult can indicate intent to live in New Jersey based upon documentation from a licensed physician or psychologist, he or she may establish residency.

Subchapter 3—A new address is provided for the Lower Central Regional Office.

Subchapter 4—N.J.A.C. 10:46-4.1(c) and (d) have been changed to indicate that the intake worker completes an assessment of the individual's functional limitations rather than making a recommendation concerning eligibility.

Subchapter 5, Discharge from Services, is proposed as new rules as part of the Division's intent to clarify the discharge process. The subchapter is comprised on sections covering the reasons for discharge, the requests for discharge, the right to immediate release from services, and various situations involving clients including instances when individuals are reported missing from their living arrangement, when individuals fail to return from vacation, when the guardian of an incompetent adult or minor moves out of state and, court commitments. Of particular importance is the proposed new rule at N.J.A.C. 10:46-5.6, when the guardian of an incompetent adult or minor moves out of state.

The Division has found itself responsible for a number of persons whose families have moved from New Jersey to another state. The proposed new rules require the legal guardians of minors or incompetent adults to continue to be responsible for those individuals once the legal guardian has moved from New Jersey. The Division will assist the person in applying to other states for services, but it will not continue to provide services beyond one year.

Social Impact

The proposed amendments to N.J.A.C. 10:46 establish new criteria for determining who may establish residency. The rule clearly indicates that persons placed in New Jersey by an agency outside the State of New Jersey are not residents. The Division of Developmental Disabilities has in the past received requests for services from persons who were placed in New Jersey by agencies from another state. The Division currently has approximately 3,000 New Jersey citizens waiting for services. It would be unfair for the citizens of another state to be added to the waiting list for services.

Similarly, proposed new rules at N.J.A.C. 10:46-5 establish a procedure for discharge from services. The proposed new rules now clearly identify the circumstances where a discharge from services would be appropriate. This includes provisions where the guardian of an incompetent adult or minor moves to another State. In those instances, the Division may notify the appropriate state agency and/or guardian of a specific date when the individual will be discharged from services.

It is anticipated that the reaction to these rules will be positive in that it will limit access of persons from other states to New Jersey services. It will also transfer responsibilities to the appropriate states once legal guardians have moved out of New Jersey.

Economic Impact

The proposed amendments and new rules are expected to have no negative impact on the citizens of New Jersey. The major impact of the amendments and new rules is to prevent persons who are not residents of New Jersey from drawing on the limited resources available for developmentally disabled persons.

The Division of Developmental Disabilities has received repeated requests for services from persons who do not live in New Jersey. The basis of the request is that the desired service is not available in the person's home state. Most often these requests are for private placement in a community setting. Currently, the average cost of such placements is $60,000 annually.

Similarly, the new rules allow persons to be discharged from services once their legal guardians no longer live in New Jersey. As these discharges occur, more people from New Jersey may be served.

There are no administrative costs associated with the proposed amendments and new rules, nor is there any direct monetary savings.

Regulatory Flexibility Statement

A regulatory flexibility analysis is not required because the proposed amendments and new rules impose no reporting, recordkeeping or other compliance requirements on small businesses as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The rules establish determination of eligibility for services to persons with developmental disabilities.

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

10:46-1.3 Definitions

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

...

"Case management" [means the linking and coordination of services across family, agency and professional lines to develop and attain goals and objectives embodied in the Individual Habilitation Plan. It involves the monitoring of and advocating for the individual's needs with individual and family participation] **means a standard process designed to coordinate the residential, social, health and habilitative services necessary to meet the needs of MR/DD persons and their families. The major functions included in case management are care planning, arranging for services, counselling, monitoring and assessment.**

...

"Resident" means a person who is a domiciliary of New Jersey for other than a temporary purpose and who has no present intention of moving from the State. **For the purpose of this chapter, an individual is considered incapable of indicating intent if the individual:**

1. Has an I.Q. of 49 or less or has a mental age of seven or less based upon recognized standardized tests;

2. Is found incapable of indicating intent based upon medical documentation obtained from a licensed physician or licensed psychologist. (42 CFR Ch IV 436.403); or

3. Is a minor. In such instances, the residence of the minor is considered to be that of his or her parent or guardian.

...

10:46-2.1 General eligibility

(a) A person determined to be developmentally disabled as defined in N.J.A.C. 10:46-1.2, and who is a resident of the State of New Jersey, is eligible for services of the Division.

1. When any agency of a state other than New Jersey arranges or makes a placement in New Jersey, the state from which the individual was placed shall be considered the individual's state of residence.

i. A competent adult placed by an agency outside New Jersey or by family/guardian who do not reside in New Jersey, upon attaining his or her 18th birthday, may choose to apply for services from the Division.

ii. An incompetent adult placed by an agency outside New Jersey or by family/guardian who does not reside in New Jersey shall not be considered a resident of New Jersey. His or her residency shall be considered the state where his or her legal guardian resides unless that incompetent individual can demonstrate that he or she is capable of indicating intent to establish residence in New Jersey based upon documentation from a licensed physician or licensed psychologist employed by the Division.

2. A state agency outside the State of New Jersey may seek to transfer an individual to the services of the Division of Developmental Disabilities in accordance with the Interstate Compact on Mental Health (N.J.S.A. 30:7B-1 et seq., see also 42 CFR Ch IV 436.403).

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

10:46-3.2 Where to apply

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

(d) Application shall be made to a regional office of the Division. Forms [and], instructions **and addresses of the regional offices** may be obtained by writing or calling:

Regional Office	Counties of Jurisdiction
Northern Regional Office 201-927-2600 1B Laurel Drive Flanders, NJ 07836	Sussex, Morris, Warren, Passaic, Bergen, Hudson
Upper Central Reg. Office 201-379-1700 65 Springfield Avenue Springfield, NJ 07081	Essex, Somerset, Union
Lower Central Reg. Office [609-298-8591 Third Street Bldg. #5 Bordentown, NJ 08505] **609-292-4500** **Capital Place 1** **222 South Warren Street** **Trenton, NJ 08625**	Middlesex, Monmouth, Mercer, Ocean, Hunterdon
Southern Regional Office 609-757-4700 101 Haddon Avenue Suite 17 Camden, NJ 08103	Camden, Atlantic, Gloucester, Cumberland, Salem, Cape May, Burlington

(e) (No change.)

10:46-4.1 Determination

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

(c) Upon receipt of an application, including all necessary documentation and completion of an in person interview with the applicant, the intake worker shall [make an initial recommendation in writing based upon specific findings] **complete an assessment to determine the applicant's functional limitations** regarding eligibility pursuant to N.J.A.C. 10:46-2.

(d) A team shall review [the recommendation of the intake worker] **information included in the case file** and:

1.-2. (No change.)

(e)-(f) (No change.)

SUBCHAPTER 5. DISCHARGE FROM SERVICES

10:46-5.1 Reasons for discharge

(a) The existence of one or more of the following circumstances may be the basis to discharge an individual from services:

1. No condition of a developmental disability exists;

2. The competent adult, the parent of a minor or the guardian no longer desires the service of the Division;

3. The individual can be better served through services available external to the Division;

4. The individual does not require the services of the Division in order to maintain an adequate adjustment;

5. The individual is missing from his living unit for more than 60 days (N.J.A.C. 10:46-5.4);

6. The individual has moved out of the State of New Jersey with the intention of establishing residence elsewhere;

7. The guardian of a minor or incompetent adult moves outside New Jersey (N.J.A.C. 10:46-5.6); or

8. An order of commitment is rescinded or expires.

10:46-5.2 Requests for discharge

(a) Requests for discharge may originate from the competent adult, parent, guardian or the administrative head of a Division component. Requests shall be directed to the appropriate Regional Administrator.

(b) The person requesting discharge shall submit a letter requesting the individual's discharge to the Regional Administrator.

1. The request shall contain the individual's name, date of birth, guardianship status and reasons for the discharge request.

2. A copy of the discharge request shall be filed in the client's record.

(c) The Regional Administrator shall review the discharge request and respond in writing to the party making the request.

1. If the request is approved, the letter to the service component shall specify the effective date of discharge.

2. If the request is disapproved, a letter of explanation shall be forwarded to the party requesting discharge.

(d) If a party disagrees with the Regional Administrator's decision concerning a request for discharge, a hearing pursuant to N.J.A.C. 10:48-1 shall be provided.

10:46-5.3 Right to immediate release

(a) The Division shall release to the immediate custody of a parent or guardian of a minor or a guardian of an incompetent adult, an individual who is receiving functional services without court order, provided that 48 hours' notice may be required. Upon written request:

1. The individual shall be released unless the matter is to be contested in court.

2. Such release may be either a discharge or transfer depending on whether the competent adult, parent or guardian requests further services.

(b) A competent adult who is receiving services without court order shall be released upon his or her own request, provided that 48 hours notice may be required.

(c) The Regional Administrator shall approve the request for discharge. He or she may not disapprove the discharge unless intervention is sought in a court of competent jurisdiction.

10:46-5.4 Individuals reported missing from their living arrangement

(a) Should an individual leave their living arrangement and not return, Division staff shall attempt to locate the individual.

(b) When an individual has been missing for 60 continuous days and all efforts to find the individual have been unsuccessful, the component head shall request the individual's discharge.

10:46-5.5 Individuals who fail to return from vacation

(a) Should an individual fail to return from a scheduled visit with family, friends or other interested parties, Division staff shall contact the family, friends or other interested persons to determine how long the stay will last.

(b) If the individual cannot be located or if efforts to clarify the family's intentions prove fruitless, then the component head may request the individual's discharge.

10:46-5.6 Guardian of an incompetent adult or minor who moves out of State

(a) Where the guardian moves to a state participating in the Interstate Compact on Mental Health, Division staff shall notify the Assistant Director for Residential Services to initiate a transfer. Once the appropriate state agency has been notified, the guardian shall be notified in writing of a date of discharge not to exceed one year from the date of notification.

(b) Where the guardian moves to a state not participating in the Interstate Compact on Mental Health, the guardian shall be notified in writing by the appropriate Regional Office of a date of discharge not to exceed one year from the date of notification.

(c) No discharge shall occur if the guardian was appointed prior to the effective date of this subchapter and resided out-of-State at the time the Division initiated the guardianship action. Discharge shall occur for guardians appointed through Division initiated guardianship action after the effective date of this subchapter or for any private guardian appointments.

(d) The Director may decide to continue to provide services and not require discharge when the legal guardian moves out of State when:

1. The individual is an adult (over 18 years) old;

2. The individual resides in a developmental center; and

3. The interdisciplinary team recommends that the individual remain at the developmental center because the transfer would be grossly detrimental to the health, safety or welfare of the individual. This determination shall be made based on the following criteria:

i. Length of placement in the developmental center,

ii. Age, health and functioning level of the individual; and

iii. Age, health and current living arrangement of the legal guardian.

10:46-5.7 Commitments

Where there is a plan to discharge an individual who is under court commitment to the Commissioner of Human Services, the court shall be notified of the reasons a discharge is sought. Discharge shall proceed at the discretion of the court.

(a)

DIVISION OF ECONOMIC ASSISTANCE

Assistance Standards Handbook
Child Care Rates

Proposed Amendment: N.J.A.C. 10:82-5.3

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

Authority: N.J.S.A. 44:7-6 and 44:10-3.

Proposal Number: PRN 1992-52.

Submit comments by February 20, 1992 to:
Marion E. Reitz, Director
Division of Economic Assistance
CN 716
Trenton, New Jersey 08625

The agency proposal follows:

Summary

This reproposed amendment supersedes the Department's Division of Economic Assistance proposal published in the New Jersey Register, October 7, 1991, as 23 N.J.R. 2989(a) concerning changes to IV-A child

care maximum rates at N.J.A.C. 10:82-5.3(g). Those amendments had set forth separate rate tables for licensed child care centers, school-age programs and day camps (Table I), registered family day care providers (Table II), and approved home providers (Table III). This reproposed amendment encompasses the aforementioned proposed amendments to Tables II and III, as well as revisions to Table I which did not include the breakdown of child care service periods by the hours per week of service provided (that is, three-quarter, one-half and one-quarter time child care periods). Therefore, Table I has been revised in this reproposal to reflect the more specific breakdown of service periods to be consistent with Tables II and III.

The Department has recently adopted rules at N.J.A.C. 10:15, 10:15A, 10:15B, and 10:15C on two new child care programs made available under the Omnibus Budget Reconciliation Act of 1990 (Public Law 101-508), namely, the Child Care and Development Block Grant (CCDBG) and the Aid to Families with Dependent Children (IV-A) At-Risk Program (see 23 N.J.R. 3771(a) and 3791(a)). Both of those programs advocate payment for child care services at the same rate levels for Title IV-A under this proposed amendment. The intent of this amendment is to maintain equalized rates for child care services which are consistent among Departmental child care programs (that is, IV-A, REACH/JOBS, CCDBG and IV-A At-Risk). The same rate maximums for the type of child care arrangement and category of care (including infant/toddler care, pre-school care, school-age care and special needs rates) shall be used in the DHS child care programs.

Currently, Table I sets forth Title IV-A rates for licensed centers and registered family day care homes and Table II sets forth rates for approved home family day care arrangements. The proposed amendment at N.J.A.C. 10:82-5.3(g) deletes existing Tables I and II and replaces them with proposed new Tables I, II and III to align the child care payment rates under Title IV-A (including REACH/JOBS child care rates) with other child care service programs available through the Department of Human Services (DHS). Also, Table I reflects increased rates for center-based care which are consistent with the rates under the new DHS IV-A "At-Risk" and the CCDBG programs. Rates in Tables II and III for registered and approved home settings have been slightly increased to equivocate prior rate inconsistencies.

The term "special circumstance" has been changed to "special needs" for alignment with language used throughout DHS child care programs.

Social Impact

The reproposed amendment should have a positive impact on families and providers. In particular, the amendment increases the maximum rates for licensed center-based care and standardizes this rate universally in all Departmental child care service programs. This provision should enhance the Department's ability to provide for a continuum of care through its various child care programs based on increasing family income levels for eligibility for child care services. Likewise, the increased rate for licensed center-based care recognizes that the extra services provided for children in such care settings warrant higher costs of care for which compensation is needed.

Economic Impact

The increased licensed center-based rates average a 29 percent increase over present rates for all child care service categories (infant/toddlers, pre-school, kindergarteners and school-age). Costs to licensed center providers in fiscal year 1991 for the period July 1, 1990 through June 30, 1991 were estimated at $7,445,580.00. With current rates, estimated payments to licensed centers in fiscal year 1992 were $9,083,608 plus the additional rate increase for the period January 1, 1992 through June 30, 1992 of $4,995,984.00. The estimated additional costs with the new rates is $1.47 million for the period January through June 30, 1992 with an annualized additional cost of $2.94 million.

Regulatory Flexibility Statement

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

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

10:82-5.3 Payment for child care

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

(g) Statewide maximum child care payment rates are based upon either the age or special [circumstance] **needs** status of the child and on the number of hours of care provided in the various types of child care arrangements. Included in the types of arrangements are registered homes, approved homes, in-home care, child care centers and day camps, and the hours of care provided (that is, full and part-time day care and care before and after school and during school recesses).

1. ["Special circumstances" or "special needs"] **"Special needs"** children as defined in N.J.A.C. 10:82-5.2 shall be eligible for the appropriate "special [circumstance] **needs**" child care rate (see [Table I] **Tables II and III** below). Appropriate authorization shall be obtained from DEA before placement of the child in care and issuance of payment.

2. (No change.)

3. Before and after school care for school-age children, age five and older, shall be actual costs up to the maximum rate set forth in Tables I [and]**,** II **and III** below.

4. (No change.)

5. The maximum authorized rates for child care are set forth in Tables I [and]**,** II **and III** below, as determined by the type of child care arrangements, and based upon either the age or special [circumstance] **needs** status of the child and the hours of care provided.

[Table I

These rates shall be utilized for licensed child care centers, school-age programs, registered family day care homes and day camps.

MAXIMUM CHILD CARE PAYMENT RATES

HOURS OF CARE PROVIDED

Child(ren) Serviced	Full-Time	Three-Quarter Time	One-Half Time	One-Quarter Time
	(30 hrs/week or more; 6 hrs or more per day)	(16 to 29 hrs/wk; less than 6 hrs/day but more than 3 hrs/day)	(7 to 15 hrs/wk)	(6 hrs/wk or less)
Infants/Toddlers (0 up to 2.5 yrs)	$89/wk based on rate $18/day	$67/wk based on rate $13 day	$45/wk based on rate $9/day	$22/wk based on rate $4/day
Pre-schoolers (2.5 up to 5 yrs)	$68/wk based on rate $14/day	$51/wk based on rate $10/day	$34/wk based on rate $7/day	$17/wk based on rate $3/day
School-agers (5 yrs-13 yrs)	$68/wk based on rate $14/day	$51/wk based on rate $10/day	$34/wk based on rate $7/day	$17/wk based on rate $3/day
*Special Circumstance Infants/Toddlers (0 up to 2.5 yrs)	$110/wk based on rate $22/day	$83/wk based on rate $16/day	$56/wk based on rate $11/day	$27/wk based on rate $5/day
*Special Circumstance Child(ren) (2.5 yrs and up)	$89/wk based on rate $18/day	$67/wk based on rate $13/day	$45/wk based on rate $9/day	$22/wk based on rate $4/day]

[Table II

These rates shall be utilized for Approved Home and in-home care providers. Reimbursement for services shall be at a rate of 60 percent of the Statewide minimum rates set forth in Table I.

60 PERCENT MAXIMUM CHILD CARE PAYMENT RATES—
APPROVED HOMES/IN-HOME CARE PROVIDERS

HOURS OF CARE PROVIDED

Child(ren) Serviced	Full-Time	Three-Quarter Time	One-Half Time	One-Quarter Time
	(30 hrs/week or more; 6 hrs or more per day)	(16 to 29 hrs/wk; less than 6 hrs/day but more than 3 hrs/day)	(7 to 15 hrs/wk)	(6 hrs/wk or less)
Infants/Toddlers (0 up to 2.5 yrs)	$53/wk based on rate $11/day	$40/wk based on rate $8 day	$27/wk based on rate $5/day	$13/wk based on rate $3/day
Pre-schoolers (2.5 up to 5 yrs)	$41/wk based on rate $8/day	$31/wk based on rate $6/day	$20/wk based on rate $4/day	$10/wk based on rate $2/day
School-agers (5 yrs-13 yrs)	$41/wk based on rate $8/day	$31/wk based on rate $6/day	$20/wk based on rate $4/day	$10/wk based on rate $2/day
*Special Circumstance Infants/Toddlers (0 up to 2.5 yrs)	$66/wk based on rate $13/day	$50/wk based on rate $10/day	$34/wk based on rate $7/day	$16/wk based on rate $3/day
*Special Circumstance Child(ren) (2.5 yrs and up)	$53/wk based on rate $11/day	$40/wk based on rate $8/day	$27/wk based on rate $5/day	$13/wk based on rate $3/day]

CHILD CARE MAXIMUM DAILY RATES

Table I

These rates shall be utilized for:

LICENSED CHILD CARE CENTERS, SCHOOL-AGE PROGRAMS, DAY CAMPS

HOURS OF CARE PROVIDED

Child's Service Category	Full-Time 6 hrs. or more per day	Three-Quarter Time* 4 or 5 hrs. per day	One-Half Time* 2 or 3 hrs. per day	One-Quarter Time* 1 hr. per day
Infants/Toddlers (0 up to 2.5 yrs)				
Weekly	$113.00	$84.75	$56.60	$28.25
Daily	$ 22.60	$16.95	$11.30	$ 5.65
Pre-Schoolers (2.5 up to 5 yrs)				
Weekly	$ 92.00	$69.00	$46.00	$23.00
Daily	$ 18.40	$13.80	$ 9.20	$ 4.60
Kindergarteners & School-Agers (5-13 yrs.) and Special Needs Child (13-19 yrs.)				
Weekly	$ 92.00	$69.00	$46.00	$23.00
Daily	$ 18.40	$13.80	$ 9.20	$ 4.60

*Care given for any portion of an hour shall be rounded to the next full hour. For example, one hour and 15 minutes is rounded to two hours.

CHILD CARE MAXIMUM DAILY RATES

Table II

These rates shall be utilized for:

REGISTERED FAMILY DAY CARE HOMES

HOURS OF CARE PROVIDED

Child's Service Category	Full-Time 6 hrs. or more per day	Three-Quarter Time* 4 or 5 hrs. per day	One-Half Time* 2 or 3 hrs. per day	One-Quarter Time* 1 hr. per day
Infants/Toddlers (0 up to 2.5 yrs)				
Weekly	$ 90.00	$67.50	$45.00	$22.50
Daily	$ 18.00	$13.50	$ 9.00	$ 4.50
Pre-schoolers (2.5 up to 5 yrs)				
Weekly	$ 70.00	$52.50	$35.00	$17.50
Daily	$ 14.00	$10.50	$ 7.00	$ 3.50
Kindergarteners & School-Agers (5 up to 13 yrs)				
Weekly	$ 70.00	$52.50	$35.00	$17.50
Daily	$ 14.00	$10.50	$ 7.00	$ 3.50
Special Needs Infants/Toddlers (0 up to 2.5 yrs)				
Weekly	$110.00	$82.50	$55.00	$27.50
Daily	$ 22.00	$16.50	$11.00	$ 5.50
Special Needs Child(ren) (2.5 yrs & up)				
Weekly	$ 90.00	$67.50	$45.00	$22.50
Daily	$ 18.00	$13.50	$ 9.00	$ 4.50

*Care given for any portion of an hour shall be rounded to the next full hour. For example, one hour and 15 minutes is rounded to two hours.

CHILD CARE MAXIMUM DAILY RATES

Table III

These rates shall be utilized for:

APPROVED HOME DAY CARE

		HOURS OF CARE PROVIDED		
Child's Service Category	Full-Time 6 hrs. or more per day	Three-Quarter Time* 4 or 5 hrs. per day	One-Half Time* 2 or 3 hrs. per day	One-Quarter Time* 1 hr. per day
Infants/Toddlers (0 up to 2.5 yrs)				
Weekly	$55.00	$41.25	$27.50	$13.75
Daily	$11.00	$ 8.25	$ 5.50	$ 2.75
Pre-schoolers (2.5 up to 5 yrs)				
Weekly	$41.00	$30.75	$20.50	$10.25
Daily	$ 8.20	$ 6.15	$ 4.10	$ 2.05
Kindergarteners & School-Agers (5 up to 13 yrs)				
Weekly	$41.00	$30.75	$20.50	$10.25
Daily	$ 8.50	$ 6.15	$ 4.10	$ 2.05
Special Needs Infants/Toddlers (0 up to 2.5 yrs)				
Weekly	$66.00	$49.50	$33.00	$16.50
Daily	$13.20	$ 9.90	$ 6.60	$ 3.30
Special Needs Child(ren) (2.5 yrs & up)				
Weekly	$55.00	$41.25	$27.50	$13.75
Daily	$11.00	$ 8.25	$ 5.50	$ 2.75

***Care given for any portion of an hour shall be rounded to the next full hour. For example, one hour and 15 minutes is rounded to two hours.**

(h) (No change.)

(a)

DIVISION OF YOUTH AND FAMILY SERVICES

Assessment

Proposed New Rules: N.J.A.C. 10:133C-3

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

Authority: N.J.S.A. 30:4C-4(h).

Proposal Number: PRN 1992-50.

Submit comments by February 20, 1992 to:
Barbara Kraeger
Manual Unit
Division of Youth and Family Services
CN 717
Trenton, New Jersey 08625-0717

The agency proposal follows:

Summary

The Division of Youth and Family Services has undertaken a project to review, revise and incorporate existing Division policy contained in the Division's Field Operations Casework Policy and Procedures Manuals into the New Jersey Administrative Code as rules. This project, known as the "Operations Policy to Rules", or OPTR, project was initiated by the Division to subject those policies which have wide-spread coverage, continuing effect or a substantial impact on the rights or legitimate interests of the regulated public to the rule-making process required by the New Jersey Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq.

The OPTR project involves an advisory body of 90 members, which includes family and child advocates, foster parent associations, Legal Services of New Jersey, the Department of the Public Advocate, the Association for Children of New Jersey, DYFS field staff and other agency representatives. Through the OPTR Advisory Group, the OPTR project has been a community-based process drawing from many elements of the affected public, from private non-profit representative groups and from governmental agencies. This process will result in a thorough and full-scale study, reevaluation and revision of existing Division policies, procedures and practices.

In the December 16, 1991 New Jersey Register, the Division proposed new rules on Initial Response, N.J.A.C. 10:133 and 10:133A (see 23 N.J.R. 3714(a) and 3717(a)). The Division's Field Operations Manual on Initial Response also describes the process of case assessment by the Division. That material covers case assessment during the Division's initial response. These proposed new rules are broader in scope than the material in the Initial Response Manual, as the proposed new rules set standards for assessments conducted by the Division at any time.

Proposed new rules regarding the Division's principles of service delivery (mission statement, service principles, permanency planning principles, etc.), and eligibility for services are being developed now through the OPTR process. The Division feels that these materials should be placed at subchapters 1 and 2 of Chapter 133C, Eligibility and Assessment. As these materials are not yet ready for proposal, subchapters 1 and 2 are being reserved for the present. The Division anticipates proposal of these two subchapters and other materials related to initial response and service delivery, within a short period of time.

The Field Operations Manual, which contains other material not regulatory in nature (hypothetical situations, case practice examples, etc.) will be revised to reflect these proposed new rules upon their adoption.

A summary of the proposed new rules follows:

10:133C-3.1 states the purpose of this subchapter.

10:133C-3.2 states the scope of this subchapter.

10:133C-3.3 references the definitions of terms used in this subchapter.

10:133C-3.4 states when an assessment is done.

10:133C-3.5 states the four purposes of an assessment.

10:133C-3.6 lists the elements of the assessment.

10:133C-3.7 indicates various means of obtaining information used in the assessment.

10:133C-3.8 states how the Division decides how services are to be provided to the client and when the client's case can be closed. At subsection (C), there is a cross reference to N.J.A.C. 10:133D-2, case plan, which has not yet been adopted but is currently in the rulemaking process.

10:133C-3.9 indicates what information the Division provides to the client.

10:133C-3.10 states when the Division must document the assessment in writing.

10:133C-3.11 states how a client may appeal a decision to deny, reduce, suspend or terminate services.

Social Impact

These proposed new rules have been developed in cooperation with representatives of child advocacy groups and Division staff members. The social impact on the regulated public is expected to be positive, as the Division will use Statewide standards in completing a case assessment. This is intended to bring about equitable treatment of clients throughout the State.

Economic Impact

The Division does not anticipate any economic impact from these proposed new rules. These rules state Division policy which will not require any additional capital improvements, expenditures for staff or equipment on the part of the Division or any individual. Any training required to familiarize Division staff with these proposed new rules will be part of ongoing staff development. As assessment is only part of many functions performed by the Division's direct service staff, the costs of such tasks cannot be estimated with any degree of accuracy.

Regulatory Flexibility Statement

Neither the Division nor the public receiving Division services are considered small businesses under the terms of the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. Therefore, these proposed new rules will have no impact on small businesses in New Jersey. These proposed new rules state DYFS assessment policy.

Full text of the proposal follows:

CHAPTER 133C
ELIGIBILITY AND ASSESSMENT

SUBCHAPTER 1. PRINCIPLES OF SERVICE DELIVERY (RESERVED)

SUBCHAPTER 2. ELIGIBILITY FOR SERVICES (RESERVED)

SUBCHAPTER 3. ASSESSMENT

10:133C-3.1 Purpose

The purpose of this subchapter is to specify when the Division shall conduct an assessment of a family's service needs and the elements of this assessment.

10:133C-3.2 Scope

The provisions of the subchapter shall apply to all Division representatives, applicants for services and persons referred for Division services who require an assessment of their service needs on the basis of a screening, see N.J.A.C. 10:133A-1, and to all clients of the Division.

10:133C-3.3 Definitions

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

10:133C-3.4 Assessment required

(a) An assessment of the family's service needs shall be conducted during or following a child abuse investigation or when child welfare services are requested.

(b) An assessment shall begin promptly based upon an initial determination of the immediacy of the needs of the child and his or her family for the service sought or required, according to time frames established in 10:133A-1.10, Responding to referrals and applications.

(c) The Division shall complete an assessment no less frequently than every six months during the period of service delivery.

10:133C-3.5 Purpose of assessment

(a) The purpose of an assessment is to:

1. Evaluate the circumstances of the child, his or her family and the community, including the child's need for protection;

2. Identify whether child welfare services are needed;

3. Identify which specific services can meet the needs of the child and his family; and

4. Identify who shall provide those services.

10:133C-3.6 Assessment elements

(a) The Division representative shall conduct an assessment of:

1. The child welfare service needs of the child and family;

2. Whether services are needed on an emergency basis;

3. What child welfare services the child and family want;

4. Whether any services already provided are alleviating the family's problems;

5. Whether the child and family will accept or continue to accept services;

6. What services are needed or continue to be needed to prevent out-of-home placement; and

7. What services are needed to reunify a child with his or her family when the child is in out-of-home placement.

(b) In making the assessment provided for in (a) above, the Division representative shall consider, at a minimum, the following:

1. Whether a child has been abused or neglected and the risk of child abuse or neglect;

2. The child's medical, physical, educational, and psychological strengths and problems;

3. The parents' own strengths and weaknesses and their problems related to the child;

4. The willingness of the family to provide care and protection, relative to the child's needs;

5. The ability of the family to provide care and protection relative to the child's needs;

6. The appropriateness of the requested or provided services and the projected outcome if the parent and child receive or do not receive the requested or indicated service;

7. The availability of appropriate supports from relatives;

8. The availability of appropriate community and social service supports;

9. The ability of the family to pay for or contribute to the cost of the services; and

10. The degree to which the parent and child understand their rights, responsibilities, and services they may receive and their impact upon the family.

10:133C-3.7 Information gathering

(a) The Division representative shall gather identifying information about the family members. The Division shall gather the majority of the information necessary to make an assessment through personal interviews with family members who are available.

(b) The Division representative may request written information from agencies and others who may have information about the family which is necessary to determine the family's need for child welfare services, in accordance with the provisions of N.J.S.A. 9:6-8.40.

(c) The Division representative may interview any person who, by virtue of his or her relationship to the child, family, perpetrator or incident, can reasonably be determined to have information necessary to complete the assessment.

10:133C-3.8 Determination of service provision

(a) The Division representative, in conjunction with the family and service providers, shall determine what services are needed to meet the family's needs.

(b) The Division representative shall determine whether the services are available and whether the services will be provided by the Division or other service providers.

(c) The Division representative and the family shall develop a case plan if the Division provides any service to the family, including case management. See N.J.A.C. 10:133D-2, Case plan.

(d) The Division shall provide information and referral or information only to the family for identified services which are not provided by the Division.

(e) The Division shall terminate involvement with the family when services are no longer needed from the Division.

10:133C-3.9 Information provided to client

(a) The Division representative shall inform the family of the steps, listed in N.J.A.C. 10:133C-3.6 and 3.7, which the Division will take in order to complete the assessment.

(b) The Division representative shall inform the family in writing within 45 days from the date of application or from the initial contact in response to a referral whether services will be provided and who will provide the services.

10:133C-3.10 Documenting the assessment

(a) The Division shall prepare a written initial assessment within:

1. Forty-five calendar days of receipt of a referral or application; or

2. Thirty days of a child entering placement, whichever comes sooner.

(b) The Division shall further document the assessment in writing at least once every six months after the initial documentation (see (a) above).

10:133C-3.11 Appeals

A client who is informed that Division services will be denied, reduced, suspended or terminated may appeal that decision, in accordance with the provisions of N.J.A.C. 10:133-1.8, Appeals.

LAW AND PUBLIC SAFETY

(a)

DIVISION OF MOTOR VEHICLES

Purple Heart Emblems on License Plates

Proposed New Rules: N.J.A.C. 13:20-42

Authorized By: Stratton C. Lee, Jr., Director, Division of Motor Vehicles.

Authority: P.L.1991, c.232, §2.

Proposal Number: PRN 1992-28.

Submit written comments by February 20, 1992 to:
Stratton C. Lee, Jr., Director
Division of Motor Vehicles
28 South Montgomery Street, 7th Floor
Trenton, New Jersey 08666

The agency proposal follows:

Summary

These proposed new rules effectuate the purposes of P.L.1991, c.232, which pertains to the affixation of purple heart emblems on license plates by persons who are active members of the Military Order of the Purple Heart. N.J.A.C. 13:20-42.1 provides that a person who is an active member of the Military Order of the Purple Heart may, pursuant to P.L.1991, c.232 and N.J.A.C. 13:20-42, affix a purple heart emblem to a New Jersey purple heart license plate issued in accordance with N.J.S.A. 39:3-27.35 et seq. for a motor vehicle owned or leased by that member. N.J.A.C. 13:20-42.1 also provides that such an emblem may only be affixed to a New Jersey purple heart license plate. N.J.A.C. 13:20-42.2 provides that the purple heart emblem shall be of a design similar to that set forth in 32 CFR §578.14(b), and shall be no larger in size than the replica of the purple heart which is already embossed on the purple heart license plate. N.J.A.C. 13:20-42.3 provides that the purple heart emblem shall be made of reflectorized material. N.J.A.C. 13:20-42.4 provides that the purple heart emblem shall be placed upon the replica of purple heart already embossed on the license plate, and shall not obscure or cover any portion of the letters or numbers which appear on the license plate.

Social Impact

The proposed new rules will have a positive social impact by honoring persons who are active members of the Military Order of the Purple Heart and who wish to affix a purple heart emblem to a New Jersey purple heart license plate. It also effectuates the purposes of P.L.1991, c.232, which provides for such emblem affixation. The rules will have no social impact upon the Division.

Economic Impact

A person who is an active member of the Military Order of the Purple Heart who wishes to affix a purple heart emblem to a New Jersey purple heart license plate will presumably incur an expense in obtaining the emblem. Neither the Division nor the State will be impacted economically by the rules, since neither the Division nor the State is involved in the preparation or distribution of such emblems.

Regulatory Flexibility Statement

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. The rules affect persons who are active members of the Military Order of the Purple Heart who wish to affix a purple heart emblem to a New Jersey purple heart license plate. Therefore, a regulatory flexibility analysis is not required.

Full text of the proposed new rules follows:

SUBCHAPTER 42. PURPLE HEART EMBLEMS ON LICENSE PLATES

13:20-42.1 Use

A person who is an active member of the Military Order of the Purple Heart may, pursuant to P.L.1991, c.232 and this subchapter, affix a purple heart emblem to a New Jersey purple heart license plate issued in accordance with N.J.S.A. 39:3-27.35 et seq. for a motor vehicle owned or leased by that member. Such an emblem may only be affixed to a New Jersey purple heart license plate.

13:20-42.2 Design

The purple heart emblem to be affixed to a purple heart license plate as set forth in N.J.A.C. 13:20-42.1 shall be of a design similar to that set forth in 32 CFR §578.14(b), and shall be no larger in size than the replica of the purple heart which is already embossed on the purple heart license plate.

13:20-42.3 Materials

The purple heart emblem to be affixed to a purple heart license plate as set forth in N.J.A.C. 13:20-42.1 shall be made of reflectorized material.

13:20-42.4 Placement

The purple heart emblem to be affixed to a purple heart license plate as set forth in N.J.A.C. 13:20-42.1 shall be placed upon the replica of the purple heart which is already embossed on the license plate, and shall not obscure or cover any portion of the letters or numbers which appear on the license plate.

(b)

DIVISION OF MOTOR VEHICLES

Licensing Service

Commercial Driver Licensing

Proposed New Rules: N.J.A.C. 13:21-23

Authorized By: Stratton C. Lee, Jr., Director, Division of Motor Vehicles.

Authority: P.L. 1990, c.103, §§12, 19 and 21; N.J.S.A. 39:3-36 and 39:5-30.

Proposal Number: PRN 1992-48.

Submit written comments by February 20, 1992 to:
Stratton C. Lee, Jr., Director
Division of Motor Vehicles
25 South Montgomery Street, 7th Floor
Trenton, New Jersey 08666

The agency proposal follows:

Summary

The Division of Motor Vehicles (Division) is proposing new rules concerning commercial driver licensing at N.J.A.C. 13:21-23. The proposed new rules implement §19 of the "New Jersey Commercial

Driver License Act" (P.L. 1990, c.103) which provides for the adoption of rules "necessary to carry out the provisions of this act, including the regulations necessary to place this State in substantial compliance with the requirements of the Federal 'Commercial Motor Vehicle Safety Act of 1986,' Pub. L. 99-570 (49 U.S.C. §2701, et seq.) and the regulations promulgated pursuant to that federal law."

N.J.A.C. 13:21-23.1 contains the definitions applicable to the subchapter.

N.J.A.C. 13:21-23.2 establishes application procedures and requirements for initial commercial driver licenses, transfers of commercial driver licenses from other states, commercial driver license upgrades, endorsements, and renewals. The application form includes the applicant's full legal name, street address of residence, mailing address, if different from street address, physical description, date of birth, social security number, signature, and any other information required by the Director. An applicant who is subject to Federal regulations pertaining to drivers in interstate or foreign commerce must certify that he or she meets the qualification requirements contained in the Federal regulations. The statutory application fee is required to be submitted with the application. N.J.A.C. 13:21-23.2(h) defines legal name as the name recorded on a birth certificate unless otherwise changed by marriage, divorce or order of court. These requirements bring New Jersey into substantial compliance with Federal regulations set forth in 49 CFR 383.71.

N.J.A.C. 13:21-23.3 establishes driver testing and licensing requirements for commercial driver license (CDLs). An applicant must pass the appropriate knowledge and skills test for the group of vehicle(s) he or she intends to operate. This section requires the Division to inquire from the Commerical Driver License Information System (CDLIS) to determine if an applicant has a CDL and, if so, whether that CDL has been suspended or whether the applicant has been disqualified. This section also requires the Division to perform the record check specified in §6 of the "New Jersey Commercial Driver License Act" prior to issuing, renewing or adding an endorsement to a CDL license. The record check is intended to determine whether an applicant (1) has been previously licensed in any other state, (2) has been disqualified from operating a motor vehicle other than a commercial motor vehicle (CMV), (3) had a license, other than a CDL, suspended, revoked or cancelled for cause in the three-year period preceding the date of application, or (4) has been convicted of any offense contained in §205(a)(3) of the National Driver Register Act of 1982. An applicant seeking a hazardous materials endorsement on a CDL is required to pass the knowledge test given for that endorsement. The Director may waive the knowledge test if an applicant for a transfer of a CDL from another state has satisfactorily completed a training course pertaining to the operation of motor vehicles which transport hazardous materials within two years of the transfer. These requirements bring New Jersey into substantial compliance with Federal regulations set forth in 49 CFR 383.73.

N.J.A.C. 13:21-23.4 provides for waiver of the skills test at the discretion of the Director. In exercising his or her discretion under this section the Director may permit an applicant to substitute his or her driving record and prior passage of an acceptable skills test or driving experience for the skills test administered by the Director. These requirements bring New Jersey into substantial compliance with Federal regulations set forth in 49 CFR 383.77.

N.J.A.C. 13:21-23.5 establishes the various classes of CMVs for which a CDL is required. Class A includes any combination of vehicles with a gross combination weight rating of 26,001 or more pounds if the gross vehicle weight rating (GVWR) of the vehicle(s) being towed is greater than 10,000 pounds. Class B includes any single vehicle with a GVWR of 26,001 or more pounds, any such single vehicle towing a vehicle not greater than 10,000 pounds GVWR, any omnibus or school bus with a GVWR of 26,001 or more pounds and a construction vehicle with a GVWR of 26,001 or more pounds which is designed to be operated on a public highway. Class C includes smaller vehicles such as small omnibuses and school buses, vehicles designed to transport eight or more but less than 16 persons for hire including those used on a daily basis to and from places of employment, and vehicles used to transport hazardous materials. These provisions bring New Jersey into substantial compliance with Federal regulations set forth in 49 CFR 383.91.

N.J.A.C. 13:21-23.6 establishes specialized testing procedures for endorsements for double/triple trailers, passenger vehicles, tank vehicles and vehicles transporting hazardous materials. These requirements bring New Jersey into substantial compliance with Federal regulations set forth in 49 CFR 383.93.

N.J.A.C. 13:21-23.7 provides for the issuance of a restricted CDL if an applicant fails the air brake component of the knowledge test or performs the skills test in a vehicle which is not equipped with air brakes. A person with a restricted CDL may not operate a CMV which is equipped with air brakes. This requirement brings New Jersey into substantial compliance with Federal regulations set forth in 49 CFR 383.95.

N.J.A.C. 13:21-23.8 generally provides that drivers of CDLs must possess knowledge and skills which are necessary to operate a CMV safely. This requirement brings New Jersey into substantial compliance with Federal regulations contained in 49 CFR 383.110 .

N.J.A.C. 13:21-23.9 specifies the knowledge relating to safe vehicle operation that a driver of a CMV must possess. The areas include, but are not limited to, motor vehicle inspection, repair, and maintenance; proper use of safety systems; air brake systems; and operation of combination vehicles. These requirements bring New Jersey into substantial compliance with Federal regulations contained in 49 CFR 383.111.

N.J.A.C. 13:21-23.10 specifies the driving skills that a driver of a CMV must possess. The areas include, but are not limited to, motor vehicle control skills; safe driving skills; and air brake inspection and operation. Applicants must pass the skills test in on-street conditions or under a combination of on-street and off-street conditions. Simulators may be utilized in skills testing but not as a substitute for testing in on-street conditions. These requirements bring New Jersey into substantial compliance with Federal regulations contained in 49 CFR 383.113.

N.J.A.C. 13:21-23.11 specifies knowledge requirements for a double/triple trailers endorsement to a CDL. This requirement brings New Jersey into substantial compliance with Federal regulations contained in 49 CFR 383.115.

N.J.A.C. 13:21-23.12 specifies knowledge and skills standard for a passenger endorsement to a CDL. These requirements bring New Jersey into substantial compliance with Federal regulations contained in 49 CFR 383.117.

N.J.A.C. 13:21-23.13 specifies knowledge requirements for a tank vehicle endorsement to a CDL. This requirement brings New Jersey into substantial compliance with Federal regulations contained in 49 CFR 383.119.

N.J.A.C. 13:21-23.14 specifies knowledge requirements for a hazardous materials endorsement to a CDL. The areas include, but are not limited to, hazardous materials regulations; hazardous materials handling; operation of emergency equipment; and emergency response procedures. The knowledge test may be waived by the Director if an applicant for a renewal of a hazardous materials endorsement or for the transfer of a hazardous materials endorsement from another state has satisfactorily completed an approved training course within two years of the date of application. These requirements bring New Jersey into substantial compliance with Federal regulations contained in 49 CFR 383.121.

N.J.A.C. 13:21-23.15 establishes the minimum passing score for knowledge tests administered for CDLs as 80 percent. The test results are valid for one year from the date that the applicant achieved a passing score. An applicant may not be retested until one week has elapsed after his or her failure of a knowledge test or until two weeks after his or her failure of a skills test. An air brake restriction is required if the applicant scores less than 80 percent on the air brake component of the knowledge test or takes the skills test in a vehicle not equipped with air brakes. These requirements bring New Jersey into substantial compliance with Federal regulations contained in 49 CFR 383.135.

N.J.A.C. 13:21-23.16 provides that the Director may authorize third parties to administer skills tests for CDLs. A third party tester is required to have an agreement with the Division providing, among other things, for random examinations, inspections and audits by the Federal Highway Administration and the Division, and on-site inspection by the Division at least annually. A third party tester may charge a fee for the administration of the skills test. The fee charged may not exceed the amount equal to the cost to the Division for administering skills testing. These requirements bring New Jersey into substantial compliance with Federal regulations contained in 49 CFR 383.75.

N.J.A.C. 13:21-23.17 provides that a CDL shall be a document that is easily recognized as a CDL. This requirement brings New Jersey into substantial compliance with Federal regulations contained in 49 CFR 383.151.

N.J.A.C. 13:21-23.18 specifies the information that must be contained on the CDL. The information includes the drivers name, signature, mailing address, physical description, date of issuance, date of expiration, group(s) of CMVs, endorsement(s) and air brake restriction, if any.

These requirements bring New Jersey into substantial compliance with Federal regulations contained in 49 CFR 383.153.

N.J.A.C. 13:21-23.19 provides that the CDL document shall be tamperproof to the greatest extent possible. This requirement brings New Jersey into substantial compliance with Federal regulations contained in 49 CFR 383.155.

N.J.A.C. 13:21-23.20 provides for the issuance of a duplicate CDL whenever an original license has been destroyed, lost or stolen. An applicant for a duplicate license must present a statement to the Director setting forth the factual basis for the application together with the statutory fee for issuance of the duplicate license.

N.J.A.C. 13:21-23.21 provides for the issuance of a corrected CDL whenever a licensee changes his or her name, mailing address or residence. A licensee must inform the Director, in writing, of such change within one week of the change of name, address or residence. A licensee must apply for the corrected license within two weeks of said change. An applicant for a corrected license, if required, must surrender his or her current CDL to the Division.

N.J.A.C. 13:21-23.22 sets forth guidelines and procedures for reduction of lifetime revocations of CMV driving privileges imposed under the "New Jersey Commercial Driver License Act" or similar law of any other state or jurisdiction. Among other requirements, an applicant for reduction under this section must be a domiciliary of this State, must have served a minimum suspension period of 10 years, must have satisfactorily completed an approved rehabilitation program, must have satisfied all of the requirements for issuance of a CDL, and must not have had a prior lifetime revocation reduced in New Jersey, another state or jurisdiction. These requirements bring New Jersey into substantial compliance with Federal regulations provided in 49 CFR 383.51(b)(3)(v).

N.J.A.C. 13:21-23.23 provides that a lifetime revocation of a CMV driving privilege is not subject to reduction if it was imposed because of a person's use of a CMV in the commission of a crime involving the possession with intent to manufacture, manufacture, distribution, or dispensing of a controlled substance or controlled substance analog. This requirement brings New Jersey into substantial compliance with Federal regulations set forth in 49 CFR 383.51(b)(3)(v).

N.J.A.C. 13:21-23.24 provides that a Driver Rehabilitation Program for purposes of the subchapter shall consist of either a Division of Motor Vehicles Driver Improvement Course or a similar program offered in another state or jurisdiction. A Driver Rehabilitation Program, for purposes of alcohol-related offenses, shall consist of an educational or rehabilitation program approved by the Director or the Division of Alcoholism or a similar program administered in another state or jurisdiction. These provisions bring New Jersey into substantial compliance with Federal regulations contained in 49 CFR 383.51(b)(3)(v).

N.J.A.C. 13:21-23.25 requires a person who is subject to a lifetime revocation pursuant to the "New Jersey Commercial Driver License Act" to notify the Director of an application to the licensing authority of another state or jurisdiction for the restoration of CMV driving privileges.

N.J.A.C. 13:21-23.26 provides for the issuance of a letter of authority to a person making application for restoration after imposition of a lifetime suspension. To this end, an applicant must comply with the application procedures set forth in N.J.A.C. 13:21-23.2.

N.J.A.C. 13:21-23.27 sets forth rules of general application regarding the imposition and effect of suspensions under the new classified licensing system. It will aid the bench, the bar and the public in understanding the effect of various types of suspension on the different driving privileges under the new classified licensing system. It is not intended to be exhaustive, all inclusive or to otherwise restrict the court's or the director's powers.

N.J.A.C. 13:21-23.28 exempts firefighting apparatus from the GVWR display requirement of N.J.S.A. 39:4-46(b). This exemption is consistent with N.J.S.A. 39:3-10j(l)(e) which exempts operators of firefighting apparatus from the CDL requirements. The exemption is also consistent with N.J.S.A. 39:3-10.29 which authorizes the Director to waive application of any provision of the New Jersey Commercial Driver License Act with respect to a class of persons or class of commercial motor vehicles if the Director determines that such waiver is not contrary to the public interest and does not diminish the safe operation of commercial motor vehicles. In light of the legislative exemption of operators of firefighting apparatus from the CDL requirements, the waiver of the GVWR display requirement for such apparatus is not contrary to the public interest and will not diminish the safe operation of firefighting apparatus. In that the GVWR display requirement is primarily intended as a tool for enforcement of the Act, the waiver does not adversely impact on the public interest nor diminish the safe operation of CMVs.

N.J.A.C. 13:21-23.29 establishes April 1, 1992, as the operative date of specified sections of this subchapter.

Social Impact

The proposed new rule shall have a beneficial social impact in that they implement the public policy of this State relative to the licensure of drivers of CMVs. The proposed rules will enhance highway safety by reducing CMV accidents which result in fatalities, personal injuries and property damage. Drivers of CMVs will be subjected to specialized licensing and testing standards applicable to the group of CMV for which application has been made. Drivers of CMVs will also be subject to suspension or revocation of their CMV driving privileges upon conviction of serious traffic violations or other offenses as specified in the "New Jersey Commercial Driver License Act."

Economic Impact

There is an economic impact on the Division of Motor Vehicles to the extent that it is responsible for the administration of a classified licensing system and a program for testing the knowledge, skills and fitness of drivers of CMVs. The costs of administration will be partially offset by the statutory fees established for permits, licenses and endorsements issued to CMV drivers. It is anticipated that the general public will benefit economically from the proposed rule to the extent that the accident rate of those drivers who are subject to the specialized testing and licensing procedures is lowered. CMV drivers are impacted economically in that they must pay the statutory fees for permits, licenses and endorsements.

Regulatory Flexibility Statement

The rules proposed for adoption do not place any bookkeeping, record keeping or compliance requirements on small businesses as the term is defined by the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The proposed new rules primarily affect drivers of CMVs and the Division of Motor Vehicles which is responsible for the administration of the new rules.

Full text of the proposed new rules follows:

SUBCHAPTER 23. COMMERCIAL DRIVER LICENSING

13:21-23.1 Definitions

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

"Basic driver's license" means a license issued by the Division which authorizes a person to operate motor vehicles other than CMVs.

"Cargo tank" means any tank permanently attached to or forming a part of any motor vehicle or any bulk liquid or compressed gas packaging not permanently attached to any motor vehicle which by reason of its size, construction, or attachment to a motor vehicle, is loaded or unloaded without being removed from the motor vehicle. Any packaging fabricated under specifications for cylinders is not a cargo tank.

"Commercial driver license" or "CDL" means a license issued in accordance with the "New Jersey Commercial Driver License Act" (P.L. 1990, c.103) to a person authorizing the person to operate a certain class of commercial motor vehicle.

"Commercial Driver License Information System" or "CDLIS" means the information system established pursuant to the Federal "Commercial Motor Vehicle Safety Act of 1986," Pub. L. 99-570 (49 U.S.C. §2701 et seq.) to serve as a clearing house for locating information related to the licensing and identification of commercial motor vehicle drivers.

"Commercial motor vehicle" or "CMV" means a motor vehicle or combination of motor vehicles used or designed to transport passengers or property on a highway:

1. If the motor vehicle has a gross vehicle weight rating of 26,001 or more pounds or displays a gross vehicle weight rating of 26,001 or more pounds;

2. If the motor vehicle has a gross combination weight rating of 26,001 or more pounds inclusive of a towed unit with a gross vehicle weight rating of more than 10,000 pounds;

3. If the motor vehicle is designed to transport 16 or more passengers including the driver;

4. If the motor vehicle is designed to transport eight or more but less than 16 persons, including the driver, and is used to transport such persons for hire, including such vehicles used to transport persons on a daily basis to and from places of employment; or

5. If the motor vehicle is transporting or used in the transportation of hazardous materials and is required to be placarded in accordance with subpart f. of 49 CFR §172, or the vehicle displays a hazardous material placard.

This term shall include those vehicles specifically described and classified in N.J.A.C. 13:21-23.5.

This term shall not include recreation vehicles.

"Controlled substance" means any substance so classified under subsection (6) of section 102 of the "Controlled Substances Act" (21 U.S.C. §802), and includes all substances listed on Schedules I through V of 21 CFR §1308, or under P.L. 1970, c.226 (C. 24:21-1 et seq.) as they may be revised from time to time. The term shall include controlled substance analogs.

"Controlled substance analog" means a substance that has a chemical structure substantially similar to that of a controlled dangerous substance and that was specifically designed to produce an effect substantially similar to that of a controlled dangerous substance. The term shall not include a substance manufactured or distributed in conformance with the provisions of an approved new drug application or an exemption for investigational use within the meaning of section 505 of the Federal Food, Drug and Cosmetic Act, (21 U.S.C. §355).

"Conviction" means a final adjudication that a violation has occured, a final judgment on a verdict, a finding of guilt in a tribunal of original jurisdiction, or a conviction following a plea of guilty, non vult or nolo contendere accepted by a court. It also includes an unvacated forfeiture of bail, bond or collateral deposited to secure the person's appearance in court, or the payment of a fine or court costs, or violation of a condition of release without bail, regardless of whether the penalty is rebated, suspended, or probated.

"Director" means the Director of the Division of Motor Vehicles in the Department of Law and Public Safety.

"Disqualification" means either:

1. The suspension, revocation, cancellation, or any other withdrawal by a state of a person's privilege to operate a commercial motor vehicle;

2. A determination by the Federal Highway Administration under the rules of practice for motor carrier safety contained in 49 CFR §386, that a person is no longer qualified to operate a commercial motor vehicle under 49 CFR §391; or

3. The loss of qualification which automatically follows conviction of an offense listed in 49 CFR §383.51.

"Division" means the Division of Motor Vehicles in the Department of Law and Public Safety.

"Domicile" means that state where a person has a true, fixed, and permanent home and principal residence and to which the person intends to return whenever the person is absent.

"Driver license" means a license issued by this State or any other jurisdiction to a person authorizing the person to operate a motor vehicle.

"Endorsement" means an authorization to a commercial driver license required to permit the holder of the license to operate certain types of commercial motor vehicles.

"Foreign jurisdiction" means any jurisdiction other than a state of the United States or the District of Columbia.

"Gross vehicle weight rating" or "GVWR" means the value specified by a manufacturer as the loaded weight of a single or a combination (articulated) vehicle, or the registered gross weight, whichever is greater. The GVWR of a combination (articulated) vehicle, commonly referred to as the "gross combination weight rating" or "GCWR," is the GVWR of the power unit plus the GVWR of the towed unit or units. In the absence of a value specified for the towed unit or units by the manufacturer, the GVWR of a combination (articulated) vehicle is the GVWR of the power unit plus the total weight of the towed unit, including the loads on them.

"Hazardous material" means a substance or material determined by the Secretary of the United States Department of Transportation to be capable of posing an unreasonable risk to health, safety, and property when transported in commerce and so designated pursuant to the provision of the "Hazardous Materials Transportation Act," (49 U.S.C. §1801 et seq.).

"Motor vehicle" includes all vehicles propelled otherwise than by muscular power, except such vehicles as run only upon rails or tracks. The term "motor vehicle" includes motorized bicycles.

"Out of service order" means a temporary prohibition against operating a CMV.

"Portable tank" means a bulk packaging (except a cylinder having a water capacity of 1,000 pounds or less) designed primarily to be loaded onto, or on, or temporarily attached to a transport vehicle or ship and equipped with skids, mountings, or accessories to facilitate handling of the tank by mechanical means. It does not include a cargo tank, tank car, multi-unit tank car tank, or trailer carrying 3AX, 3AAX, or 3T cylinders.

"Recreation vehicle" means a self-propelled or towed vehicle equipped to serve as temporary living quarters for recreational, camping, or travel purposes and is used solely as a family or personal conveyance.

"Representative vehicle" means a motor vehicle which represents the type of motor vehicle that a commercial driver license applicant operates or expects to operate.

"Serious traffic violation" means conviction for one of the following offenses committed while operating a commercial motor vehicle:

1. Excessive speeding, involving any single offense for a speed of 15 miles per hour or more above the speed limit;

2. Reckless driving, as defined by state or local law or regulation, including, but not limited to, offenses of driving a commercial motor vehicle in willful or wanton disregard of the safety of persons or property, including violations of N.J.S.A. 39:4-96;

3. Improper or erratic traffic lane changes;

4. Following a vehicle ahead too closely, including violations of N.J.S.A. 39:4-89;

5. A violation, arising in connection with a fatal accident, of state or local law relating to motor vehicle traffic control, other than a parking violation; or

6. Any other violation of a state or local law relating to motor vehicle traffic control determined by the Secretary of the United States Department of Transportation in 49 CFR §383.5 to be a serious traffic violation.

This term shall not include vehicle weight or equipment defect violations.

"State" means a state of the United States or the District of Columbia.

"State of domicile" means the state where a person has a true, fixed, and permanent home and principal residence and to which the person intends to return whenever he is absent.

"Tank vehicle" means any commercial motor vehicle that is designed to transport any liquid or gaseous material within a tank that is either permanently or temporarily attached to the vehicle or the chassis. Such vehicles include, but are not limited to, cargo tanks and portable tanks as defined in this section. However, this definition does not include portable tanks having a rated capacity under 1,000 gallons.

"Vehicle group" means a class or type of vehicle with certain operating characteristics.

13:21-23.2 Driver application procedures; initial; examination permit; transfer from another state; renewal; upgrade; endorsements; form; fee; legal name defined

(a) To obtain a CDL, a person must meet the following requirements:

1. Pass a knowledge test in accordance with the standards contained in N.J.A.C. 13:21-23.9 for the type of motor vehicle the person operates or expects to operate;

2. Pass a driving or skills test in accordance with the standards contained in N.J.A.C. 13:21-23.8 through 23.15 taken in a motor vehicle which is representative of the type of motor vehicle the person operates or expects to operate or provide evidence that he or she has successfully passed a driving test administered by an authorized third party;

3. If a person operates or expects to operate in interstate commerce, meet the driver qualification requirements set forth in 49 CFR 391;

4. Make application for an initial CDL, CDL examination permit, transfer of a CDL from another state, CDL upgrade, CDL endorsement, or renewal of a CDL, to the Division in the form specified in (g) below. An applicant must provide complete and accurate information and all required certifications on the application;

5. Complete the application form with the information required to be included on the CDL as specified in N.J.A.C. 13:21-23.18;

6. Surrender his or her noncommercial driver's license to the Division; and

7. Pay to the Division the license fee established by N.J.S.A. 39:3-10.30.

(b) In addition to any other requirements provided by law, a person applying for a CDL, a CDL examination permit, a transfer of a CDL from another state, a renewal of a CDL or a person applying to operate a CMV in a different group or endorsement from the group or endorsement in which he or she already holds a CDL, shall provide the following certifications:

1. A certification that he or she meets the qualification requirements contained in 49 CFR §391; provided, a person who operates or expects to operate entirely in intrastate commerce and is not subject to 49 CFR 391, may instead certify that he or she is not subject to Part 391; and

2. Certify that the motor vehicle in which he or she takes the driving skills test, where such test is required, is representative of the type of motor vehicle he or she operates or expects to operate; and

3. Certify that he or she is not subject to any disqualification, suspension, revocation or cancellation as contained in the "New Jersey Commercial Driver License Act" or 49 CFR 383.51; and

4. Certify that he or she does not have a driver license from more than one state or jurisdiction.

(c) When applying to transfer a CDL from another state of domicile to New Jersey, an applicant shall apply for a CDL from the Division within no more than 30 days after establishing his or her new domicile in New Jersey. The applicant shall:

1. Provide to the Division the certifications contained in (b)1 and (b)3 above;

2. Provide to the Division updated information as specified in N.J.A.C. 13:21-23.18;

3. If the applicant wishes to retain a hazardous materials endorsement, comply with Division requirements as specified in N.J.A.C. 13:21-23.3(b)4; and

4. Surrender the CDL from the old state of domicile to the Division.

(d) When applying for a renewal of a CDL, all applicants shall:

1. Provide to the Division the certifications contained in (b)1 above;

2. Provide to the Division updated information as specified in N.J.A.C. 13:21-23.18; and

3. If a person wishes to retain a hazardous materials endorsement, pass the test for such endorsement as specified in N.J.A.C. 13:21-23.14.

(e) When applying to operate a CMV in a different group or endorsement from the group or endorsement in which the applicant already has a CDL, all applicants shall:

1. Provide to the Division the necessary certifications as specified in (b)1 and (b)2 above; and

2. Pass the tests specified in (a)1 and (a)2 above for the new vehicle group and/or different endorsements.

(f) When applying for a CDL examination permit, all applicants shall:

1. Provide to the Division the certifications contained in (b)1 through (b)4 above;

2. Provide to the Division the information required to be included on the CDL as specified in N.J.A.C. 13:21-23.18;

3. Pay to the Division the examination permit fee established by N.J.S.A. 39:3-10.30; and

4. Pass a knowledge test in accordance with the standards contained in N.J.A.C. 13:21-23.9 for the type of motor vehicle the person intends to operate.

(g) An application for an initial CDL, commercial driver examination permit, transfer of a CDL from another state, CDL upgrade, CDL endorsement, or renewal of a CDL shall include the following:

1. The full legal name, the street address of the residence and the mailing address, if different from the street address of the applicant. A post office box shall appear on the application only as a part of a mailing address that is submitted in addition to a street address;

2. A physical description of the person including sex, height, weight, and eye color;

3. Full date of birth;

4. The applicant's Social Security number (An applicant shall be required to exhibit the original Social Security card or other acceptable proof of said number);

5. The applicant's signature;

6. Such proof of physical condition, experience, training, prior driving experience and knowledge as the Director may require; and

7. Any other information required by the Director.

(h) For purposes of this section, legal name shall mean the name recorded on a birth certificate unless otherwise changed by marriage, divorce or order of court.

13:21-23.3 Driver testing and licensing; initial licenses; license transfers; renewals; upgrades; issuance; penalties for false information; reciprocity

(a) Prior to issuing a CDL to a person, the Division shall:

1. Require the driver applicant to certify, pass tests, and provide information as described in N.J.A.C. 13:21-23.2(a) and (b);

2. Check that the vehicle in which the applicant takes his or her test is representative of the vehicle group the applicant has certified that he or she operates or expects to operate;

3. Initiate and complete a check of the applicant's driving record as specified in Section 6 of the New Jersey Commercial Driver License Act to ensure that the person is not subject to any disqualification, suspensions, revocations or cancellations as contained in the New Jersey Commercial Driver License Act or 49 CFR §383.51 and that the person does not have a driver's license from more than one state. The record check shall include, but not be limited to, the following:

i. A check of the applicant's driving record as maintained by his or her current state of licensure, if any;

ii. A check with CDLIS to determine whether the driver applicant already has a CDL, whether the applicant's license has been suspended, revoked, or canceled, or if the applicant has been disqualified from operating a CMV; and

iii. A check with the National Driver Register (NDR) to determine whether the driver applicant has:

(1) Been disqualified from operating a motor vehicle (other than a CDL);

(2) Had a license (other than a CDL) suspended, revoked, or canceled for cause in the three-year period ending on the date of application; or

(3) Been convicted of any offenses contained in section 205(a)(3) of the National Drivers Register Act of 1982 (23 U.S.C. 401 note); and

4. Require the driver applicant, if he or she has moved from another state, to surrender his or her driver's license issued by another state.

(b) Prior to issuing a CDL to a person who has a CDL from another state, the Division shall:

1. Require the driver applicant to make the certifications contained in N.J.A.C. 13:21-23.2(b);

2. Complete a check of the driver applicant's record as contained in (a)3 above;

3. Request and receive updates of information specified in N.J.A.C. 13:21-23.18;

4. If such applicant wishes to retain a hazardous materials endorsement, ensure that the driver has, within the two years preceding the transfer, either:

i. Passed the test for such endorsement specified in N.J.A.C. 13:21-23.14; or

ii. Successfully completed a hazardous materials test or training that is given by a third party and that is deemed by the Director to substantially cover the same knowledge base as that described in N.J.A.C. 13:21-23.14; and

5. Obtain the CDL issued by the applicant's previous State of domicile.

(c) Prior to renewing any CDL the Division shall:

1. Require the driver applicant to make the certification contained in N.J.A.C. 13:21-23.2(b);

2. Complete a check of the driver applicant's record as contained in (a)3 above;

3. Request and receive updates of information specified in N.J.A.C. 13:21-23.18; and

4. If such applicant wishes to retain a hazardous materials endorsement, require the driver to pass the test for such endorsement specified in N.J.A.C. 13:21-23.14.

(d) Prior to issuing an upgrade of a CDL, the Division shall:

1. Require such driver applicant to obtain an examination permit, provide certifications and pass tests as described in N.J.A.C. 13:21-23.2(e); and

2. Complete a check of the driver applicant's record as described in (a)3 above.

(e) After the Division has completed the procedures described in (a), (b), (c), or (d) above, it may issue a CDL to the driver applicant. The Division shall notify the operator of the CDLIS of such issuance, transfer, renewal, or upgrade within the 10-day period beginning on the date of license issuance.

(f) If the Division determines, in its check of an applicant's license status and record prior to issuing a CDL, or at any time after the CDL is issued, that the applicant has falsified information contained in N.J.A.C. 13:21-23.18 or any of the certifications required in N.J.A.C. 13:21-23.2(b), the Division shall, after notice and an opportunity for a hearing pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1 at a minimum suspend, cancel, or revoke the person's CDL, or his or her pending application, or disqualify the person from operating a CMV for a period of at least 60 consecutive days.

(g) Any person who has a valid CDL which is not suspended, revoked, or canceled, and who is not disqualified from operating a CMV, may operate a CMV in this State on a reciprocal basis in accordance with N.J.S.A. 39:3-17.

13:21-23.4 Substitute for driving skills tests

(a) At the discretion of the Director, the driving skill test as specified in N.J.A.C. 13:21-23.10 may be waived for a CMV operator provided that the applicant holds a license issued in accordance with N.J.S.A. 39:3-10 which is substantially similar to a CDL at the time of his or her application for a CDL, and the applicant's driving record is satisfactory in the discretion of the Director and the applicant has previously passed a Federally-approved skills test, or the applicant's driving record is satisfactory in the discretion of the Director and the applicant has substantial driving experience with CMVs. The Division shall impose the following conditions and limitations to restrict the applicants from whom the Division may accept alternative requirements for the skills test described in N.J.A.C. 13:21-23.10:

1. An applicant must certify that, during the two-year period immediately prior to applying for a CDL, he or she:

i. Has not had more than one license (except in the instances specified in 49 CFR 383.21(b));

ii. Has not had any license suspended, revoked, or canceled;

iii. Has not had any convictions for any type of motor vehicle for the disqualifying offenses contained in the New Jersey Commercial Driver License Act or 49 CFR §383.51(b)(2);

iv. Has not had more than one conviction for any type of motor vehicle for serious traffic violations; and

v. Has not had any conviction for a violation of State or local law relating to motor vehicle traffic control (other than a parking violation) arising in connection with any traffic accident, and has no record of an accident in which he or she was at fault; and

2. An applicant must provide evidence and certify that:

i. He or she has been regularly employed in a job requiring operation of a CMV, and that either:

ii. He or she has previously taken and passed a skills test given by a state with a classified licensing and testing system, and that the test was behind-the-wheel in a representative vehicle for that applicant's driver's license classification; or

iii. He or she has operated, for at least two years immediately preceding application for a CDL, a vehicle representative of the CMV the driver applicant operates or expects to operate.

13:21-23.5 Commercial motor vehicle groups; description; representative vehicle; relation between classes

(a) Each driver applicant must possess and be tested on his or her knowledge and skills, described in N.J.A.C. 13:21-23.8 through 23.14 for the CMV group(s) for which he or she desires a CDL. The CMV groups are as follows:

1. Combination vehicle (Group A)—Any combination of vehicles with a Gross Combination Weight Rating (GCWR) of 26,001 or more pounds provided the GVWR of the vehicle(s) being towed is in excess of 10,000 pounds.

2. Heavy Straight Vehicle (Group B)—Any single vehicle with a GVWR of 26,001 or more pounds, any such vehicle towing a vehicle not in excess of 10,000 pounds GVWR, any vehicle with a GVWR of 26,001 or more pounds and designed to carry 16 or more persons including the driver whether used for hire or not.

3. Small Vehicle (Group C)—Any single vehicle less than 26,001 pounds GVWR, or any such vehicle towing a vehicle not in excess of 10,000 pounds GVWR provided that the vehicle is used in the transportation of materials found to be hazardous for the purposes of the Hazardous Materials Transportation Act and which is required to be placarded under the Hazardous Materials Regulations (49 CFR Part 172, Subpart F); or the vehicle is designed to transport 16 or more passengers including the driver, whether used for hire or not; or the vehicle is designed to transport eight to 16 passengers including the driver and is used for hire; or the vehicle is used to transport eight to 16 persons including the driver for hire on a daily basis to and from places of employment; or the vehicle is used for the transportation of more than six passengers to or from summer day camps or summer residence camps; or the vehicle is an omnibus; or the vehicle is required to be registered as a school bus.

(b) For purposes of taking the driving test in accordance with N.J.A.C. 13:21-23.10, a representative vehicle for a given vehicle group contained in (a) above is any CMV which meets the definition of that vehicle group.

(c) Each driver applicant who desires to operate in a different CMV group from the one which his or her CDL authorizes shall be required to take and pass all related tests, except the following:

1. A driver who has passed the knowledge and skills tests for a combination vehicle (Group A) may operate a heavy straight vehicle (Group B) or a small vehicle (Group C), provided that he or she possesses the requisite endorsement(s); and

2. A driver who has passed the knowledge and skills tests for a heavy straight vehicle (Group B) may operate any small vehicle (Group C), provided that he or she possesses the requisite endorsement(s).

13:21-23.6 Endorsements; descriptions; testing requirements

(a) In addition to taking and passing the knowledge and skills tests described in N.J.A.C. 13:21-23.8 through 23.14, all persons who operate or expect to operate the type(s) of motor vehicles described in (b) below shall take and pass specialized tests to obtain each endorsement. The Division shall issue CDL endorsements only to drivers who successfully complete the tests.

(b) An operator must obtain endorsements to his or her CDL to operate CMVs which are:

1. Double/triple trailers;

2. Passenger vehicles (for example, omnibuses and school buses);

3. Tank vehicles; or

4. Required to be placarded for hazardous materials.

(c) The following tests are required for the endorsements contained in (b) above:
1. Double/Triple Trailers—a knowledge test;
2. Passenger—a knowledge and a skills test;
3. Tank vehicle—a knowledge test; and
4. Hazardous Materials—a knowledge test.

13:21-23.7 Air brake restrictions
(a) If an applicant either fails the air brake component of the knowledge test, or performs the skills test in a vehicle not equipped with air brakes, the Division shall indicate on the CDL, if issued, that the person is restricted from operating a CMV equipped with air brakes.
(b) For the purposes of the skills test and the restriction, air brakes shall include any braking system operating fully or partially on the air brake principle.

13:21-23.8 General requirement for knowledge and skills
All drivers of CMVs shall have knowledge and skills necessary to operate a CMV safely as contained in this subchapter.

13:21-23.9 Required knowledge
(a) All CMV operators must have knowledge of the following general areas as developed by the Division and approved by the United States Department of Transportation as meeting its minimum standards:
1. Driver-related elements of the regulations contained in 49 CFR Parts 391, 392, 393, 395, 396, and 397, such as: motor vehicle inspection, repair, and maintenance requirements; procedures for safe vehicle operations; the effects of fatigue, poor vision, hearing, and general health upon safe CMV operation; the types of motor vehicles and cargoes subject to the requirements; and the effects of alcohol and drug use upon safe CMV operations;
2. Proper use of the motor vehicle's safety system, including lights, horns, side and rear-view mirrors, proper mirror adjustments, fire extinguishers, symptoms of improper operation revealed through instruments, motor vehicle operation characteristics, and diagnosing malfunctions. CMV drivers shall have knowledge on the correct procedures needed to use these safety systems in an emergency situation, for example, skids and loss of brakes;
3. The purpose and function of the controls and instruments commonly found on CMVs;
4. The proper procedures for performing various basic maneuvers;
5. The basic shifting rules and terms, as well as shift patterns and procedures for common transmissions;
6. The procedures and rules for various backing maneuvers;
7. The importance of proper visual search, and proper visual search methods;
8. The principles and procedures for proper communications and the hazards of failure to signal properly;
9. The importance of understanding the effects of speed;
10. The procedures and techniques for controlling the space around the vehicle;
11. Preparations and procedures for night driving;
12. The basic information on operating in extreme driving conditions and the hazards that are encountered in extreme conditions;
13. The basic information on hazard perception and clues for recognition of hazards;
14. The basic information concerning when and how to make emergency maneuvers;
15. The information on the causes and major types of skids, as well as the procedures for recovering from skids;
16. The principles and procedures for the proper handling of cargo;
17. The objectives and proper procedures for performing vehicle safety inspections, as follows:
i. The importance of periodic inspection and repair to vehicle safety;
ii. The effect of undiscovered malfunctions upon safety;
iii. What safety-related parts to look for when inspecting vehicles;
iv. Pre-trip/enroute/post-trip inspection procedures; and
v. Reporting findings;
18. What constitutes hazardous material requiring an endorsement to transport; classes of hazardous materials; labeling/placarding requirements; and the need for specialized training as a prerequisite to receiving the endorsement and transporting hazardous cargoes;
19. Operators of vehicles equipped with air brakes shall also have knowledge of:
i. Air brake system nomenclature;
ii. The dangers of contaminated air supply;
iii. Implications of severed or disconnected air lines between the power unit and the trailer(s);
iv. Implications of low air pressure readings;
v. Procedures to conduct safe and accurate pre-trip inspections; and
vi. Procedures for conducting enroute and post-trip inspections of air actuated brake systems, including ability to detect defects which may cause the system to fail; and
20. Operators for the combination vehicle group shall also have knowledge of:
i. Coupling and uncoupling—The procedures for proper coupling and uncoupling a tractor to semi-trailer; and
ii. Vehicle inspection—The objectives and proper procedures that are unique for performing safety inspections on combination vehicles.

13:21-23.10 Required skills; control skills; safe driving skills; air brake skills; test area; simulation
(a) All applicants for a CDL must possess and demonstrate basic motor vehicle control skills for each vehicle group which the driver operates or expects to operate. These skills should include the ability to start, to stop, and to move the vehicle forward and backward in a safe manner.
(b) All applicants for a CDL must possess and demonstrate the safe driving skills for their vehicle group. These skills should include proper visual search methods, appropriate use of signals, speed control for weather and traffic conditions, and ability to position the motor vehicle correctly when changing lanes or turning.
(c) Except as provided in N.J.A.C. 13:21-23.7, applicants shall demonstrate the following skills with respect to inspection and operation of air brakes:
1. Applicants shall demonstrate the skills necessary to conduct a pre-trip inspection which includes the ability to:
i. Locate and verbally identify air brake operating controls and monitoring devices;
ii. Determine the motor vehicle's brake system condition for proper adjustments and that air system connections between motor vehicles have been properly made and secured;
iii. Inspect the low pressure warning device(s) to ensure that they will activate in emergency situations;
iv. Ascertain, with the engine running, that the system maintains an adequate supply of compressed air;
v. Determine that required minimum air pressure build up time is within acceptable limits and that required alarms and emergency devices automatically deactivate at the proper pressure level; and
vi. Operationally check the brake system for proper performance.
2. Applicants shall successfully complete the skills test contained in this subsection in a representative vehicle equipped with air brakes.
(d) Skills tests shall be conducted in on-street conditions or under a combination of on-street and off-street conditions.

13:21-23.11 Requirements for double/triple trailers endorsement
(a) In order to obtain a double/triple trailers endorsement, each applicant must have knowledge covering:
1. Procedures for assembly and hookup of the units;
2. Proper placement of heaviest trailer;
3. Handling and stability characteristics including off-tracking, response to steering, sensory feedback, braking, oscillatory sway, rollover in steady turns, yaw stability in steady turns; and
4. Potential problems in traffic operations, including problems the motor vehicle creates for other motorists due to slower speeds on steep grades, longer passing times, possibility for blocking entry of other motor vehicles on freeways, splash and spray impacts, aerodynamic buffeting, view blockages, and lateral placement.

13:21-23.12 Requirements for passenger endorsement

(a) An applicant for the passenger endorsement must satisfy both of the following additional knowledge and skills test requirements:

1. All applicants for the passenger endorsement must have knowledge covering at least the following topics:

i. Proper procedures for loading/unloading passengers;

ii. Proper use of emergency exits, including push-out windows;

iii. Proper responses to such emergency situations as fires and unruly passengers;

iv. Proper procedures at railroad crossings and drawbridges; and

v. Proper braking procedures.

2. To obtain a passenger endorsement applicable to a specific vehicle group, an applicant must take his or her skills test in a passenger vehicle satisfying the requirements of that group as defined in N.J.A.C. 13:21-23.5.

13:21-23.13 Requirements for tank vehicle endorsement

(a) In order to obtain a tank vehicle endorsement, each applicant must have knowledge covering the following:

1. Causes, prevention, and effects of cargo surge on motor vehicle handling;

2. Proper braking procedures for the motor vehicle when it is empty, full and partially full;

3. Differences in handling of baffled/compartmental tank interiors versus non-baffled motor vehicles;

4. Differences in tank vehicle type and construction;

5. Differences in cargo surge for liquids of varying product densities;

6. Effects of road grade and curvature on motor vehicle handling with filled, half-filled and empty tanks;

7. Proper use of emergency systems; and

8. For drivers of Federal Department of Transportation specification tank vehicles, retest and marking requirements.

13:21-23.14 Requirements for hazardous materials endorsement; waiver of knowledge test

(a) In order to obtain a hazardous material endorsement, each applicant must have such knowledge as is required of a driver of a hazardous materials laden vehicle, from information contained in 49 CFR Parts 171, 172, 173, 177, 178, and 397 on the following:

1. Hazardous materials regulations including:

i. Hazardous materials table;

ii. Shipping paper requirements;

iii. Marking;

iv. Labeling;

v. Placarding requirements;

vi. Hazardous materials packaging;

vii. Hazardous materials definitions and preparation;

viii. Other regulated material (for example, ORM-D);

ix. Reporting hazardous materials accidents; and

x. Tunnels and railroad crossings;

2. Hazardous materials handling including:

i. Forbidden materials and packages;

ii. Loading and unloading materials;

iii. Cargo segregation;

iv. Passenger carrying buses and hazardous materials;

v. Attendance of motor vehicles;

vi. Parking;

vii. Routes;

viii. Cargo tanks; and

ix. "Safe Havens";

3. Operation of emergency equipment including:

i. Use of equipment to protect the public;

ii. Special precautions for equipment to be used in fires;

iii. Special precautions for use of emergency equipment when loading or unloading a hazardous materials laden motor vehicle; and

iv. Use of emergency equipment for tank vehicles; and

4. Emergency response procedures including:

i. Special care and precautions for different types of accidents;

ii. Special precautions for driving near a fire and carrying hazardous materials, and smoking and carrying hazardous materials;

iii. Emergency procedures; and

iv. Existence of special requirements for transporting Class A and B explosives.

(b) The Director may waive the written knowledge test if an applicant for a renewal of a hazardous materials endorsement or the transfer of a hazardous materials endorsement from another state has satisfactorily completed an approved training course pertaining to the operation of motor vehicles transporting hazardous materials within two years of the date of application.

13:21-23.15 Minimum passing scores; test longevity; waiting period between tests

(a) The driver applicant must correctly answer at least 80 percent of the questions on each knowledge test in order to achieve a passing score on such knowledge test. The results of a knowledge test shall remain valid for a period of one year from the date that the applicant achieved a passing score.

(b) To achieve a passing score on the skills test, the driver applicant must demonstrate that he or she can successfully perform all of the skills listed in N.J.A.C. 13:21-23.10.

(c) If the driver applicant does not obey traffic laws, or causes an accident during the test, he or she shall automatically fail the test.

(d) The scoring of the basic knowledge and skills test shall be adjusted as follows to allow for the air brake restriction (see N.J.A.C. 13:21-23.7):

1. If the applicant scores less than 80 percent on the air brake component of the basic knowledge test as described in N.J.A.C. 13:21-23.9(a)(7), the driver will have failed the air brake component and, if the driver is issued a CDL, an air brake restriction shall be indicated on the license; and

2. If the applicant performs the skills test in a vehicle not equipped with air brakes, the driver will have omitted the air brake component as described in N.J.A.C. 13:21-23.10(c) and, if the driver is issued a CDL, the air brake restriction shall be indicated on the license.

13:21-23.16 Third party testing; proof of testing

(a) The Director may authorize a person (including an employer, or a department, agency or instrumentality of a local government) to administer the skills test as specified in N.J.A.C. 13:21-23.10 if the following conditions are met:

1. The tests given by the third party are the same as those which would otherwise be given by the Division; and

2. The third party has an agreement with the Division containing, at a minimum, provisions that:

i. Allow the Federal Highway Administration, or its representative, and the Division to conduct random examinations, inspections and audits without prior notice;

ii. Require the Division to conduct on-site inspections at least annually;

iii. Require that all third party examiners meet the same qualification and training standards as Division examiners, to the extent necessary to conduct skills tests in compliance with N.J.A.C. 13:21-23.10;

iv. Require that, at least on an annual basis, Division employees take the tests actually administered by the third party as if the Division employees were test applicants, or that the Division test a sample of drivers who were examined by the third party to compare pass/fail results; and

v. Reserve unto the Division the right to take prompt and appropriate remedial action against the third-party testers in the event that the third-party fails to comply with Division or Federal standards for the CDL testing program, or with any other terms of the third-party contract.

(b) A driver applicant who takes and passes driving tests administered by an authorized third party shall provide evidence to the Division that he or she has successfully passed the driving tests administered by the third party.

(c) An authorized third party may charge a driver applicant a fee for the administration of the skills test, except that said fee shall not exceed an amount equal to the cost to the State for administering such testing.

13:21-23.17 Commercial driver's license document; general

The CDL shall be a document that is easy to recognize as a CDL. At a minimum, the document shall contain the information specified in N.J.A.C. 13:21-23.18.

13:21-23.18 Information on the document and application

(a) All CDLs shall contain the following information:

1. The prominent statement that the license is a "Commercial Driver's License" or "CDL," except as specified in (b) below;

2. The full name, signature, and mailing address of the person to whom such license is issued;

3. Physical and other information to identify and describe such person including date of birth (month, day, and year), sex, and height;

4. A color photograph of the driver;

5. The driver's license number;

6. The name of New Jersey as the State which issued the license;

7. The date of issuance and the date of expiration of the license;

8. The group or groups of CMV(s) that the driver is authorized to operate, indicated as follows:

i. A for Combination Vehicle;

ii. B for Heavy Straight Vehicle; and

iii. C for Small Vehicle;

9. The endorsement(s) for which the driver has qualified, if any, indicated as follows:

i. T for double/triple trailers;

ii. P for passenger;

iii. N for tank vehicle;

iv. H for hazardous materials;

v. NH for a combination of the tank vehicle and hazardous materials endorsements; and

vi. At the discretion of the Director, additional codes for additional classes of endorsements, as long as each such discretionary code is fully explained on the front or back of the CDL document.

(b) If the Division has issued the applicant an air brake restriction as specified in N.J.A.C. 13:21-23.7, that restriction must be indicated on the license.

(c) If the Division has issued the applicant a Small Vehicle (Group C) CDL which is restricted to the operation of vehicles, including school buses, which are designed to transport not more than 15 passengers including the driver, that restriction must be indicated on the license.

(d) A driver applicant must provide his or her Social Security Number on the application of a CDL. If the applicant has been exempted from applying for a Social Security Number because of his or her religious beliefs, the applicant must submit a letter from the Social Security Administration or the Internal Revenue Service confirming the grant of the exemption. The Division will assign an identification number for the applicant if the applicant has been granted an exemption from applying for a Social Security Number.

(e) The Division must provide the Social Security Number or identification number assigned by the Division to the CDLIS.

13:21-23.19 Tamperproofing requirements

The Division shall make the CDL tamperproof to the maximum extent practicable. At a minimum, the Division shall use the same tamperproof method used for noncommercial drivers' license.

13:21-23.20 Duplicate CDL

The Director, upon presentation of a statement, stating that the original CDL has been destroyed, lost or stolen, may, if he or she is satisfied that the facts as set forth in the statement are true, issue a duplicate CDL, if needed, to the original holder thereof, upon the payment to the Director of the fee set forth in N.J.S.A. 39:3-31 for the duplicate CDL so issued and a fee for the color photograph established by the Director in accordance with N.J.S.A. 39:3-10.30.

13:21-23.21 Change of legal name or address; application for corrected CDL

When a person holding a CDL issued by this State changes his or her legal name, mailing address or residence, he or she shall notify the Director, in writing, of such change within one week after the change is made. The Director may issue a corrected CDL, if needed, only if the person surrenders his or her current CDL and provides such other information as the Director may require.

13:21-23.22 Guidelines and conditions under which certain suspensions or revocations of CMV driving privileges for life may be reduced to a period of not less than 10 years

(a) A person whose CMV driving privilege has been revoked for life under Section 12(c) or 12(h) of the New Jersey Commercial Driver License Act, or under a similar provision of the law of any other state or jurisdiction, may apply to the Director to have his or her CMV driving privilege restored.

(b) The Director may, in his or her discretion, restore the CMV driving privileges of such applicant provided the applicant satisfies all of the following requirements:

1. The applicant has served a minimum suspension period of 10 years under the suspension imposed pursuant to Section 12(c) or 12(h) of the New Jersey Commercial Driver License Act, or under a similar provision of the law of any other state or jurisdiction;

2. The applicant has enrolled in, paid for, attended and successfully completed a rehabilitation program (that is, driver improvement program and/or alcohol education or rehabilitation program) approved by the Director and has provided sufficient proof of program completion;

3. The applicant is domiciled in this State and has produced sufficient proof of domicile;

4. The applicant has paid the restoration fee provided in N.J.S.A. 39:3-10a, if required;

5. The applicant has paid the Alcohol Education Rehabilitation, and Enforcement Fund fee provided in N.J.S.A. 39:4-50(b), if required;

6. The applicant has satisfied all of the requirements for obtaining a CDL and applicable endorsements in this State. No waiver of the skills test shall be permitted for applicants under this section;

7. The applicant has not previously had his or her CMV driving privileges restored pursuant to this section or the law of another state or jurisdiction similar to this section;

8. The applicant's driving privileges are not suspended or revoked in this State or any other state or jurisdiction and he or she has satisfied all outstanding suspensions in this State or any other state or jurisdiction;

9. If the lifetime revocation was imposed by a licensing authority or court of any other state or jurisdiction authorizing a restoration;

10. The applicant's driving record in this and any other state or jurisdiction, including his or her driving record during the period when his or her CMV driving privilege was suspended, clearly demonstrates that it is consistent with public safety that the applicant be again permitted to operate CMVs. The Director may consider all relevant evidence including the frequency, nature and number of violations, accidents, suspensions and revocations, any special circumstances connected with any violation or suspension, including whether applicant has been involved in any accident resulting in death or bodily injury to any person. The burden shall be on the applicant to demonstrate requisite qualification. The applicant's failure to produce requisite evidence of qualification shall be sufficient grounds to deny the application; and

11. The applicant has submitted an application for such restoration as provided by the Director.

13:21-23.23 Ineligibility for reduction of lifetime revocation

No person whose CMV driving privilege has been revoked pursuant to Section 12(e) or 12(h) of the New Jersey Commercial Driver License Act or the similar law of any other state or jurisdiction because of his or her use of a CMV in the commission of a crime involving the manufacture, distribution, or dispensing of a controlled substance or controlled substance analog, or possession with intent to manufacture, distribute, or dispense a controlled substance or controlled substance analog, shall be eligible to have his or her CMV driving privilege restored pursuant to N.J.A.C. 13:21-23.22.

13:21-23.24 Driver rehabilitation program

(a) For purposes of this subchapter, a driver rehabilitation program shall consist of:

1. A driver improvement course, or a program in another state or jurisdiction which the Director determines is substantially similar; and

2. If the applicant has ever been convicted of a violation of Section 5 or 16 of the New Jersey Commercial Driver License Act or N.J.S.A. 39:4-50 or N.J.S.A. 39:4-50.2 or similar laws of this or any other state or jurisdiction, he or she must show that he or she has satisfied the educational and rehabilitation requirements set forth in N.J.S.A. 39:4-50 or the similar program requirements of another state or jurisdiction which the Director or the Division of Alcoholism, as the case may be, has determined satisfy those requirements.

(b) The fee for the Driver Improvement Course shall be the fee set forth in N.J.A.C. 13:20-17.3.

13:21-23.25 Application to another jurisdiction for restoration; notice to Director

A person whose CMV driving privileges have been revoked for life pursuant to Section 12(c) or 12(h) of the New Jersey Commercial Driver License Act shall notify the Director, in writing, within 10 days of any application to the licensing authority of another state or jurisdiction for restoration of those privileges. The notice shall provide the information specified at N.J.A.C. 13:21-23.2(g)1 through (g)5, the New Jersey drivers license number issued to such person, and any other information required by the Director.

13:21-23.26 Temporary authority to applicant for restoration under N.J.A.C. 13:21-23.22

(a) The Director may issue a letter of temporary authority to a person who has applied for restoration of his or her CMV driving privilege under N.J.A.C. 13:21-23.22 for the purpose of allowing said person to fit himself or herself to become a CMV operator. A person making application for a letter of temporary authority under this section shall comply with the application procedures set forth in N.J.A.C. 13:21-23.2.

(b) If, upon expiration of the letter of temporary authority, a CDL has not been issued as provided in N.J.A.C. 13:21-23.22, the applicant's CMV driving privileges shall continue to be revoked in accordance with the original revocation order.

13:21-23.27 Interrelationship between basic driver's license and CDL relative to suspension of driving privileges; rules of general application; specialized cases under the New Jersey Commercial Driver License Act

(a) No person may operate a CMV while his or her CDL is suspended or revoked in this State. No person may operate a CMV while his or her basic driver license is suspended or revoked in this State. No person properly licensed in another state may operate a CMV in this State while his or her CDL is suspended in that state.

(b) For those persons licensed by this State, a valid basic driver license is a prerequisite for the operation of a CMV. For persons properly licensed in another state, the law of that state should be consulted.

(c) Whenever a person's basic driver license is suspended, revoked, or prohibited pursuant to any statute or regulation of this State, the person's CDL, if any, shall be suspended, revoked or prohibited, as the case may be, until the basic driver license and the CDL have been restored by the Director.

(d) Whenever a person is convicted for a violation of N.J.S.A. 39:4-50 committed in a CMV, the person's basic driver's license shall be suspended or revoked for the appropriate time periods specified in N.J.S.A. 39:4-50(a)(1), (a)(2) or (a)(3). For purposes of assessing the appropriate suspension period under N.J.S.A. 39:4-50, all violations of N.J.S.A. 39:4-50 shall be counted without regard to whether they occurred in a commercial or noncommercial motor vehicle.

(e) The suspension or revocation of a person's CMV driving privilege for a violation of N.J.S.A. 39:3-10.13 shall not serve to suspend the person's basic driver's license unless the violation that gave rise to the CMV driving privilege suspension, revocation, or denial would have resulted in a suspension, revocation, or denial of the person's basic driver's license if committed in a noncommercial motor vehicle. An example of such a violation would be where the court has convicted the person of a violation of both N.J.S.A. 39:3-10.13 and 39:4-50, or where the court has convicted the person of a violation of N.J.S.A. 39:3-10.3 and has exercised its power under N.J.S.A. 39:5-31.

(f) Whenever a person is convicted for a violation of N.J.S.A. 39:4-129 committed in a CMV and an injury or death to any person has occurred, the person's basic driver's license shall be suspended or revoked for the appropriate time periods specified in N.J.S.A. 39:4-129(a). For purposes of assessing the appropriate suspension period under N.J.S.A. 39:4-129(a), all violations of N.J.S.A. 39:4-129 shall be counted without regard to whether they occurred in a commercial or noncommercial motor vehicle.

(g) The suspension or revocation of a person's CMV driving privilege for a violation of using a CMV in the commission of a crime or using a CMV in the commission of a crime involving the manufacture, distribution, or dispensing of a controlled substance or a controlled substance analog, or possession with intent to manufacture, distribute or dispense a controlled substance or controlled substance analog shall not serve to suspend the person's basic driver's license unless otherwise ordered by the court.

(h) Whenever a person is convicted for a violation of N.J.S.A. 39:4-50.2 or section 16 of the Act or other similar law committed in a CMV the person's basic driver's license shall be suspended in accordance with N.J.S.A. 39:4-50.4a or 39:3-10.24(f) or other similar law.

(i) The suspension or revocation of a person's CMV driving privilege for a violation of N.J.S.A. 39:3-10.18(b) shall not serve to suspend the person's basic driver's license unless otherwise ordered by the court.

(j) With regard to serious traffic violations, the suspension or revocation of a person's CMV driving privilege by a court shall not serve to suspend the person's basic driver's license unless otherwise ordered by the court. If the particular serious traffic violation also is cause for suspension of the basic driver license by the Director pursuant to N.J.S.A. 39:5-30(b), 39:5-30(c), 39:5-30(e), 39:5-30.8, 39:5-30.10 or N.J.A.C. 13:19-10, the person may accept the period proposed by the Director and ask that the suspension of the basic driver's license imposed by the Director run to the greatest extent possible concurrently with the court-imposed suspension of CMV driving privilege. However, the pendancy of any administrative action shall not serve to stay any court-imposed suspension.

(k) The provisions of this rule are not intended to be exhaustive or otherwise to restrict the court's or the director's powers.

13:21-23.28 Display of GVWR not required on firefighting apparatus

Owners of firefighting apparatus are exempted from the requirement of N.J.S.A. 39:4-46(b) pertaining to the display of the GVWR on the vehicle.

13:21-23.29 Operative date

This subchapter shall take effect upon publication of the notice of its adoption, except that N.J.A.C. 13:21-23.22 through 13:21-23.27 shall become operative on April 1, 1992.

RULE ADOPTIONS

BANKING

(a)

OFFICE OF REGULATORY AFFAIRS

Bank Holding Companies

Adopted New Rules: N.J.A.C. 3:13

Proposed: October 7, 1991 at 23 N.J.R. 2904(a).

Adopted: December 26, 1991 by Robert M. Jaworski, Deputy Commissioner, Department of Banking.

Filed: December 26, 1991 as R.1992 d.40, **without change.**

Authority: N.J.S.A. 17:9A-379.

Effective Date: January 21, 1992.

Expiration Date: January 21, 1997.

Summary of Public Comments and Agency Responses:

The Department received **no comments.**

The rules at N.J.A.C. 3:13 were proposed for readoption on October 7, 1991. The Department extended the period for comments until December 22, 1991. Because the chapter expired on November 17, 1991, they are being adopted here as new rules pursuant to N.J.A.C. 1:30-4.4(f).

Full text of the adoption as new rules may be found in the New Jersey Administrative Code at N.J.A.C. 3:13.

Full text of the adopted amendments follows.

3:13-1.3 Initial registration

Recodify (b)-(c) as (a)-(b) (No change in text.)

3:13-2.2 Definitions

The words and terms defined at N.J.A.C. 3:13-1.2, when used in this subchapter, shall have the meanings set forth in N.J.A.C. 3:13-1.2, unless the context clearly indicates otherwise.

Recodify 3:13-2.2 and 2.3 as 3:13-2.3 and 2.4. (No change in text.)

3:13-3.1 Examination charges

The Commissioner may examine any company which controls a bank, and shall charge for any such examination a per diem per person examination charge in an amount set forth in N.J.A.C. 3:1-6.6.

PERSONNEL

(b)

MERIT SYSTEM BOARD

Examination Records

Adopted Amendment: N.J.A.C. 4A:4-2.16

Proposed: October 7, 1991 at 23 N.J.R. 2906(b).

Adopted: December 17, 1991 by the Merit System Board; William G. Scheuer, Acting Commissioner, Department of Personnel.

Filed: December 26, 1991 as R.1992 d.41, **without change.**

Authority: N.J.S.A. 11A:4-1 et seq.

Effective Date: January 21, 1992.

Expiration Date: June 6, 1993.

Summary of Public Comments and Agency Responses:

A public hearing on the proposed amendment was held on Wednesday, October 23, 1991. Mr. Henry Maurer served as hearing officer. **No comments** were received at that time and no recommendations were made by the hearing officer.

No written comments received.

Full text of the adoption follows.

4A:4-2.16 Retention and inspection of examination records

(a) The following examination records shall be retained until the expiration of the eligible list:

1.-2. (No change.)

3. The examination papers and scoring keys;

4. A description of the examination, including the date held, rating system and minimum score required, if any;

5.-6. (No change.)

(b) All examination records listed in (a)1, 4 and 5 above shall be open to public inspection. The Commissioner shall determine which other records may be open to public inspection and the conditions for such inspection.

COMMUNITY AFFAIRS

(c)

DIVISION OF HOUSING AND DEVELOPMENT

Uniform Construction Code

Indoor Air Quality Standards and Procedures for Buildings Occupied by Public Employees

Adopted New Rule: N.J.A.C. 5:23-11

Proposed: June 3, 1991 at 23 N.J.R. 1730(b).

Adopted: December 19, 1991, by Melvin R. Primas, Jr., Commissioner, Department of Community Affairs.

Filed: December 20, 1991 as R.1992 d.33, **with substantive and technical changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

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

Effective Date: January 21, 1992.

Expiration Date: March 1, 1993.

Summary of Public Comments and Agency Responses:

A public hearing was held on June 27, 1991 before Charles Decker, at the Department of Community Affairs, 101 South Broad St., Trenton. Six people attended the hearing and offered their comments in writing. Mr. Decker recommended that the comments offered be combined with other comments received, and evaluated by the agency. The Department's response is contained in the summary which follows. The public hearing record may be inspected or a copy obtained by contacting Michael L. Ticktin, Esq., Chief, Legislative Analysis, Department of Community Affairs, CN 802, Trenton, New Jersey 08625.

Comments were received from the following persons: R. Christopher Spicer, CIH, CHMM, Kaselaan & D'Angelo Associates, Inc.; William S. Kerbel, CIH, Atlantic Environmental, Inc.; Patricia Clark Kenschaft, Ph.D.; Dante P. Mariani; Robert L. Kramer, Esq., Nexus Properties, Inc.; Mary Brand; a group of employees from the Union County Division of Social Services (62 signatures); Jacqueline Moskowitz; Norman Hymowitz, Commission on Smoking OR Health; Richard S. Wadleigh, College Health and Environmental Safety Society of New Jersey (CHESS); Robert Van Eman; Allen Strasburger; Joyce Y. Krais; Carol Reilly, R.N.; Ruth G. Ostrow; Richard Norman, Rutgers University; Regina Carlson, New Jersey Group Against Smoking Pollution (GASP); Jane Blackman; Gerard Garofalow, Ridgefield Park Building Department; Mrs. I. Rubin; Roger Belling; John Slade, M.D., University of Medicine and Dentistry of New Jersey; Anthony F. Abriola, Cumberland County College; Patricia Yoczls; Edwin Brill; Enid Bloch, Ph.D.; Donna M. Capizzi, CIH, Matthew Carmel and Michael Quinlan, American Industrial Hygenists; Robert H. Karen, New Jersey Builders Association; Commissioner John Ellis, New Jersey Department of Education; Robert J. Fogg, New Jersey Department of Health, Health Facilities Evaluation; David S. Gordon, Esq., DKM Properties; Chester Chartowich; Jim Mulholland, Communications Workers of America (CWA); Trudy Drucker; Shirley A. DeLibero, NJ Transit; and Jerome M. Holzman, P.E., P.P., Middlesex County College.

COMMENT: Several commenters expressed support for the proposal.

RESPONSE: The Department appreciates the support.

COMMENT: Two commenters felt that training and education are crucial and should be required.

RESPONSE: The local officials responsible for enforcing the Uniform Construction Code are trained and licensed by the Department. The professionals who will be making evaluations of indoor air quality do not need further training. The Department of Labor might consider training on indoor air quality for the people who operate building systems.

COMMENT: The economic impact of requiring retrofit to meet ASHRAE is potentially significant. If this is to be required by the State, then the State should pay the cost of compliance. The State will bear the economic burden of remediation for State-owned buildings.

RESPONSE: While it is true that there might be a significant cost associated with compliance, this will only be the case where serious health problems associated with indoor air quality exist. The Department feels that the cost is warranted where this is the case. For State-owned buildings, the State will have to pay the cost of compliance.

COMMENT: ASHRAE is difficult to understand.

RESPONSE: ASHRAE is a technical standard to be applied by qualified professionals. It is not difficult for trained professionals to understand.

COMMENT: Several commenters expressed support for ASHRAE as a design standard for new buildings, but opposed it as a compliance standard for existing buildings.

RESPONSE: Since ASHRAE 62-1989 is regarded as the state-of-the-art standard for ventilation systems, it is the most appropriate standard to adopt at this time. In addition, a proposal published elsewhere in this issue of the New Jersey Register proposes adoption of the ASHRAE standard as the design standard for new and altered buildings.

COMMENT: "Qualified professional" should be defined. The judgment of a "qualified professional," and not the ASHRAE standard, should be relied upon for evaluation and remediation.

RESPONSE: In the text of the rule, the Department specifies that the evaluation should be conducted by an architect, engineer or industrial hygienist. The judgment of a qualified professional cannot be used in place of an appropriate standard. Both are necessary.

COMMENT: Occupational vs. non-occupational exposures must be addressed in the standard. The standard should also address why some workers may be exposed to higher levels of contaminants because they do not work in offices. The standard should address the relationship between the PEOSHA (Public Employees Occupational Safety & Health Act) and OSHA PEL (Permissible Exposure Level) and ASHRAE TLV (Threshold Limit Value).

RESPONSE: The Subcode has been amended to accommodate laboratories or industrial locations which comply with OSHA standards.

COMMENT: "Acceptable" level of contaminants is debatable. California decided airborne contaminant levels could not be regulated. The California standard regulates outdoor air supply, maintenance, and record keeping.

RESPONSE: The Department feels that it is necessary to adopt standards to deal with indoor air contaminants and that the ASHRAE standards meet that need.

COMMENT: Source control problems caused by the tenant (high occupancy, office machinery, etc.) should not result in mechanical upgrades.

RESPONSE: The investigation into the causes of indoor air quality problems will reveal whether a mechanical upgrade is necessary or there is some other cause of the problem.

COMMENT: ASHRAE is not a referenced standard in BOCA. The Department should clarify the use of ASHRAE standards.

RESPONSE: Commenters have pointed out the conflicts between the standard that the Department proposes to adopt (ASHRAE 62-1989 Ventilation for Acceptable Indoor Air Quality) and the standard it already has adopted (BOCA National Mechanical Code, adopted as the Mechanical Subcode of the Uniform Construction Code). Both BOCA and ASHRAE provide guidance for designing mechanical systems from a capacity standpoint and for determining how much air can be recirculated from an operational standpoint. Through the public comment period on this proposal, the Department has evaluated the differences between and possible conflicts in applying these two different standards.

Since ASHRAE 62-1989 is regarded as the state-of-the-art standard for ventilation systems, the Department is publishing proposal elsewhere in this issue of the New Jersey Register to delete the BOCA Mechanical Code's ventilation requirements from New Jersey's mechanical subcode and require instead that the ventilation rates contained in ASHRAE 62-1989 be used for new building design. By adopting ASHRAE both for the evaluation of existing buildings and for the design of ventilation systems for new buildings, the Department eliminates any potential conflict that might result from the adoption of two different model codes and ensures that the most up-to-date indoor air quality standard available is used for all new construction in New Jersey.

(NOTE: The Department is also submitting a code change proposal to BOCA to update the ventilation requirements of the BOCA Mechanical Code. The BOCA Mechanical Code includes a five cfm/person minimum outdoor air requirement. It is believed that allowing this minimum contributes to the presence of indoor air quality problems in new buildings. The Department is proposing that BOCA raise this minimum to 10 cfm/person of outdoor air and that the method for determining how much air recirculation is allowed under the BOCA Mechanical Code be improved. If BOCA accepts this code change proposal, then the Department will reconsider its decision not to use the BOCA ventilation rates as part of the mechanical subcode.)

COMMENT: ASHRAE is based on conditions in which 80 percent would feel comfort. The standard should make it clear that 20 percent may not feel comfort.

RESPONSE: This is clear in the ASHRAE standard.

COMMENT: Failure to respond adequately to an individual complaint could stigmatize the employer.

RESPONSE: Failure to respond adequately to an individual complaint should stigmatize the employer, inasmuch as the PEOSH Act and this subcode require that the complaints of individuals be investigated. But, as stated below, the rules do not require that the workplace be altered to accommodate a "hypersensitive" person. What is required is a response to each complaint received.

COMMENT: In the case of "unjustified complaints," the cost should be borne by the complainant/tenant. If the Department exercises its discretion arbitrarily, then the building owner should be able to recover the cost of the investigation from the Department.

RESPONSE: Complaints are, to some degree, screened by the preliminary review of the Department of Community Affairs or the Department of Health. Previous complaints will be taken into consideration. If the building owner feels that the Department has acted arbitrarily, then the building owner may appeal the Department's determination.

COMMENT: Several commenters questioned whether indoor air quality must be made acceptable for each and every individual and expressed concern that some individuals are hypersensitive.

RESPONSE: The standard does not require that the workplace be altered to accommodate a "hypersensitive" person.

COMMENT: Commenters noted that temperature is a comfort issue, not a health issue, and questioned whether the Department intends to regulate discomfort as a health concern.

RESPONSE: Temperature is to be regulated within reasonable limits. At extremes, temperature can be a health issue.

COMMENT: A large number of commenters urged that the Department adopt a rule banning smoking in buildings covered by the subcode. Many of these commenters supported the provision that air from designated smoking areas not be recirculated into non-smoking areas of the building. One commenter stated that requiring separately ventilated smoking areas is unreasonable and expensive and suggested that smoking be banned instead.

RESPONSE: It seems that many people misunderstood the scope of these rules. These rules do not set smoking policy nor does this Department have the authority to do so. The only provision regarding smoking contained in the rules is the requirement that if designated smoking areas are provided, air from designated smoking areas may not be recirculated into non-smoking areas (N.J.A.C. 5:23-11.3(a)2.)

N.J.A.C. 5:23-11.1

COMMENT: Commenters questioned which buildings are covered by the rules.

RESPONSE: All buildings occupied by public employees as defined in the PEOSH Act are covered by these rules.

COMMENT: The subcode should differentiate between industrial and manufacturing situations and true indoor air quality problems.

RESPONSE: As noted above, an amendment is being made upon adoption to indicate that laboratories and industrial sites in compliance with applicable OSHA standards will be deemed to be in compliance with the Indoor Air Quality Subcode.

N.J.A.C. 5:23-11.3

COMMENT: One commenter stated that evaluating "adequate level of indoor air quality" is imprecise.

RESPONSE: Indoor air quality is to be measured against the ASHRAE standard.

COMMENT: One commenter asked whether a building is out of compliance if one airborne contaminant level is elevated, but ventilation rates are acceptable.

RESPONSE: Yes, a building is out of compliance if one airborne contaminant level is elevated.

COMMENT: The evaluation must be in accordance with ASHRAE standards, but no evaluation procedure is specified and ASHRAE 62-89 does not have an evaluative procedure.

RESPONSE: Applying the ASHRAE standard is the responsibility of the qualified professional making the evaluation.

COMMENT: The ASHRAE 62-89 foreword states that it does not ensure the avoidance of all possible health effects; does this standard?

RESPONSE: ASHRAE is widely recognized as a state-of-the-art standard for indoor air quality. While the Department cannot guarantee that this subcode will ensure the avoidance of all possible health effects, it is the best standard available at this time for addressing health effects related to poor air quality.

COMMENT: A mechanism should be added for incorporating changes in the indoor air quality field in the standards adopted.

RESPONSE: The model codes are updated as warranted through a prescribed code change process.

COMMENT: A statement should be added adopting the BOCA Building Code for the "construction, renovation and maintenance of buildings." Also, the regulations should tell where to get copies of the BOCA Model Codes.

RESPONSE: This is done in Subchapter 3 of the Uniform Construction Code.

COMMENT: If the requirement prohibiting the recirculation of air from designated smoking areas applies to new construction, then it should be included as an amendment to the Mechanical Subcode.

RESPONSE: The BOCA National Mechanical Code already contains such a provision at Section M-1603.2.

COMMENT: "The Department, upon investigation, has reason to believe" is vague language and should be clarified.

RESPONSE: This provision is intended to allow the Department to exercise discretion in the enforcement of this subcode.

COMMENT: N.J.A.C. 5:23-11.3(b) states that the Department may require retrofit; subsection (c) states that retrofit of all buildings is not required. Is this a contradiction?

RESPONSE: The subcode does **not** require the retrofitting of all existing buildings. What it does require is that existing buildings be investigated in response to employee complaints and that retrofitting be done, if the investigation indicates that this is necessary.

COMMENT: N.J.A.C. 5:23-11.3(b) should be strengthened and clarified.

RESPONSE: The language suggested by the commenter for this subsection is very similar to the language proposed. No change has been made.

N.J.A.C. 5:23-11.4

COMMENT: There should be a lead agency.

RESPONSE: There is a lead agency for PEOSHA enforcement: the Department of Labor. However, other agencies, including the Departments of Health and Community Affairs also have roles in the enforcement of PEOSHA rules. Enforcement activities are coordinated through the PEOSHA Advisory Board, chaired by the Department of Labor.

N.J.A.C. 5:23-11.5(a)

COMMENT: The words "unless otherwise specified in writing by the employer" should be deleted.

RESPONSE: The Department declines to make this change. It is reasonable to allow the employer to designate someone to respond to complaints brought under this subcode.

N.J.A.C. 5:23-11.5(b)

COMMENT: Response actions by the employer must be required. Accordingly, "The response may" should be changed to "the response shall".

RESPONSE: The response is required. What that response includes is a "may."

N.J.A.C. 5:23-11.5(c)

COMMENT: Commenters questioned what would happen if there are conflicts between the terms of a lease and the subcode. They note that some current leases specify compliance with ASHRAE 90-75.

RESPONSE: The State and other public employers will have to work this out in negotiating lease agreements. The legal question of whose responsibility it is to pay for mandated retrofit work under the terms of the lease is separate from the proposed requirement that buildings meet a certain minimum standard if employees raise legitimate complaints about indoor air quality. (ASHRAE 90-75 is an energy standard.)

COMMENT: The building owner's responsibility should be clarified by adding a requirement that the building owner respond within five working days.

RESPONSE: It is the employer who has the responsibility to respond under PEOSHA.

COMMENT: Buildings should only be required to meet the original code under which they were built, not a subsequent ASHRAE standard.

RESPONSE: Many buildings have indoor air quality problems because the codes under which they were built do not adequately address indoor air quality. Therefore, allowing continued compliance with these codes is to allow the problems to remain.

N.J.A.C. 5:23-11.7(a)4

COMMENT: Specific language changes are suggested as follows: 1) Delete "if the extent of the problem indicates." 2) Move "the investigation for contaminants shall be conducted . . ." to follow the list of three conditions.

RESPONSE: The Department feels that the language of this section is adequate as drafted and declines to make the suggested changes.

COMMENT: "Known contaminants" and "point source of contamination" are difficult to define. These terms imply chemical/biological identification. Also, substances are toxic based on dose/concentration. ASHRAE acknowledges that it does not include all contaminants of concern, so subjective evaluation is part of control. This will be difficult to enforce.

RESPONSE: The Department recognizes that this standard will be somewhat difficult to enforce in certain instances. But, as stated above, it is widely recognized as the best indoor air quality standard available at this time.

COMMENT: Relocation of employees should be required if the contaminant levels exceed the ASHRAE levels or if any employee is experiencing ill health from poor indoor air quality.

RESPONSE: The Department cannot automatically require disruptive and potentially expensive relocation of employees. If there is an immediate health threat to employees, appropriate steps will be taken.

N.J.A.C. 5:23-11.7

COMMENT: Separation of health and building complaints is not as clear as this standard implies. Also, the health-related complaint section requires air sampling as a first step; this is contrary to NIOSH practice.

RESPONSE: The subcode allows for the Department of Health and the Department of Community Affairs to make referrals to one another where cross-over problems are found. Air sampling is not automatically required as the first step.

COMMENT: Add that "study shall . . . **identify problems** and report [the] result[s] in writing." As written, the report requires the results of an investigation, but no clear statement of problem. (The same change should also be made to N.J.A.C. 5:23-11.8.)

RESPONSE: N.J.A.C. 5:23-11.7 requires that the employer report the results of any study undertaken to the Department of Health. (Building owner or employer, not report, is the subject of the sentence.) The contents of the study are not specified, but it is assumed that any study would include, at a minimum, a statement of the findings and suggested corrective actions.

COMMENT: When raising a complaint, the employee has the right to withhold his name. The words "or employee's representative" should be added after "employee."

RESPONSE: This suggestion has been incorporated in the rules.

N.J.A.C. 5:23-11.8(a)

COMMENT: The phrase "in its sole discretion" should be deleted as it adds nothing. "And employee's representative" should be added as should language clarifying that the Department will issue a report of its findings.

RESPONSE: The phrase "in its sole discretion" will remain in the rules. As stated above, "employee's representative" will be incorporated.

Finally, any investigation or finding by the Department is a matter of public record and available upon request.

N.J.A.C. 5:23-11.9

COMMENT: Specify "latest edition of BOCA" because section numbers change.

RESPONSE: A change has been made to incorporate this suggestion.

COMMENT: Employees experiencing symptoms of ill health from construction work should be relocated upon request until completion of this work.

RESPONSE: As stated above, the Department cannot automatically require disruptive and potentially expensive relocation of employees. If there is an immediate health threat to employees, appropriate steps will be taken.

COMMENT: "Appropriate measures" and "necessary measures" should be clarified to provide more guidance.

RESPONSE: Because the rules cannot give an exhaustive list of all of the construction, renovation or maintenance activities that might be undertaken and how to deal with them, this section is necessarily general. Employers should use accepted work practices, manufacturers' instructions for individual products and common sense to ensure employee safety. Text has been added at subsection (a) to clarify the situations which require ventilation.

N.J.A.C. 5:23-11.10

COMMENT: One commenter indicated support for the maintenance requirement.

RESPONSE: The Department appreciates the support.

COMMENT: The maintenance schedule should be made available upon request to any affected employee or employee's representative.

RESPONSE: Because the regulations say nothing to the contrary, the maintenance schedule is considered to be a public record and, as such, is available for review upon request.

COMMENT: This section applies to all buildings where public employees work and, therefore, is not complaint-driven.

RESPONSE: While it is true that all public employers/building owners are expected to follow this very minimal maintenance requirement, enforcement of the requirement is still complaint-driven.

N.J.A.C. 5:23-11.12(b)

COMMENT: Can the building owner appeal a Department decision?

RESPONSE: A change has been made to add the building owner or manager to the list of those who can appeal a Department decision.

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 11. INDOOR AIR QUALITY ***STANDARDS AND PROCEDURES FOR BUILDINGS OCCUPIED BY PUBLIC EMPLOYEES***

5:23-11.1 Title; scope; intent

(a) This subchapter, adopted pursuant to authority of the State Uniform Construction Code Act and the Public Employees Occupational Safety and Health Act (N.J.S.A. 34:6A-25 et seq.), and entitled "Indoor Air Quality ***Standards and Procedures for Buildings Occupied by Public Employees***," shall be known and may be cited throughout the rules as subchapter 11, and when referred to in subchapter 11 of this chapter, may be cited as this subchapter.

(b) Unless otherwise specifically provided, all references to article or section numbers or to provisions not specifically identified by number, shall be construed to refer to such article, section or provision of this subchapter.

(c) This subchapter shall control matters relating to indoor air quality in existing buildings occupied by public employees during their regular work hours, including procedures for reporting and responding to complaints of indoor air quality in accordance with the Public Employees Occupational Safety and Health Act (PEOSHA).

(d) This subchapter seeks to provide an efficient administrative framework for reporting and responding to complaints of indoor air quality, and for the enforcement of indoor air quality standards. Additionally, this subchapter provides a uniform standard through the adoption of nationally-recognized standards.

5:23-11.2 Definitions

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

"Building-related problems" means complaints regarding such conditions as temperature, humidity and ventilation.

"Department" means both the Department of Community Affairs and the Department of Health, unless the context clearly indicates otherwise.

"Designated smoking area" shall mean an area in a building where smoking is permitted and which is physically separated from non-smoking areas and which nonsmokers do not need to enter or pass through.

"Employee" means any public employee as defined in the Public Employees Occupational Safety and Health Act. ***For purposes of this subchapter, "employee" shall be deemed to include "employee's representative."***

"Employer" means public employer and shall include any person acting directly on behalf of, or with the knowledge and ratification of the State, or any department, division, bureau, board, council, agency or authority of the State, except any bi-state agency; or any county, municipality, or any department, division, bureau, board, council, agency or authority of any county or municipality, or of any school district or special purposes district created pursuant to law.

"Facility manager" means the person employed by the building owner and charged with the care and maintenance of the building.

"Health-related problems" means any complaint that involves a symptom such as headaches, nausea, dizziness, etc.

"Lease management officer" shall mean the person or office who signs the lease on behalf of the employer or who is designated by the employer with responsibility for the lease.

"Retrofit" means to bring a building or portion thereof which exhibits indoor air quality deficiencies into compliance with the standards adopted in this subchapter.

5:23-11.3 Adoption of standards

(a) Pursuant to the authority granted under P.L. 1975, c.217, as amended, the Commissioner hereby adopts and incorporates herein by reference the nationally-recognized standards of the American Society of Heating, Refrigerating and Air Conditioning Engineers, Inc., known as ASHRAE 55-1981 (Thermal Environmental Conditions for Human Occupancy) and ASHRAE 62-1989 (Ventilation for Acceptable Indoor Air Quality), including all subsequent revisions and amendments thereto, as the standard for evaluating indoor air quality in all buildings or portions of buildings subject to this subchapter.

1. Copies of these standards may be obtained from the sponsor at: ASHRAE Publication Sales Department, 1791 Tullie Circle, NE, Atlanta, GA 30329.

2. In addition to the provisions of the standards adopted above, the air from designated smoking areas shall not be recirculated to non-smoking areas in buildings covered by this subchapter.

3. Laboratories and/or industrial locations which comply with Permissible Exposure Levels established pursuant to the Occupational Safety and Health Act (OSHA) shall be deemed to be in compliance with the requirements of this subchapter for contaminant levels.

(b) Where the Department, upon investigation, has reason to believe that a building or a portion of a building does not provide for an adequate level of indoor air quality when measured against the nationally recognized standards adopted in this subchapter, then the Department may require the building owner or employer to perform a comprehensive ventilation and temperature evaluation in accordance with those standards. The Department may additionally require the building owner or employer to obtain and furnish to the Department, at the building owner's expense, a report from a licensed engineer or registered architect or certified industrial hygienist or other person with similar qualifications, education, or experience who can demonstrate the ability to perform indoor air quality evaluations. The report must outline appropriate corrective measures to the building or portions of the building under investigation. Where retrofit is found to be necessary it shall be performed in accordance with the standards adopted in this subchapter.

(c) Except as required by (b) above, nothing in this subchapter shall be interpreted as requiring the retrofit of all buildings subject to this chapter in conformity with the adopted standards. These standards are adopted in order to provide a nationally recognized objective measurement tool for the evaluation and retrofit of buildings or portions of buildings which exhibit indoor air quality deficiencies.

5:23-11.4 Enforcement

(a) The Department of Health shall be the sole agency for investigating complaints and initiating enforcement of standards for health-related problems.

(b) The Department of Community Affairs shall be the sole agency for investigating complaints and enforcing standards for building-related problems.

(c) The Department of Labor shall be the sole agency for the enforcement of orders resulting from investigations initiated by the Department of Health.

5:23-11.5 Initial complaint to employer

(a) The employee or employee's representative shall submit the complaint in writing to the employer or to the employee relations officer, unless otherwise specified in writing by the employer.

(b) Within five working days of receipt the employer shall acknowledge receipt of the complaint and shall outline the planned response action in writing to the employee. The response may include any combination of the following:

1. A description of any remedial action already taken;

2. An outline of any response action planned but not yet taken with a timetable for completion; and/or

3. An order for study of the problem with a timetable for completion.

(c) In a leased building, the employee shall submit the complaint to the employer. In such buildings managed and maintained by the building owner and not the employer, the complaint shall be forwarded by the employer to the lease management officer or to the person designated by the building owner to receive such complaints who, in turn, shall forward it to the building owner for corrective action pursuant to the terms of the lease and this subcode.

(d) Where a response action is planned or a study ordered, it shall be initiated as soon as possible. The employer shall report the results in writing to the employee within 10 working days of completion.

5:23-11.6 Formal complaint to State agency

(a) If the condition persists or if the employer fails to respond to the complaint, the employee may request further action by notifying the Department of Health or the Department of Community Affairs in writing.

(b) Health-related complaints shall be reported to the Department of Health.

(c) Building-related complaints shall be reported to the Department of Community Affairs.

(d) Within five working days following receipt of the complaint, the Department of Health or the Department of Community Affairs shall notify the employer that a complaint has been filed.

1. If the employer has had an opportunity to respond as outlined in N.J.A.C. 5:23-11.5(a), the enforcing agency shall proceed to its investigation.

2. If the employee files the complaint directly with the Department of Health or the Department of Community Affairs, the enforcing agency shall give the employer the opportunity to respond as outlined in N.J.A.C. 5:23-11.5.

5:23-11.7 Formal complaint procedure; health-related complaint

(a) Health-related complaints shall be reported to the Department of Health as follows:

1. The employee or employee's representative shall notify the Department of Health in writing of the grounds for the complaint. All relevant documents shall accompany the complaint.

2. Within five working days from receipt of the complaint, the Department of Health shall notify the employer that a complaint has been filed.

i. Upon request of the employee or the employee's representative filing the complaint, the employee's name shall be withheld from the notice to the employer.

ii. Where the employee exercises this right, the Department of Health shall notify the employer who, in turn, shall respond to the Department.

3. The Department of Health shall determine the extent of the problem.

4. If the extent of the problem indicates, the Department of Health shall determine or shall order the employer to have a qualified expert determine whether at least one of the following three conditions exists. The investigation for contaminants shall be conducted in accordance with the standards adopted in N.J.A.C. 5:23-11.3.

i. Known contaminants are clearly present;

ii. A definite point source of contamination exists; or

iii. Physical evidence indicates contaminants although exact identification has not been made.

5. If the study is contracted for by the building owner or employer, the building owner or employer shall report the results in writing to the Department of Health within five working days of its receipt.

6. If remedial action is indicated by the investigation, the Department of Health shall ensure that such remedial action is completed, provided this action relates to removal of identified source(s) of contamination or modification/abatement of workpractices which generate air contaminants. Any remedial action involving repairs or modifications to the general ventilation system shall be referred to the Department of Community Affairs for enforcement.

7. A complete record of this investigation shall be kept by both the Department of Health and the employer for five years. The employer shall provide the employee bringing the complaint with copies of studies undertaken, if any, and with written reports of work planned and completed to abate the problem.

8. If, in the course of the investigation, the Department of Health discovers that the complaint includes a building-related problem which will not be corrected by the remedial action undertaken, the Department of Health shall refer that problem to the Department of Community Affairs for investigation in accordance with N.J.A.C. 5:23-11.8. If health symptoms reported are determined to be due to building renovation or construction activities as outlined in Section 3019 of the BOCA National Building Code, 1990 edition, then the Department of Health shall refer the matter to the Department of Community Affairs for enforcement.

9. If any corrective action requires a construction permit under the Uniform Construction Code, the permit shall be obtained from the enforcing agency having jurisdiction.

5:23-11.8 Formal complaint procedure; building-related complaints

(a) Building-related complaints shall be reported to the Department of Community Affairs as follows:

1. The employee or the employee's representative shall notify the Department of Community Affairs in writing of the grounds for the complaint. All relevant documents shall accompany the complaint.

2. Within five working days from the receipt of the complaint, the Department of Community Affairs shall notify the employer that a complaint has been filed.

i. Upon the request of the employee or the employee's representative filing the complaint, the employee's name shall be withheld from the notice to the employer.

ii. Where the employee exercises this right, the Department of Community Affairs shall notify the employer who, in turn, shall respond to the Department.

3. The Department of Community Affairs shall investigate and determine the nature and extent of the problem. The investigation shall be conducted in accordance with the standards adopted in N.J.A.C. 5:23-11.3.

4. Where the Department, in its sole discretion, determines that an engineering evaluation of the building or portion of a building and its mechanical systems is warranted, then the building owner or employer shall, at its expense, provide for such engineering evaluation as the Department determines is necessary and shall

report the results in writing to the Department within five working days of receipt.

i. The comprehensive evaluation shall include, but not be limited to, monitoring of building air intake and exhaust flows, room temperatures, room air supply and return flows, and calculation of amount of outdoor air per occupant.

ii. Since the environmental parameters of temperature, radiation, humidity and air movement necessary for thermal comfort depend upon the occupant's clothing and activity level, the evaluation mentioned in (a)4i above shall take these items into consideration as recommended in the indoor air quality subcode. If humidity can be controlled by existing equipment in the building, it shall be evaluated in accordance with the indoor air quality subcode.

iii. The results of the ventilation and temperature evaluation, along with a plan for remediation of the indoor air quality, shall be submitted to the Department for review and approval. The remediation plan shall include target dates for the following:

(1) Evaluation of engineering control options;

(2) Selection of optimum control methods and completion of design;

(3) Procurements, installation and operation of selected control measures; and

(4) Testing and acceptance or modification or design of controls.

5. If remedial action is indicated by the investigation, the Department of Community Affairs shall ensure that such remedial action is undertaken and successfully completed.

6. A complete record of this investigation shall be kept by the Department of Community Affairs and the employer for five years. The employer shall provide the employee bringing the complaint with copies of studies undertaken, if any, and with written reports of work planned and completed to abate the problem.

7. If, in the course of the investigation, the Department of Community Affairs discovers that the complaint includes the existence of air contaminants which will not be corrected by any remedial action undertaken, the Department of Community Affairs shall refer the complaint to the Department of Health for investigation in accordance with N.J.A.C. 5:23-11.7.

8. If any corrective action requires a construction permit under the Uniform Construction Code, the permit shall be obtained from the enforcing agency having jurisdiction.

5:23-11.9 Renovation work/cleaning operations

(a) Renovation work, new construction and/or cleaning operations ***that results in the diffusion of dust, stone and other small particles, toxic gases or other harmful substances in quantities hazardous to health shall be safeguarded by means of local ventilation or other protective devices to insure the safety of the public and*** shall be performed in accordance with *[Section 3019 of the BOCA National Building Code, 1990 edition, incorporated herein by reference]* ***the requirements of the building subcode***. Renovation areas in occupied buildings shall be isolated and dust and debris shall be confined to the renovation or construction area. Following the completion of construction or renovation work, the employer should ensure that appropriate measures are taken to allow materials to offgas prior to employee occupancy.

(b) Before use of paints, adhesives, sealants, solvents, or installation of insulation, particle board, plywood, floor coverings, carpet backing, textiles, or other materials in the course of renovation or construction, the employer or the employer's hired contractor shall check product labels or seek and obtain information from the manufacturers of those products on whether or not they contain volatile organic compounds such as solvents, formaldehyde or isocyanates that could be emitted during regular use. This information shall be used to select products and to determine necessary measures to be taken to comply with this section.

5:23-11.10 Equipment maintenance

(a) The facility manager shall establish and follow a preventive maintenance schedule in accordance with the manufacturer's recommendations or with accepted practice for the following equipment and/or systems:

1. HVAC System. Scheduled maintenance of the HVAC system shall include checking and/or changing air filters, checking and/or changing belts, lubrication of equipment parts, checking the functioning of motors and confirming that all equipment is in operating order. Damaged or inoperable components shall be replaced or repaired as appropriate. Additionally, any reservoirs or parts of this system with standing water shall be checked for microbial growth.

2. Any other building systems equipment not listed above that requires routine maintenance in accordance with the manufacturer's instructions or, where there are no manufacturer's recommendations, with accepted maintenance practice.

(b) The maintenance schedule shall be updated to show all maintenance performed on equipment. The schedule shall include the date that such maintenance was performed and the name of the person or company performing the work.

(c) The maintenance schedule shall be made available upon request to any representative of an enforcing agency.

(d) Porous building materials contaminated with microbial growth shall be replaced or disinfected.

5:23-11.11 Penalties

(a) For noncompliance with the provisions of this subchapter with regard to building-related problems, orders shall be issued and penalties shall be assessed in accordance with N.J.A.C. 5:23, the Uniform Construction Code, of which this subchapter is a part, by the enforcing agency having jurisdiction.

(b) For noncompliance with the provisions of this subchapter with regard to health-related problems, orders shall be issued and penalties shall be assessed by the Department of Labor in accordance with the Public Employees Occupational Safety and Health Act.

5:23-11.12 Appeals of Department decisions

(a) Whenever the Department of Community Affairs shall act as the enforcing agency, appeals may be made to the Division of Housing and Development. Whenever the Department of Health shall act as the enforcing agency, orders shall be issued by and appeals may be made to the Department of Labor, Division of Workplace Standards. The case shall be adjudicated before the Office of Administrative Law and the final decision shall be issued by the Commissioner of the department involved. Such hearings shall be governed by the provisions of the Administrative Procedure Act (see N.J.S.A. 52:14B-1 et seq. and 52:14F-1 et seq. as implemented by N.J.A.C. 1:1).

(b) Appeals may be made by *[either]* the employee *[or]***,*** the employer ***or the building owner or manager*** *[as defined in this subchapter]*.

(c) The application for appeal shall be taken within 20 business days of the receipt of written notice of the decision of the department involved.

(d) The application for appeal shall be in writing, briefly setting forth the appellant's position. Such application shall state the name and address of the appellant, the address of the building or site in question and shall reference the specific sections of the rules in question, and the extent and nature of the appellant's reliance on them. The appellant may append to his written application any data or information that he may deem appropriate to his cause.

1. The department involved shall make available to the Office of Administrative Law the full record of the complaint which is the subject of the appeal.

(a)

NEW JERSEY COUNCIL ON AFFORDABLE HOUSING

Development Fees

Adopted Amendments: N.J.A.C. 5:92-1.3, 1.4 and 8.4

Adopted New Rules: N.J.A.C. 5:91-15 and 5:92-18

Proposed: September 16, 1991 at 23 N.J.R. 2813(b).

Adopted: December 4, 1991 by the New Jersey Council on Affordable Housing, Kevin Quince, Acting Chairman

Filed: December 26, 1991 as R.1992 d.45, **with substantive and technical changes** not requiring additional public notice and comment (See N.J.A.C. 1:30-4.3)

Authority: N.J.A.C. 52:27D-301 et seq., specifically 52:27D-307.

Effective Date: January 21, 1992.

Expiration Date: February 7, 1996.

Summary of Public Comments and Agency Responses:

The following individuals submitted written comments, which are on file at the offices of the Council on Affordable Housing.

Thomas A. Kelly, Senior Vice-President, Office of the Undersigned; Diego R. Visceglia, President, Summit Associates, Inc.; Michael Vetri, President, Bomar Builders, Inc.; Thomas S. Michnewicz, General Manager, The Prudential Property Company, Inc.; William T. Kitley, President, GRC Development Corp.; Douglas J. Kelly, Douglas J. Kelly Associates; Walter M. Smith, Exec. Vice-President, Hartz Mountain Industries, Inc.; Roger M. Steinhardt, Carnegie Center; Alan B. Landis, The Landis Group; William F. King, III, Nassau Park; Joseph D. Morris, President, The Morris Companies; David P. Cali, Cali Associates; Donald Kempler, Dowel Associates; Martin A. Cohn, Vornado, Inc.; Scott K. Parkins, President, Went Bros. & Storms Co.; James M. Bollerman, President, Commercial Realty & Resources Corp.; EAK Management Corp.; William D. Epstein, President, Epstein Associates, Inc.; Marcus D. Baker, Mgr. of Dev., Baker Properties; David Sanzari, President, Alfred Sanzari Enterprises; Charles T. Kavanaugh, Vice-President, The Blau & Berg Co.; Robert Heller, Paragon; Marilyn Pearlman, Director, Facility Planning, J.M. Huber Corp.; Joseph Riggs, President, Swedeland Forge; Anthony Zaccardi, Partner, The Linpro Company; Philip & Mary Ann Deacon, Deacon Homes; Samuel J. Paparone, President, Terruce Corp.; Alan R. Amaral, Fox Runne Associates; Alan R. Amaral, The Polamar Group Inc.; Rosalie L. Daniels, Comprehensive Realty Co., Inc.; John W. Rell, Vice-President, William Bowman Associates, Inc.; Milt Fitterman, Woodfield Homes, Inc.; Cheryl A. Kozloff, President, C.A.G. Management, Inc.; Earl J. Applegate, Taylor Wiseman & Taylor; Michael M. Solandz, Vice-President, Sunrise Communities, Inc.; Richard Dickson, Dickson Development Corporation; Lawrence A. Kramer, Kramer Lumber Co.; KRG Associates, Moritz and Company, Page One Associates; Darius Kapadia, APEX Homes Inc.; Robert W. Kean, III, Exec. Vice President, E'TOWN Properties, Inc.; Karl F. Held, Cygnet Core Corp.; Daniel T. Cottone, President, D.C. Construction Company, Inc.; Lee G. Webb, P.P., Flannery, Webb & Hansen, P.A.: Joseph C. DeCerbo, President, Atmostemp Inc. Heating & Cooling, A & D Development Co.; Charles F. Pratt, Ackeratt Associates, Inc.; Michael McGuinness, Director of Environmental Affairs; Nell McCann, Nell McCann Realty, Inc.; A. Andrew Rogers, President, A. Rogers Construction Co.; George T. Christine III, President, Christine Development Corp.; Walter B. Riley, President, Appleton Development Co.; Michael E. Merkle, Partner, The Linpro Co.; Joseph Mutinsky, Vice-President, Centex Real Estate Corp, N.J. Div.; Paul F. Farms, President, Paul Farms Construction Co., Inc.; Robert A. Fourniadis, Vice-President, Calton Homes; Anthony J. Bertino, Abert Development Corp., Bercon Builders, Inc., Willowbrook Development Corp.; Joseph Sharples, President, Sharples Construction Inc.; Craig W. Rohner, Almolind Inc.; Winfield E. Ziegenfuss, Jr., President, Scarborough Corp.; Thomas C. Schaeffer, President, Donald Burke, Robert Nabrzeski, Judy Richardson, Jack Champion, Art Dayton, Daystar Corp.; John J. Ploskonka, P.E., Concept Engineering Consultants; William G. Ridgway, Vice President, Berkeley Realty Group, Inc.; Joseph S. Van Osten, Exec. Vice President, Builders League of South Jersey; Robert Shaw; Robert E. Marshall, Past Pres., NJ Builders Association, R.E. Marshall Electric Co.; Frank A. Intessimoni, Vice-Pres., V & I Associates, Inc.; Thomas R. Whitesell, Chairman, Whitesell Construction Co., Inc.; Charles A. Gemberling, President, Tavistock Hills, Inc.; Bruce E. Toll, President, Toll Brothers; P.J. Hovnanian, Vice-President, Joseph McElwee, Proj. Mgr., S.J. Hovnanian, Vice-President, J.S. Hovnanian, President, Patrick Bunn, Project Manager, Four-H Builders Inc.; Kevin Scarborough, President, Kevin Scarborough, Inc.; Michael R. Fink; Thomas J. Maguire, Vice President, Carteret Realty Corp.; Kenneth J. McIlvaine, President, Gold Key Builders, Inc.; Ralph Mocci, Atlantic Realty Development Corp.; Christopher G. Gaffney, Dir. of Planning, Acquaviva Ltd.; Paul B. Hugus, Exec. Vice President, Midlantic National Bank; Herbert M. Iris, Iris Construction Company; Michael J. Gross, Esq., Giordano, Halleran & Ciesla; Eric K. Snyder, P.P., Eric K. Snyder & Associates, Inc.; Jeffrey Surenian, Esq., Lomell, Muccifori, Adler, Ravaschiere, Amabile, Pehlivanian; Jeffrey L. Abrams, Pike Development Corp.; Mark B. Lapping, Professor & Dean, Rutgers University; Peter Blicher, President, Pennington Properties, Inc.; Edward Mainardi, Sr., Main Land Dev. Corp.; Robert S. Powell, Jr., President, DKM Properties Corp.; Mark Strauss, Corporate Counsel, The Vizzini Group; Diana Fainberg, Vice President, Bellemead Development Corp.; William G. Dressel, Jr., Assistant Exec. Director, NJ State League of Municipalities; Robert H. Karen, President, Patrick J. O'Keefe, Executive Vice President, NJ Builders Association; W. Art Wells; Michael Schofield, Exec. Vice President, Eastman Construction Co., Inc.; Lawrence M. DiVietro, Jr., President, Land Dimensions Engineering; Thomas F. Carroll, III, Esq., Hill Wallack; Donald R. Daines, Vice President, River Vale Realty; Robert S. Rau, Jr.; Douglas J. Janacek, Esq., Crummy, Del Deo, Dolan, Griffinger & Vecchione; Thomas A. Meli, Sr.; Virginia A. Edwards, President, NJ Urban Counties Community Development Association; Harvey Schultz, President, H. Schultz & Co., Inc.; Jeffrey A. Horn, Executive Dir., National Association of Industrial Office Parks, NJ Chapter; George M. Raymond, AICP, AIA, PP, George Raymond Associates, Inc.; George Raymond for Court Masters P. Caton, D. Kinsey, K. Kominsky, J. Lynch, E. McKenzie, H. Moskowitz; Melvin R. Primas, Jr., Commissioner, Department of Community Affairs; Diane Sterner, Affordable Housing Network; Jeffrey Kantowitz, Esq., Greenbaum, Rowe, Smith, Ravin & Davis; Stephen Eisdorfer, Assistant Deputy Public Advocate, Department of Public Advocate, Division of Public Interest Advocacy; Robert R. Minutoli, Township of Lawrence; Margaret J. Gould, Clerk, Borough of Peapack & Gladstone; Mary Louise Allen, Clerk, Township of Hampton; David D. Gladfelter, Esq., Kessler, Tutek & Gladfelter, Attorney for Florence Township; Township of Holmdel, Ronald L. Reisner, Esq., Tucci, Iadanza & Reisner; Township of Plainsboro; Elizabeth Jaeger, Mayor, Township of Randolph; Francine Case, Housing Officer, Township of Monroe; Ronald A. Breslow, Esq., Attorney for Wayne Twp.; Borough Council of Waldwick, Borough of Waldwick; H. Steven Wood, Administrator, Township of Bernards; Alfred Reda, Administrator, Borough of West Paterson; Ralph G. Engleman, Mayor, Borough of Madison; Mayor and Council, Borough of Allendale; West Windsor Twp. Committee; Municipal Council, City of Clifton; Town Council, Town of Clinton; Township Council, Township of Old Bridge; Township Committee, Township of Freehold; City Council, City of Orange Township; Township Council, Township of Ocean; Township Committee, Township of Boonton; Robert L. Broughton, Government Services Director, County of Gloucester; Robert Bzik, Planning Director, Somerset County Planning Board;

COMMENT: The proposal is consistent with the Supreme court's direction in the *Holmdel* case. The manner in which development fees will be assessed, as a percentage of equalized assessed valuation is a fair common-sense approach to the imposition of fees.

RESPONSE: The Council believes that equalized assessed value is the most accurate measure of true value. Given that the fee is a percentage of value (rather than a flat fee) the Council believes its standard is sensitive to the different markets around the State.

COMMENT: The Council should not increase the maximum development fee. Such an increase would repress growth. Many communities are attempting to use fees to stop growth.

RESPONSE: The Council does not intend to increase the maximum development fee at this time.

COMMENT: Given the depressed state of the real estate market, municipalities should not be able to impose exorbitant development fees. Higher fees would make it even more difficult for lenders to justify lending new money to real estate. The Council should allow several years of economic recovery before even considering higher fees.

RESPONSE: The Council is certainly concerned that the fees not retard economic recovery. Therefore, the Council has established fees that it believes are reasonable. Also, it should be noted that no developer must pay any part of a development fee until the economy improves to the point that he or she is ready to build.

COMMENT: The one percent fee for non-residential development is too high. It is much higher than the fees most communities collected prior to the Holmdel Decision.

RESPONSE: In researching development fees, the Council was able to obtain 16 New Jersey ordinances and several ordinances from other parts of the country. The one percent fee was fairly consistent with the fees paid pursuant to these ordinances.

COMMENT: May a municipality contract with another agency to administer the 30 percent of the collected fees to be used for affordability assistance?

RESPONSE: Yes, subject to Council review.

COMMENT: If a developer pays fees in lieu of constructing low and moderate income units, the Council must ensure that the community is creating a realistic opportunity to address its fair share.

RESPONSE: The Council agrees and there is language to that effect in N.J.A.C. 5:92-18.10(c).

COMMENT: Given present economic conditions, it is imperative that the proposed development fees not be increased. In addition, for municipalities to collect and use linkage fees, they must be required to receive substantive certification or the fees will be used for exclusionary purposes.

RESPONSE: The Council does not intend to permit higher development fees at this time; and the rules do require participation in a process that provides a comprehensive review of a municipality's response to its fair share.

COMMENT: The one percent development fee standard for non-residential development should be replaced with a fee structure that considers the economic realities of various types of non-residential development.

RESPONSE: As explained in response to other comments, the Council developed its standard after consideration of various alternatives and determined that basing the fees on one percent of equalized assessed value was the fairest and best way to impose fees, since it takes the value of the development into account. The Council believes its standard is reasonable. If an alternative approach is presented, the Council will consider it.

COMMENT: The rule proposal does not permit the imposition of development fees on developments that have been granted preliminary approval unless the developer seeks a "substantial change." "Substantial change" should be defined as a substantial alteration in site layout, development density or types of uses.

RESPONSE: The Council agrees that a substantial alteration in site layout, development density or types of uses within a development would constitute a substantial change. Although it may not be possible to provide an all encompassing definition of "substantial change," the Council views preliminary approval as granting vested rights. Fees should not be imposed on developments with preliminary approval.

COMMENT: The rule proposal allows a six percent fee on additional units that result from a rezoning. May a municipality collect the six percent if the rezoning occurred prior to the rule adoption or substantive certification?

RESPONSE: The six percent fee refers to rezoning that occurs subsequent to the adoption of the rules. If a municipality receives the Council's approval to collect fees, it can collect the six percent fee on land rezoned between the Council's approval of fee collection and substantive certification.

COMMENT: It is unconstitutional for COAH to retroactively validate development fee ordinances which predate the adoption of the proposed development fee rule.

RESPONSE: The Council's position is that these fees were collected in lieu of building affordable units. Much of the land that generated these fees was developed. Thus, the developer that paid the fees received a benefit for paying them. Also, the land is no longer available for affordable housing. Thus, unless the fees are retained, a limited, irreplaceable resource (land) would have been dissipated without a contribution toward low and moderate income housing. Also, the fee ordinances were found to be invalidly adopted, not for lack of statutory authority, but because the Council had no rules. The Council now is curing this procedural defect.

COMMENT: The proposed rule permits municipalities to use 20 percent of the fees for administration and collect up to 50 percent of the fees at issuance of building permit. Both figures are excessive. It is more important for fees to be spent on housing. Also, with regards to the 50 percent collected at the issuance of the building permit, smaller developers often have limited cash flow when beginning a development.

RESPONSE: The cost of developing and implementing a housing element and fair share plan can be substantial. The Council wants to encourage communities to develop plans that comport with the Council's standards. The Council also wants communities to affirmatively market their programs, provide assistance to low and moderate income applicants and administer the turnover of sales and rental units. There is a cost associated with this work and the Council believes the 20 percent standard is reasonable. It is consistent with HUD standards and Council standards for administering rehabilitation programs and regional contribution agreements.

Fifty percent of the fees may be collected at building permit. The Council has not received information convincing it that the fee is excessive. The 50 percent standard is consistent with the requirements of many development fee ordinances that preceded the *Holmdel* decision.

COMMENT: COAH should change its definition of substandard housing to be more consistent with State and Federal programs.

RESPONSE: The Council is reviewing its definition of substandard housing as part of its comprehensive review of all its rules.

COMMENT: The Council should provide an opportunity for the public to rebut assertions that the proposed rules will: have a positive social impact; not have a detrimental impact on the economy; will not add substantial cost to market housing; and not affect New Jersey's economic recovery.

RESPONSE: In soliciting input from a variety of sources, including business community representatives, there was an indication that the proposed fee structure was reasonable and would not adversely impact the State's economy. The Council developed the proposed rules after considerable input from interested parties and groups, as well as input from the general public and considered all of the issues the commentor raises. After the Supreme Court issued the *Holmdel* decision, the Council immediately contacted municipal representatives, residential and non-residential developers, representatives of low and moderate income households, as well as representives of non-profits, the legislature and the executive branch. The Council formed a working group with these representatives that met over a period of four months. This group discussed numerous approaches to the imposition of development fees and appropriate standards. The progress of this working was reported to the Council at the Council's public meetings during this time. After the working group conducted its sessions, Council staff prepared a proposal and the Council held several public hearings on the proposal. The general public had the opportunity to comment on the proposal. Finally, the Council held a public hearing on November 8, 1991 on the proposal that appeared in the September 16, 1991 New Jersey Register. Douglas Opalski served as hearing officer, and recommended to the Council the adoption of the proposed amendments and rules with those changes appearing in this notice of adoption. The record of this hearing may be inspected or obtained by contacting Douglas Opalski, Executive Director, New Jersey Council on Affordable Housing, CN 813, Trenton, NJ 08625. The Council has offered the public and interested parties considerable opportunity to present their views on all issues raised in relation to the imposition of development fees.

COMMENT: The Council must closely monitor the use of impact fees.

RESPONSE: The Council will monitor the use of fees and believes the monitoring provisions included in the rules are adequate to do so.

COMMENT: The rule requires a projection of fees that will be collected based on past development activities. For developed communities, past development activity will not reflect possible collections in the future.

RESPONSE: Projections can indicate diminished possibilities due to lack of developable land or increased possibilities due, for example, to an expanded economy. The purpose of requiring a projection of fees is so the municipality can develop an idea of possible fee collections. If the municipality is relying on fee collections to implement its plan, it would be foolish for the municipality to overstate its projections. The reason for this is that the collection of the fee is linked to substantive certification. Substantive certification requires a community to implement its plan. Thus, if the plan requires money and fees are not forthcoming, the municipality would be responsible for providing the money by another means (including through the municipal budget or by issuance of a municipal bond).

COMMENT: The rule proposal allows municipalities too much flexibility in developing plans to spend money. COAH should require a capital improvement program as reflected in the Municipal Land Use Law.

RESPONSE: The Council believes its rules provide reasonable requirements on municipalities to develop plans to spend money. If experience demonstrates the need for a more structured approach, the Council will consider it.

COMMENT: The rule proposes to delete provisions in N.J.A.C. 5:92-8.4(d),(e),(f) and (g). A number of these provisions should be retained and incorporated in a reorganized rule.

RESPONSE: The Council believes that the deleted provisions were overly repetitive and proscriptive. The proposed rule embraces the basic principle that was established in the deleted sections. The basic principle is that a compensatory benefit, subject to the Council's review, is required to collect higher fees. As the Supreme Court has stated, development fees are the functional equivalent of mandatory set-asides on inclusionary developments. When density bonuses are provided a higher fee may be collected. These fees are similar to the internal subsidy required to build the average low and moderate income unit. Fees in lieu of building units must be reviewed by the Council to determine the existence of a realistic opportunity. All voluntary agreements in excess of the Council's fee structure must offer a financial incentive. These agreements are subject to Council review. The Council believes the rule provides sufficient checks to delete the sections raised by the commentator.

COMMENT: Municipalities should not be able to collect and spend development fees unless they petition for and receive substantive certification.

RESPONSE: The Council decided to incorporate substantive certification into the requirements for collecting and spending fees. After listening to proponents and opponents of substantive certification, the Council determined that the collection of fees should be an integral part of a comprehensive planning process that addresses the municipality's entire fair share. The fees should be reviewed in the context of how they help the municipality address the entire fair share. The Council believes that this approach is consistent with the Supreme Court's view that development fees are a constituent part of the overall plan to provide for the entire fair share that is subject to the Council's review and certification. The Fair Housing Act describes a comprehensive planning process that culminates in substantive certification. By allowing a municipality to collect development fees when it enters the substantive certification process, the possibility exists that the municipality will have collected money to implement the plan after receiving substantive certification.

COMMENT: Before urban aid municipalities collect fees they should adopt a local comprehensive housing affordability strategy (CHAS).

RESPONSE: Urban aid municipalities have historically housed a disproportionate share of the poor. The Legislature and State Planning Commission have recognized their special needs and the importance of reinvesting in these urban centers. The court and the Council have recognized their historic role of housing the poor by not making these cities responsible for reallocated present or prospective need. Given these facts, the Council believes it is enough to require urban aid cities to develop a plan to spend collected fees and to implement that plan.

COMMENT: The rule must "tighten" the time frames for building housing with collected fees. Municipalities that have received substantive certification should be required to submit final plans to spend development fees no later than six months after substantive certification.

RESPONSE: The Council does not believe that is makes sense to force municipalities to address an artificial deadline. If a community has already received certification or repose, the Council believes that the plan to spend money can be developed over time as the municipality develops a plan to address its next fair share. Similarly, for those municipalities that have not yet received certification the plan to spend money should be folded into substantive certification.

COMMENT: Municipalities that delay the substantive certification process should lose the ability to collect fees until substantive certification is granted.

RESPONSE: N.J.A.C. 5:92-18.17 provides conditions for the collection of fees upon cooperating with the Council to expedite substantive certification.

COMMENT: N.J.A.C. 5:92-18.6 is hard to follow. It should be separated into separate provisions following the format of N.J.A.C. 5:92-18.4 and 18.5.

RESPONSE: The Council has tried to write the rule to be as clear as possible. If the commentor has some specific language changes, they will be considered.

By way of clarification, N.J.A.C. 5:92-18.6 pertains to municipalities that: (1) have not collected fees and have received substantive certification; or (2) have not collected fees and are proceeding toward certification as of the effective date of this rule. N.J.A.C. 5:92-18.6(a) outlines general requirements for both types of municipalities. N.J.A.C. 5:92-18.6(b) is specific to those municipalities that are proceeding toward certification as of the effective date of this rule. N.J.A.C. 5:92-18.6(c) is specific to those municipalities that have received certification.

COMMENT: Allowing municipalities to collect six percent of the equalized assessed value for additional units permitted as a result of rezoning is excessive. This section should be deleted.

RESPONSE: The six percent fee is only allowed with a density bonus. The Council believes that such a fee attached to a density bonus is similar to inclusionary zoning where a developer is responsible for building a subsidized unit in exchange for density bonuses.

COMMENT: Negotiated agreements that permit higher fees should not be allowed to be in excess of the six percent of equalized assessed value.

RESPONSE: It is possible that the compensatory benefit offered by the municipalities would legitimize higher fees. The Council will review all such agreements to determine whether the compensatory benefit justifies the higher fee.

COMMENT: The rule proposal allows communities to exempt certain areas of a municipality from the exemption of a fee. Standards are needed to limit the applicability of these provisions to non-profit and public uses and perhaps enterprise zones or areas of identified distress.

RESPONSE: At this point, the Council does not believe it is necessary to limit municipal discretion in selecting areas to impose a fee. If a specific problem is brought to the Council's attention, the Council will examine this issue again.

COMMENT: If COAH permits the imposition of development fees at building permit, the fees collected should be based only on the number of units that received building permits.

RESPONSE: Development fees may only be collected at building permit on the units for which building permits are issued.

COMMENT: Housing trust fund accounts must be available for public inspection. Anyone who believes an account is being handled contrary to COAH requirements should be able to file a petition with COAH that would require COAH to audit the account.

RESPONSE: At this time, the Council will not develop additional rules related to housing trust fund accounts. The Council will not develop a rule that requires the Council to audit a specific account as a result of a complaint. The rule provides for monitoring reports. In addition, anyone can request a Council action through the Council's motion practice. Upon such a motion, the Council will follow the procedures it normally follows in deciding the merits of the motion.

COMMENT: The language that allows COAH to revoke development fee ordinance approval should be amended to require revocation if a municipality fails to comply with COAH rules.

RESPONSE: The rule allows the Council the discretion to gather the facts and structure a remedy that suits a specific situation.

COMMENT: N.J.A.C. 5:92-18.18(a) should be amended to require COAH to solicit plans to create or rehabilitate housing from "for-profit developers."

RESPONSE: The Council will consider the commentor's suggestion as part of any future amendment to the rule.

COMMENT: The rule should establish a process for COAH to hear and decide disputes between municipalities and developers over the amount of fees, time of collection, etc.

RESPONSE: N.J.A.C. 5:91-13 and 15 provide such a process.

COMMENT: When there is a determination that a fee has been illegally assessed and collected, the fee should be refunded to the individual who paid the fee unless there is a legal agreement with subsequent purchasers that the fee is to be refunded to another party.

RESPONSE: N.J.A.C. 5:92-15 and 5:92-18.8 provide for such a refund.

COMMENT: Once the development fee is assessed, it cannot be changed while an application proceeds through the approval process.

RESPONSE: If the fee is established as a condition of a preliminary approval, it may not be changed.

COMMENT: Municipalities should be able to retain fees collected prior to the *Holmdel* decision; however, the collection of fees should be part of a comprehensive planning process that leads to substantive certification.

RESPONSE: The Council agrees that a municipality only should be permitted to retain prior collected fees if the municipality has received approval of a plan to satisfy its entire fair share obligation. Accordingly, N.J.A.C. 5:92-18.4 and 18.5 specifically state that only municipalities that

have received or are proceeding towards substantive certification may avail themselves of the procedures for retention of fees.

COMMENT: Municipalities that impose fees should be required to include the economic impact of its fee within the context of current and projected economic conditions, development trends and the SDRP's objectives.

RESPONSE: Having developed standards for acceptable fees, the Council does not believe that municipalities need to justify the imposition of fees with an economic impact statement.

COMMENT: COAH should quantify the cost of subsidizing an average low and moderate income unit to provide guidance on acceptable fees pursuant to N.J.A.C. 5:92-18.10(c).

RESPONSE: N.J.A.C. 5:92-11.5(c) approximates the average internal subsidy of a moderate income unit to be $27,500. The average internal subsidy of a low income unit is estimated to be $12,500. Given a 50/50 split of low and moderate income units, the average internal subsidy is estimated at $20,000. The Council believes this provides sufficient guidance.

COMMENT: In addition to the six percent maximum established for residential development, COAH should establish a ceiling for non-residential development.

RESPONSE: The ceiling for non-residential development is one percent of equalized assessed value, unless the municipality and the developer can agree to compensatory benefits that allow a higher fee.

COMMENT: COAH should clarify its reasons for reviewing development fee agreements permitted by the rule. If COAH requires a review, it should place time limits on itself.

RESPONSE: There have been a number of developments that have required developers to build more than a 20 percent set-aside that have been taken over by lending institutions. It does not benefit the poor for a developer to agree to requirements that jeopardize the feasibility of a project in his or her zeal to please the municipality. Therefore such a review is required. The Council will conduct the review as quickly as it can.

COMMENT: COAH should specify how a municipality will receive credit against its fair share for collecting fees.

RESPONSE: The municipal plan to spend money will be reviewed with the entire housing element and fair share plan. The fee itself does not entitle a municipality to credit against its fair share. Rather, it is the housing unit that will be created by using the fee. Accordingly, to the extent that the municipality relies on fees to implement the plan, the municipality must understand that the responsibility to implement the plan remains, even if the fees have not yet been collected. The municipality, if it must use municipal dollars to implement the plan, may reimburse itself when the fees are collected.

COMMENT: Development fees used to improve roads to inclusionary sites should be coordinated with other county and municipal improvement programs.

RESPONSE: The commenter's thought is an enviable goal. However, the Council shall not impose additional transportation requirements beyond those already imposed by the State and counties.

COMMENT: The proposed rule does not address whether any portion of the fee may be used to address the needs of households earning less than 20 percent of a region's median income.

RESPONSE: The fees can clearly be used for any segment of the low and moderate income household population. In requiring 30 percent of the fees to be used for affordabilty assistance, the Council envisioned helping the very poor.

COMMENT: Municipalities should not be required to petition for substantive certification as a pre-condition for collecting fees. The incentive to undertake the expense and effort to submit to COAH's jurisdiction is not there. By maintaining this requirement, COAH will forfeit the opportunity to generate maximum development fees throughout the State.

RESPONSE: The Council's logic for requiring substantive certification has been outlined in the Summary Statement to the proposal and in a previous response to a comment.

COMMENT: COAH's maximum fees make no sense on a Statewide basis. The level of fees should be decided by the municipality.

RESPONSE: In *Holmdel*, the Supreme Court directed the Council to develop standards for the imposition of fees. The Supreme Court listed items it thought the Council should consider when developing standards. After considering these items and suggestions from various interest groups and the public, the Council determined that the best approach was to establish a definite fee that would be sensitive to individual markets. Such standards are important so that the Council can defend the ordinances and plans it certifies. It believes that the percentage of equalized assessed value standard is the most reasonable because it is based on actual value. The Council also believes that since the standard is a percentage, the fee collected is sensitive to the different markets in New Jersey. Where property values are high, a higher fee may be collected.

COMMENT: The Council should adopt higher maximum fees for residential and non-residential development.

RESPONSE: The Council has explained, in response to a previous comment, that the fees were established after soliciting input from a variety of sources. Certainly, the present state of the economy and the impact of the fees on subsequent purchases of homes were a consideration in establishing the fee standards.

COMMENT: The rule requires 30 percent of collected fees to be spent for affordability assistance. This could prevent a municipality from spending all of its development fee revenues on a municipally sponsored development for low and moderate income households.

RESPONSE: In developing these rules, the Council was very much aware that the poor have tremendous problems in mortgage qualification and in affording existing rents. The Council believes this requirement is important to addressing the challenge presented by the low and moderate income housing constitutional obligation.

COMMENT: If a municipality granted approval of a development prior to the *Holmdel* decision and one of the conditions of approval was the imposition of a fee, may the municipality begin to collect fees when it issues building permits for the development?

RESPONSE: Based on the manner in which the question is posed, the municipality may collect a fee at building permit providing the community has received approval to collect fees and the fee comports with the Council's standards. Upon more detailed review of the specific situation, the Council may decide the facts of the case warrant a different opinion.

COMMENT: The proposed rules should define the term equalized assessed value and provide guidance on its calculation.

RESPONSE: Equalized assessed value means the value of a property determined by the municipal tax assessor through a process designed to ensure that all property in the municipality is assessed at the same assessment ratio or ratios required by law. Estimates at the time of building permit may be obtained by the tax assessor utilizing estimates for construction cost. Final equalized assessed value will be determined at project completion by the municipal tax assessor. This definition has been added to the rules.

COMMENT: The proposed rules allow a municipality to collect up to 50 percent of the fees when a building permit is issued. In order to collect the fee, it is necessary to compute the fee, but the basis for the computation, the assessment, has not yet been made. May the municipality estimate the assessment when the building permit is issued, and later adjust the fee (by refunding any excess or collecting any deficiency) based on the actual assessment?

RESPONSE: Yes.

COMMENT: The maximum fees are too low given the value and scarcity of land as a necessary resource for housing, the dearth of funding resources for housing and the fact that the collection and use of development fees are part of a comprehensive regulatory scheme to be devoted entirely to affordable housing.

RESPONSE: The Council has explained the logic of its standard in previous comments. The Supreme Court has stated that development fees are the functional equivalent of mandatory set-asides. Set-asides and fees must be sensitive to the economic return of the developer. This economic return is not a function of the other factors raised by the commenter.

COMMENT: Municipalities should be able to use the 20 percent of the fees that may be devoted to administration to defray the costs of existing staff. The State has imposed onerous burdens on municipalities to manage affordable housing programs. Funding should be permitted to defray the costs.

RESPONSE: The Council may consider waivers to this rule on a case by case basis. The Council will want to know the duties of staff for which a waiver is required and will not consider staff whose responsibilities are not limited to addressing or implementing a housing element and fair share plan.

COMMENT: COAH should not limit the municipality's ability to collect fees at the issuance of building permit. Such a requirement limits the municipality in negotiations with developers.

RESPONSE: The Council does not believe a developer should pay a fee until he or she is ready to build. If the developer had to pay a fee prior to building permit, it might adversely affect his or her ability to build.

COMMENT: The maximum fees on all development should be more consistent with the internal subsidization within an inclusionary development.

RESPONSE: In general, inclusionary developments include a density bonus in exchange for a subsidized unit. To collect a fee that is equivalent to the internal subsidization within an inclusionary development, the Council believes a density bonus is required. Thus, without a density bonus, the Council does not believe it is appropriate to require a fee in excess of the one-half percent standard.

COMMENT: COAH should allow administrative fees to reimburse the municipality for application fees, inspection fees and other fees which the municipality has waived since *Mount Laurel II*.

RESPONSE: Fees waived to promote the production of affordable housing were consistent with the *Mount Laurel* requirement of eliminating unnecessary cost generation from the development process. Administrative funds cannot be used for this purpose.

COMMENT: Fees collected prior to the *Holmdel* decision should be presumed valid unless an objector can prove that the level of fees fails to meet the Supreme Court's standard of an adequate return on investment in a local market.

RESPONSE: The Supreme Court's *Holmdel* decision permitted fees when the Council develops standards. If fees collected exceed the Council's standard, they must be returned.

COMMENT: There is no need for the proposed rule to require a timetable or a schedule for the use of development fees.

RESPONSE: There is a need to schedule the use of development fees to create a realistic opportunity of addressing the municipal fair share within the constraints of the six year certification period.

COMMENT: The Council should allow municipalities to reduce the density from pre-existing levels and require developers to pay a fee in exchange for an increased density unless it can be proven by an objector that the rezoning was solely for the purpose of generating cash.

RESPONSE: The Council believes the concept precluding this activity is sound. If developers are to pay an increased fee, they should receive an increased benefit. The benefit received is questionable, if the increased zoning results in the zoning he or she already had. Municipalities that wish to pursue this issue may seek a waiver. The Council may then examine the facts of a specific case.

COMMENT: Rather than requiring detailed monitoring reports, COAH should require municipalities to keep certain records regarding the funds that will become public record subject to inspection. If a problem develops, COAH can determine what has happened to the funds.

RESPONSE: Municipalities must maintain records on these funds to comply with DCA's Division of Local Government Services (LGS). The Council does not believe that sharing this information will be onerous. Moreover, the Council views its monitoring responsibility as a constructive way of identifying small problems before they become major.

COMMENT: If a municipality begins to collect fees when it petitions for certification but fails to receive certification, does COAH have the authority to direct the spending of the collected fees?

RESPONSE: The Council believes it has the authority and has provided for directing fees when it deems necessary.

COMMENT: The rule proposal provides for a higher fee on residential developments provided there is a density bonus. For the Council to allow the higher fee, it must first determine that there has been a density bonus. How will the Council make that determination?

RESPONSE: N.J.A.C. 5:92-18.8(a)3 requires a description of any changes to the municipal zoning ordinance during the previous two years. It is anticipated that this information will be sufficient to allow the Council to determine if a density bonus has been granted. If the Council requires additional information, it reserves the right to obtain and review it.

COMMENT: Developers should be able to phase their payment of development fees based on a schedule similar to N.J.A.C. 5:92-10.4, which regulates the phasing of inclusionary developments.

RESPONSE: It is not clear how such a phasing schedule would work. If the commenter can present a specific phasing schedule, it may be considered by the Council.

COMMENT: While the rules address fees collected prior to December 13, 1990 and fees collected subsequent to the effective date of the rules, the rules are silent on all the monies received and ordinances adopted between December 13, 1990 and the effective date of the rules. Thus, the rules provide no guidance to numerous developers and municipalities that have adopted ordinances and expended fees in this twilight zone area.

RESPONSE: Prior to the Supreme Court's December 13, 1990 *Holmdel* decision, it was not clear whether the collection of mandatory development fees was permissible. After the decision, it was clear that the collection of fees would become legal when the Council developed standards. Thus, between the December 13, 1990 decision and the Council's approval for a municipality collecting fees, such collection was not permissible; and the fees collected should be returned to the developers that paid them.

COMMENT: The proposed rules repeal COAH's prior voluntary contribution standards and provide no guidance as to how COAH will review the voluntary ordinances and expenditures pursuant thereto prior to December 13, 1990.

RESPONSE: The proposed rules still permit voluntary contribution agreements within the context of a comprehensive review of a municipality's response to its entire fair share. See N.J.A.C. 5:92-18.10(d) and 18.11(b). The rules provide direction so communities can collect fees without negotiating agreements; and maintain the principle that higher fees may be negotiated with a compensatory benefit.

COMMENT: While the rules permit a municipality and developer to enter into an agreement whereby the developer will construct a 20 percent set-aside on-site or make a payment in lieu thereof, the rules only permit this arrangement if it would constitute a "realistic opportunity" without ever defining when a municipality and developer will be able to gauge whether their agreement creates the requisite realistic opportunity.

RESPONSE: The municipality, when negotiating the agreement, should consider how the agreement relates to the other components of its plan. The combination of fees and other techniques for creating affordable housing should comport with the Council's criteria for addressing the entire municipal fair share.

COMMENT: While the rules would permit a developer to pay a fee in lieu of constructing a 20 percent set-aside, the rules do not state whether 100 percent of those monies may be used to finance an RCA for the number of units that would otherwise be constructed on site or whether only 70 percent of those monies may be used for said purpose.

RESPONSE: At least 30 percent of these fees should be reserved for affordability assistance.

COMMENT: While the rules envision the potential that COAH, via a non-profit, may expend a municipality's monies to create affordable housing outside of the region, the rules do not state whether the subject municipality will secure credit towards its *Mount Laurel* responsibilities as a result of COAH's expenditure of its monies.

RESPONSE: The Council's rule does not mention addressing the municipal fair share outside of the housing region. The Council would only direct development fees to a non-profit if a community failed to perform. Communities that fail to perform or address the Council's rules will not receive credit towards their fair share.

COMMENT: The rules are confusing and difficult to follow. They should be restructured to avoid confusion and subsequent litigation.

RESPONSE: The Council has tried to make the rules as clear as possible. If the commenter can offer specific language changes, they will be considered.

COMMENT: The Council has no power to dictate to a court. Yet, the rules limit the power to collect fees of municipalities outside of the Council's jurisdiction.

RESPONSE: It is clearly not the Council's intent to dictate to a court. If the court has jurisdiction of an exclusionary zoning case, the court will decide whether the municipality may impose a development fee. The intent of including language regarding a case before the court was to emphasize that development fees may be imposed only within the context of a comprehensive review of a municipal response to its entire fair share. The Council amended language in the rules to clarify this intent.

COMMENT: Will a municipality proceeding towards a judgment of repose be required to submit its development fee ordinance for the Council's review?

RESPONSE: No, unless the court refers the review to the Council.

COMMENT: Municipalities that have received substantive certification should not have to seek Council approval of ordinances and have the Council determine the percentage of those fees may be retained. This process will require too much time. The interests of the poor are

best served if municipalities are free to conform their ordinances to COAH rules and reimburse developers for any overpayment without a full blown approval process.

RESPONSE: It is the Council's responsibility to review these ordinances. Without Council review, there would be no objective agency to determine whether the fees collected were at an acceptable level.

COMMENT: Municipalities that collected fees should not be able to keep them unless they conform to the provisions of N.J.A.C. 5:92-18.4 and 18.5, and 5:91-15.1(b) in the rule proposal.

RESPONSE: In order to collect, maintain and speed fees, municipalities must comply with the rules outlined in N.J.A.C. 5:91-15 and 5:92-18.

COMMENT: If a developer paid a development fee prior to December 13, 1990 and has not received a building permit, the fee should be returned to the developer.

RESPONSE: Specific cases will be reviewed as they come before the Council.

COMMENT: The requirement that 30 percent of the fees generated be used to render units more affordable should be eliminated. Municipalities should be allowed to utilize the fees to address their local housing problems as they see fit within the general guidelines of the Fair Housing Act.

RESPONSE: The Council believes that the 30 percent requirement for affordability assistance is necessary given the needs of the poor. Many of the poor require help in the form of downpayment assistance, mortgage subsidies and rental assistance. The development fees represent a new resource to address these needs.

COMMENT: There is no time limitation for the submission to be made if the municipality wishes to retain development fees collected prior to December 13, 1990. The Council should include a deadline.

RESPONSE: N.J.A.C. 5:92-18.8(a)9 requires municipalities that wish to retain development fees to make specific submissions within 90 days of the effective date of these rules.

COMMENT: If municipalities fail to comply with the deadlines of N.J.A.C. 5:91-15, they should be required to return fees to the developers that paid them.

RESPONSE: N.J.A.C. 5:91-15(c) requires the return of development fees to the developers that paid them if the municipality fails to comply with the deadlines in N.J.A.C. 5:91-15 or the deadline imposed by N.J.A.C. 5:92-18.8(a)9.

COMMENT: To retain fees collected prior to the Supreme Court's *Holmdel Builders Ass'n* decision, the municipality must receive the Council's approval of their proposed ordinances.

RESPONSE: N.J.A.C. 5:91-15 and 5:92-18.4, 18.5 and 18.8 set forth procedures for retention of previously collected fees. These procedures include Council review of proposed ordinances.

COMMENT: The Council should clarify its rule so it is clear that the terms "fees" and "fee" are interchangeable.

RESPONSE: The terms are interchangeable.

COMMENT: In N.J.A.C. 5:92-18.4(a), there is a reference to N.J.A.C. 5:92-15. The correct reference is 5:91-15.

RESPONSE: The commenter is correct. The error shall be corrected.

COMMENT: It is not clear at all whether it is the submission of plans to spend money or the spending of money which must take place prior to the expiration of the substantive certification period or judgment of repose. This comment is applicable to N.J.A.C. 5:92-18.4(c), 18.6(c) and 18.7(b).

RESPONSE: The references refer to the plan to spend money.

COMMENT: Since the equalized assessed value of a development will not be determined until a point in time substantially after issuance of the initial building permit, the provisions of N.J.A.C. 5:92-18.10(a) and 18.11(a) will be virtually impossible to coordinate with the provisions of N.J.A.C. 5:92-18.13 regarding the collection of the development fee. Some express provision should be made of the estimation of equalized assessed value which will then be adjusted once actual equalized value is determined.

RESPONSE: To collect half of the development fee at building permit, the equalized assessed value must be estimated; and an adjustment will be required if the estimate is not equal to the actual equalized assessed value.

COMMENT: Some express statement should be contained in the rules which prohibits down zoning which is intended to be upgraded in exchange for a developer's paying a higher development fee. This comment applies to N.J.A.C. 5:92-18.10(d) and 18.11(b). In connection with this comment, it is noted that the two year look-back provided in N.J.A.C. 5:92-18.8(a)3 is too short a period of time to prevent abuses.

RESPONSE: As indicated in a response to a previous comment,the Council has decided to retain this principle in its rule. If the Council decides the two year period is inadequate, the rule allows the Council to require additional information.

COMMENT: While the provision for an increased development fee in exchange or some "financial incentive" may be appropriate for residential development, this provision will not work for the vast majority of non-residential developments. In most instances non-residential development is limited not by the density of development in relation to land area, but by the constraints which are related to the parking/loading requirements applicable to the project. In most cases, the only way to increase parking within the given envelope of a particular piece of property would be to provide for what is referred to as structured parking, i.e., an above ground parking deck or an underground parking garage. The economic cost of structured parking is simply prohibitive for the vast majority of non-residential development and therefore precludes any meaningful density bonus.

RESPONSE: The Council recognized that it was difficult to prescribe a compensatory benefit which could result in an increased fee. Therefore, it did not do so. All increased fees shall be through individual negotiations, subject to the Council's review.

COMMENT: It is the Council's determination, as stated in the Summary, that development fees can only be authorized under the Fair Housing Act if municipalities are involved in a comprehensive planning process and obtain substantive certification. Accordingly, N.J.A.C. 5:92-18.17(b), which allows the Council to retain fees collected by the municipalities which do not actually obtain such certification, would appear unlawful. It is also inconsistent with the concept stated in N.J.A.C. 5:91-15(a), in connection with retaining development fees collected prior to December 13, 1990.

RESPONSE: By allowing municipalities to collect development fees when they petition, the Council is encouraging the collection of fees within the framework of a comprehensive review of the municipal response to its fair share. There is a risk that the municipality will not receive substantive certification. If that is the case, the municipality shall no longer collect development fees. It is quite possible however, that the municipality collected fees while proceeding through the Council's process. These fees may only be collected when the developer is ready to build. Once the developer has constructed his or her project, he has reaped the benefit and utilized land that could have been devoted to housing. Given the need for housing and the diminishing supply of land in New Jersey, the Council believes that it is appropriate to use the collected fees for low and moderate income housing.

COMMENT: It appears that the administrative expenses listed in the second sentence of N.J.A.C. 5:92-18.15(e) are permitted and are not subject to the 20 percent limitation on administrative expenses set forth in the first sentence of the section. It is suggested that the Council insert in the second sentence a requirement that such expenditures be reasonable in amount as determined by the Council on some periodic basis.

RESPONSE: All of the examples included in N.J.A.C. 5:92-18.15(e) are subject to the 20 percent limitation on administrative funds.

COMMENT: Fees collected from potential inclusionary development in lieu of on site construction of lower income units should be devoted to new construction and rehabilitation. Administrative costs, etc., should be met exclusively out of the proposed fees of one-half of one percent from non-inclusionary residential development and one percent from non-residential developments. Such requirements would provide an added incentive for municipalities to subject all developments to the maximum permitted fee level and to reasonably control administrative costs.

RESPONSE: The Council understands the commenter's concern. However, the suggestion would make it more difficult for municipalities to maintain records; and more difficult for the Council to monitor.

COMMENT: The provisions that allow municipalities to keep fees collected prior to the *Holmdel* decision are fair where the contributing developers were granted density bonuses. By the same token, where fees were collected without a corresponding bonus, the return of any difference between the amount paid and the amount authorized in the proposed rule should be refunded.

RESPONSE: The Council agrees.

COMMENT: The proposed rules would prohibit the use of development fees to reimburse municipalities for past housing activities. This provision should not be construed to prohibit municipalities who are

required to provide municipal funds, because they need to implement a certified plan prior to receiving development fees, from reimbursing themselves.

RESPONSE: Such a reimbursement is permissible.

COMMENT: The Council should modify its one-half and one percent fees to allow for higher fees under certain circumstances. The Council could require a strong standard of proof for a municipality to establish higher fees rather than those allowed by the rule, but should not absolutely deny higher fees.

RESPONSE: The Council believes a standard is necessary. It adds clarity to the Council's process. If the commenter can suggest criteria for a higher fee, they will be considered. As is, the rule does allow negotiations that may result in a higher fee.

COMMENT: Fees should not be collected on housing that is affordable to middle income individuals.

RESPONSE: As with most of the comments to the rule proposal, this issue was considered in developing the rules. By basing collection on a percentage of value, modestly priced market housing will be targeted for a lower fee. The rules do not preclude municipalities from excluding modestly priced market housing from a development fee.

COMMENT: The Council should consider alternate approaches to directing the expenditure of development fees when a municipality fails to comply with the proposed rules. Minor infractions, like submitting late reports, should not trigger a takeover by COAH of the municipality's development fee.

RESPONSE: The rules allow the Council to exercise discretion in directing the use of development fees.

COMMENT: Municipalities should have to receive certification prior to collecting fees.

RESPONSE: By allowing municipalities to collect development fees when they petition, they are more likely to have money available to implement the plan when they receive substantive certification. If the municipality does not expedite substantive certification, the Council can direct the money to an entity that will build low and moderate income housing. With the exception of urban aid cities, the municipality must receive substantive certification before spending collected fees.

COMMENT: Can a municipality continue to collect fees if it collects more than is necessary to implement its plan?

RESPONSE: A municipality may continue to collect fees as long as it conforms to the Council's rules. If the community collects fees in excess of what is required to implement its housing element and fair share plan, the community may retain the fees for the purposes permitted in N.J.A.C. 5:92-18.15.

COMMENT: Are tax abatements under the Fox-Lance Act exempt from the Council's rules?

RESPONSE: Yes.

COMMENT: Can a municipality conduct affordable housing seminars, with the 20 percent of the development fees allocated to administration? Specifically, can a municipality pay for a seminar to educate and qualify individuals for mortgages with administrative funds.

RESPONSE: Yes.

COMMENT: Municipalities that are under the jurisdiction of the court, either pursuing a judgment of repose or implementing a compliance plan, should not be subject to the Council's review of its development fee ordinance or spending plan. Such a requirement is beyond the Council's powers.

RESPONSE: As discussed earlier, the Council shall review ordinances and spending plans if they are referred by the court. The Council has added N.J.A.C. 5:92-18.1(e) to clarify this intent.

COMMENT: N.J.A.C. 5:92-18.7 seems to require any municipality under court jurisdiction, seeking to impose a development fee, to receive the Council's approval of the entire compliance plan. If this is the intent, the Council has exceeded its authority.

RESPONSE: The rule applies to municipalities that lie within the Council's jurisdiction.

COMMENT: Many settlements of cases before the Council and the courts included agreements where developers paid or will pay money to municipalities. The proposed rules should not void these agreements. Otherwise, the settlements will be disrupted and the production of affordable housing will be delayed.

RESPONSE: It is not the Council's intent for these rules to void settlement agreements that it or a court has approved. If these agreements have been approved as part of comprehensive review of the municipality's response to the entire fair share, the agreements should stand.

COMMENT: How does a municipality secure a mandatory and voluntary payment from multi-family developers the way it presumably can from single family and nonresidential developers. For example, if a parcel's pre-*Mount Laurel* zoning is multi-family and the Township therefore intends to impose a half percent mandatory fee, what standards can the parties rely upon to charge a voluntary fee over and above the mandatory?

RESPONSE: The standards in the rules are no different for multi-family housing. The rules anticipate a negotiation between a municipality and a developer. The municipality is expected to offer a compensatory benefit in exchange for a higher fee. Any agreement is subject to Council review.

COMMENT: If the developer has a range of single family unit types from $100,000 per unit to $500,000 per unit as a result of density bonuses, how do the parties determine whether the six percent fee for the additional units applies to the $100,000 units or the $500,000 units?

RESPONSE: The municipality should estimate the equalized assessed value for the entire project and divide the total value by the number of units to determine an average per unit value. The municipality should then determine the potential yield of the site prior to offering a density bonus. The pre-density bonus yield should then be multiplied by the average per unit value. This product may be multiplied by the one-half of one percent to compute part of the fee. The remaining fee may be computed by multiplying the additional units permitted by the density bonus by the average per unit cost by six percent of equalized assessed value.

COMMENT: Several other questions arise if a municipality wishes to enter into a payment in lieu agreement with a developer to fund an RCA. If the RCA cost less than the internal cost of subsidization, may the municipality receive the full cost of internal subsidization. If the RCA cost more than the internal cost of subsidization and the developer is willing to pay the greater fee to get the units off site, may the municipalitiy charge more. If the developer is willing to make the RCA payments in five equal annual installments in order to get the units off-site, is COAH going to insist on a payment of 50 percent upon receipt of a building permit and 50 percent at the certification of occupancy stage?

RESPONSE: The fee permitted is not related to the ultimate use of money collected. In addition, the payment schedule clearly allows the collection of up to 50 percent of the fee at building permit.

COMMENT: The Council should not allow development fees to be used to implement a regional contribution agreement. Using funds, esepecially those collected from non-residential uses, to create housing outside the municipality is contrary to the strong link between jobs and housing responsibility established by the court.

RESPONSE: The Supreme Court determined that the authorization to impose development fees lies in the Fair Housing Act. The Fair Housing Act established a comprehensive approach of addressing municipal fair share and provided municipalities the opportunity to address up to one-half the obligation via regional contribution agreements. Therefore, regional contribution agreements are a legitimate method of addressing the fair share obligation and are a permitted use of development fee collection.

COMMENT: The Council should delete the provisions in the rule that allow for negotiated agreements. Such agreements are inconsistent with the concept of comprehensive planning and are illegal.

RESPONSE: Agreements voluntarily negotiated between a developer and municipality routinely are done in the *Mt. Laurel* context. Indeed, almost anytime a *Mt. Laurel* case is settled, there is such an agreement. The agreement must be reviewed by the Council to ensure that it is feasible and constitutes sound planning and will provide a realistic opportunity for the fair share. Also, the agreement must be implemented by an ordinance that generally provides the developer with the option of building the affordable units or paying a fee in lieu of the units.

COMMENT: The rule proposal requires a community to petition for substantive certification to collect development fees. Such a provision is required by law. By statute, the Council has jurisdiction over municipalities that petition for substantive certification. The Supreme Court did not and could not expand the Council's jurisdiction. To the contrary, the court expressly envisioned that the Council's review of development fee ordinances would be in the context of the agency's broader review of the municipal housing element and fair share plan.

RESPONSE: As discussed in previous comments, the Council is neither seeking to expand its jurisdiction nor usurp the court's jurisdiction. The Council has amended the rules to clarify its intent that develop-

ment fees be collected within the context of a comprehensive review of a municipality's response to its entire fair share.

COMMENT: The requirement linking substantive certification to the collection of development fees is sound policy. The appropriateness of the municipality's plan to spend money can only be assessed in light of its housing element and fair share plan, taken as a whole. Indeed, an ordinance that might appear entirely benign when evaluated in isolation could, when viewed in context, turn out to be an impediment to addressing the municipal obligation.

RESPONSE: The Council agrees with the commenter.

COMMENT: The Council's decision to base development fees on equalized assessed value will result in higher fees than are warranted for non-residential development. Equalized assessed value results in over-valuing non-residential property.

RESPONSE: As mentioned in a previous comment, the Council's standard is consistent with other development fees paid in New Jersey and in other parts of the country. Therefore, the Council believes its standard is reasonable. Since proposing the rules, the Council has been asked to raise and lower the fee by parties with different interests. However, the Council has seen no evidence that it believes warrants a change in the standard.

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 15. RETENTION OF DEVELOPMENT FEES

5:91-15.1 Procedures for retaining development fees

(a) Municipalities that collected development fees prior to December 13, 1990, as outlined in N.J.A.C. 5:92-18.4 and 5, may retain at least some portion of such fees by conforming to the requirements of N.J.A.C. 5:92-18.8(a)9 (Development fee ordinance review).

(b) In addition, municipalities that collected development fees prior to December 13, 1990 shall provide notice to each developer that paid a development fee of its request for Council review of the development fee ordinance. The municipality shall provide each developer with a copy of all information required in N.J.A.C. 5:92-18.8(a)9 within seven days of the governing body's resolution to request review of its development fee ordinance.

(c) Municipalities that fail to provide all information to the Council, or fail to provide information to developers that paid development fees prior to December 13, 1990 within the time limits imposed by the Council, may be required by the Council to return the development fees to the developers that paid them.

(d) Developers shall have 14 days from the receipt of the information provided in (b) above to submit comments to the Council regarding the submissions made by the municipality. The developer shall simultaneously serve the municipality with a copy of the comments.

(e) Following the submissions from municipalities and developers, the Council shall review and approve or disapprove the ordinance. The Council may also determine the revenues that the municipality must return to the developers that paid the fees. Municipalities shall be able to retain fees that conform to the standards in this subchapter and N.J.A.C. 5:92-18.

5:92-1.3 Definitions

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

...

"Development fees" means money paid by an individual, person, partnership, association, company or corporation for the improvement of property as permitted in N.J.A.C. 5:92-18.

...

"Equalized assessed value" means the value of a property determined by the municipal tax assessor through a process designed to ensure that all property in the municipality is assesed at the same assessment ratio or ratios required by law. Estimates at the time of building permit may be obtained by the tax assessor utilizing estimates for construction cost. Final equalized assessed value will be determined at project completion by the municipal tax assessor.

...

"Judgment of repose" means a judgment issued by the Superior Court approving a municipality's plan to satisfy its fair share obligation.

...

5:92-1.4 Housing element

(a) A municipality's housing element shall be designed to achieve the goal of access to affordable housing to meet present and prospective housing needs, with particular attention to low and moderate income housing, and shall contain at least:

1.-5. (No change.)

6. If a development fee is imposed pursuant to N.J.A.C. 5:92-18, a copy of the spending plan as required in (b) below;

Recodify 6.-12. as 7.-13. (No change in text.)

(b) If a municipality intends to collect development fees, it shall prepare a plan to spend development fees that includes the following:

1. A projection of revenues anticipated from imposing fees on development, based on historic development activity;

2. A description of the administrative mechanism that the municipality will use to collect and distribute revenues;

3. A description of the anticipated use of all development fees;

4. A schedule for the creation or rehabilitation of housing units;

5. If the municipality envisions being responsible for public sector or non-profit construction of housing, a pro-forma statement of the anticipated costs and revenues associated with the development; and

6. The manner through which the municipality will address any expected or unexpected shortfall if the anticipated revenues from development fees are not sufficient to implement the plan.

5:92-8.4 Vacant sites

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

SUBCHAPTER 18. DEVELOPMENT FEES

5:92-18.1 Purpose

(a) The New Jersey Supreme Court, in *Holmdel Builder's Ass'n v. Holmdel Township,* 121 *N.J.* 550 (1990) (issued December 13, 1990), determined that mandatory development fees are both statutorily and constitutionally permissable. The Court further anticipated that the Council would promulgate appropriate development fee rules specifying, among other things, the standards for these development fees. The purpose of this subchapter is to provide such guidance.

(b) Except as otherwise provided to these rules, a municipality may only collect and spend development fees through participation in the Council's substantive certification process ***or through a comprehensive review designed to achieve a judgment of repose***. The exceptions to this rule are set forth in N.J.A.C. 5:92-18.3 through 18.6 inclusive. These exceptions are permitted because some communities have already received substantive certification; others have achieved a judgment of repose; and still others are litigating exclusionary zoning cases. Some of these municipalities have already collected fees. The Council has created a process for these municipalities to collect and/or retain fees. However, in the future, the ability to collect and spend development fees shall be limited to municipalities that petition for substantive certification. Urban aid municipalities are also considered a special case. These municipalities have historically housed a disproportionate share of New Jersey's poor and, as a result, may have exceedingly high fair share obligations that would be extremely difficult to address in a six year period. Therefore, the Council will allow these municipalities to collect fees outside of substantive certification provided the municipality adheres to the rules in this subchapter. The rules that follow provide basic requirements for collecting and spending development fees. They then provide additional requirements for municipalities in various categories.

(c) While the rules that follow shall govern those municipalities that petition for substantive certification and urban aid cities, the Council will review development fee ordinances and plans to spend money upon the request of the court with jurisdiction in an exclusionary zoning lawsuit.

5:92-18.2 Basic requirements

(a) Except as set forth in N.J.A.C. 5:92-18.3 through 18.6 inclusive, the Council shall not review or approve any development fee ordinance unless the municipality has petitioned for substantive certification.

(b) No municipality shall collect development fees unless the municipality has adopted a housing element and the Council has approved its development fee ordinance.

(c) No municipality shall spend development fees unless the Council has approved a plan for spending such fees. With the exception provided for in N.J.A.C. 5:92-18.3, municipalities that have not received substantive certification *[or a judgment of repose]* shall not spend development fees until they have received substantive certification *[or a judgment of repose]*.

5:92-18.3 Urban aid municipalities

Municipalities that qualify for state aid pursuant to P.L.1978, c.14 (N.J.S.A. 52:27D-178 et seq.) shall not collect or spend development fees without conforming to the requirements set forth in N.J.A.C. 5:92-18.2. Council approval of the municipal development fee ordinance shall allow the municipality to collect development fees for a period specified by the Council not to exceed six years, commencing with the Council's approval of the development fee ordinance. Notwithstanding any other provision of this Chapter, these municipalities shall have one year from the Council's approval of their development fee ordinance to submit a plan for spending development fees. These municipalities may collect and spend development fees without petitioning for substantive certification.

5:92-18.4 Municipalities that collected fees and received certification*[/repose]*

(a) This rule deals with the category of municipalities that have collected development fees prior to December 13, 1990 and have received substantive certification *[or a judgment of repose]*. These municipalities may petition the Council to review and approve an ordinance regarding development fees collected prior to December 13, 1990. The Council may approve such ordinance, provided it conforms to the procedures in N.J.A.C. 5:92-18.8, Development fee ordinance review and N.J.A.C. *[5:92-15]* ***5:91-15***, Procedures for retaining development fees.

(b) The municipalities in this category shall not resume collecting development fees or spend development fees without conforming to N.J.A.C. 5:92-18.2.

(c) Notwithstanding any other provision of this chapter, the municipalities in this category shall submit plans to spend the development fees (regardless of when these fees were collected) prior to the expiration of their substantive certification periods *[or their judgments of repose]*.

5:92-18.5 Municipalities that collected fees and are proceeding toward certification*[/repose]*

(a) This rule deals with the category of municipalities that have collected development fees prior to December 13, 1990 and have petitioned for substantive certification *[or are proceeding toward a judgment of repose]*. These municipalities may petition the Council to review and approve an ordinance regarding development fees collected prior to December 13, 1990. The Council may approve such ordinance provided they conform to the procedures in N.J.A.C. 5:92-18.8, Development fee ordinance review, and N.J.A.C. 5:91-15, Procedures for retaining development fees.

(b) The municipalities in this category shall not resume collecting development fees or spend development fees without conforming to N.J.A.C. 5:92-18.2.

(c) Notwithstanding any other provision of this chapter, municipalities in this category shall submit plans to spend the development fees and receive approval of these plans prior to receiving substantive certification *[or a judgment of repose]*.

5:92-18.6 Municipalities that have not collected fees that have received substantive certification, *[a judgment of repose]* or are proceeding toward substantive certification *[or a judgment of repose]*

(a) This rule deals with municipalities that have not collected development fees and that have received substantive certification*[, a judgment of repose]* or are proceeding toward substantive certification *[or a judgment of repose]*. Municipalities in this category shall not collect fees until they have adopted a housing element and received the Council's approval of its development fee ordinance. No municipality in this category shall spend development fees unless the Council has approved a plan for spending such fees.

(b) Municipalities that have not received substantive certification *[or a judgment of repose]* shall submit plans for spending the development fees and receive approval for these plans prior to receiving substantive certification *[or a judgment of repose]*.

(c) Notwithstanding any provision of this chapter, municipalities in this category that have received substantive certification *[or a judgment of repose]* shall submit plans for spending the development fees prior to the expiration of the substantive certification period or period of repose.

5:92-18.7 Other municipalities that have not collected fees

(a) Except as provided for in N.J.A.C. 5:92-18.3 through 18.6 inclusive, municipalities that have not collected fees shall not collect fees until they have adopted a housing element, petitioned for substantive certification and received the Council's approval of its development fee ordinance.

(b) No municipality in this category may spend development fees unless the Council has approved a plan for spending such fees and granted substantive certification. Municipalities shall submit these plans when they petition for substantive certification. Municipalities that have petitioned for substantive certification prior to *[the effective date of this rule]* ***January 21, 1992*** shall submit plans for spending development fees prior to receiving substantive certification.

5:92-18.8 Development fee ordinance review

(a) The Council shall not review a development fee ordinance unless the municipality has submitted:

1. A copy of an adopted housing element that complies with the Municipal Land Use Law, N.J.S.A. 40:55D et seq.;

2. A copy of the proposed ordinance designed to collect development fees;

3. A description of any changes to the municipal zoning ordinance during the previous two years;

4. A request in the form of a resolution by the governing body for the Council to review the development fee ordinance;

5. If the municipality has received a court ordered judgment of repose, a copy of the compliance plan, implementation ordinances and information regarding the period of time encompassed by the judgment of repose;

6. A description of the types of developments that will be subject to fees;

7. A description of the amount and nature of the fees imposed;

8. A statement regarding the use of density bonuses or other devices to counterbalance development fees; and

9. If development fees have been collected prior to December 13, 1990 and the municipality wishes to retain some or all of these fees, the following information must be submitted to the Council *[within 90 days of the effective date of this rule]* ***by April 20, 1992***:

i. A copy of the ordinance pursuant to which the fees were collected; and the proposed ordinance, if any, designed to reimpose some or all of these fees;

ii. A request in the form of a resolution by the governing body for the Council to review the development fee ordinance used to collect the fees;

iii. The name of each developer that paid a development fee;

iv. The amount paid by each developer and the formula for the amount collected;

v. The equalized assessed value of each development at the time of collection;

vi. An accounting of all money collected and identification of the municipal account that houses all development fees;

vii. If any money collected through a development fee ordinance has been spent, an accounting of the expenditure; and

viii. Any other information the Council may require.

(b) Municipalities that collected fees prior to December 13, 1990, shall be able to retain such revenues or reimpose such fees to the extent that the fees collected by the municipality do not exceed the amount permitted under these regulations. Municipalities interested in retaining development fees collected prior to December 13, 1990 shall also conform to the procedures outlined in N.J.A.C. 5:91-15 (Procedures for Retaining Development Fees).

5:92-18.9 Content of plans to spend development fees

Plans to spend development fees shall consist of the information required by N.J.A.C. 5:92-1.4(b).

5:92-18.10 Development fees; residential

(a) Residential development fees shall be a maximum of one-half of one percent of the equalized assessed value for residential development, provided no increased density is permitted.

(b) Where there is a zoning change that permits increased residential development, the municipality may impose a development fee of up to six percent of the equalized assessed value for each additional unit that may be realized as a result of the rezoning. Example: if a rezoning allowed two extra units to be constructed, the fees could equal one-half of one percent of equalized assessed value on the first unit*s* and six percent of equalized assessed value on the two incremental units.

(c) Municipalities may allow developers of sites zoned for inclusionary development to pay a fee in lieu of building low and moderate income units provided the Council determines the municipal housing element and fair share plan provides a realistic opportunity for addressing the municipal fair share obligation. The fee may equal the cost of subsidizing the low and moderate income units that are replaced by the development fee. For example, an inclusionary development may include a 20 percent set-aside, no set-aside and a fee that is the equivalent of a 20 percent set-aside or a combination of a fee and set-aside that is the equivalent of a 20 percent set-aside.

(d) Municipalities may collect fees exceeding those permitted in this section provided they enter into agreements with developers that offer a financial incentive for paying higher fees. The financial incentive may be in the form of a tax abatement. No agreement may provide for a voluntary developer fee without also providing for a comparable off-setting incentive. All agreements are subject to Council approval.

5:92-18.11 Development fees; non-residential

(a) Non-residential development fees shall be a maximum of one percent of the equalized assessed value for non-residential development.

(b) Municipalities may collect fees exceeding those permitted in this section provided they enter into agreements with developers that offer a financial incentive for paying higher fees. Such agreements may include, but are not limited to, a tax abatement, increased commercial/industrial square footage, increased commercial/industrial lot coverage and/or increased commercial/industrial impervious coverage in return for an increased fee. The fee negotiated must bear a reasonable relationship to the additional commercial/industrial consideration to be received. All agreements are subject to Council approval.

5:92-18.12 Eligible exactions, ineligible exactions and exemptions

(a) Except as provided for in N.J.A.C. 5:92-18.10, inclusionary developments shall be exempt from development fees. All other forms of new construction may be subject to development fees.

(b) Development fees may be collected when an existing structure is expanded or undergoes a more intense use. The development fee that may be collected shall be calculated on the increase in the equalized assessed value of the improved structure.

(c) Municipalities shall not reduce densities from pre-existing levels and then require developers to pay development fees in exchange for an increased density.

(d) Developments that have received preliminary or final approval or final approval prior to the imposition of a municipal development fee shall be exempt from development fees unless the developer seeks a *[major]* ***substantial*** change in the approval. Municipalities that collected development fees prior to December 13, 1990 may not retain any fees imposed subsequent to granting preliminary or final development approval, unless the developer seeks a *[major]* ***substantial*** change in the approval.

(e) Municipalities may exempt specific types of development from fees or may impose lower fees for specific types of development, provided each classification of development is addressed consistently. For example, all retail development may be exempt from fees.

(f) Municipalities may exempt specific areas of the municipality from the imposition of fees or reduce fees in order to promote development in specific areas of the municipality.

5:92-18.13 Collection of fees

Municipalities may collect up to 50 percent of the fee on any specific development at the time of issuance of the building permit. The remaining portion may be collected at the issuance of the certificate of occupancy.

5:92-18.14 Housing trust fund

All development fees shall be deposited in a separate interest bearing housing trust fund. In establishing the housing trust fund, the municipality shall provide whatever express written authorization that may be required by the bank to permit the Council to direct the disbursement of development fees pursuant to N.J.A.C. 5:92-18.17 and 18.18.

5:92-18.15 Use of money

(a) A municipality may use revenues collected from development fees for any activity approved by the Council for addressing the municipal fair share. Such activities include, but are not limited to: rehabilitation, new construction, regional contribution agreements, purchase of land for low and moderate income housing, improvement of land to be used for low and moderate income housing, extensions and/or improvements of roads and infrastructure to low and moderate income housing sites, assistance designed to render units to be more affordable and administration of the implementation of the housing element. Municipalities are encouraged to use development fee revenues to attract other funds such as, but not limited to, available public subsidies and funds from private lending institutions.

(b) Funds shall not be expended to reimburse municipalities for past housing activities.

(c) At least 30 percent of the revenues collected from development fees shall be devoted to render units more affordable. Examples of such activities include, but are not limited to: downpayment assistance, low interest loans, and rental assistance. This requirement may be waived in whole or in part when the municipality demonstrates the ability to address the requirement of affordability assistance from another source.

(d) Municipalities may contract with a private or public entity to administer the implementation of any part of its housing element, including the requirement for affordability assistance.

(e) No more than 20 percent of the revenues collected from development fees shall be expended on administration, including, but not limited to, salaries and benefits for municipal employees or consultant fees necessary to develop or implement: a rehabilitation program; a new construction program; a regional contribution agreement; a housing element; and an affirmative marketing program. Administrative funds may be used for: income qualification of households; monitoring the turnover of sale and rental units; and compliance with Council monitoring requirements. Development fees shall not be used to defray the costs of existing staff.

5:92-18.16 Monitoring

Municipalities that collect development fees shall complete and return all monitoring forms related to the collection of fees, expen-

diture of revenues and implementation of the plan certified by the Council or approved by the court. Quarterly financial reports, and annual program implementation and auditing reports, shall be completed on forms designed by the Council.

5:92-18.17 Penalties

(a) The municipality's ability to collect fees and the Council's approval of an ordinance and spending plan shall be conditioned on compliance with all requirements of this subchapter. Occurrence of the following may result in the Council taking an action pursuant to (b) below:

1. Failure to submit a plan pursuant to N.J.A.C. 5:92-1.4(b) within the time limits imposed by the Council;

2. Failure to meet deadlines for information required by the Council in its review of a housing element, development fee ordinance, or plan for spending fees;

3. Failure to proceed through the Council's administrative process toward substantive certification in a timely manner;

4. Failure to address the Council's conditions for approval of a plan to spend development fees within the deadlines imposed by the Council;

5. Failure to address the Council's conditions for substantive certification within deadlines imposed by the Council;

6. Failure to submit accurate monitoring reports within the time limits imposed by the Council;

7. Failure to implement the plan to spend development fees within the time limits imposed by the Council, or within reasonable extensions granted by the Council;

8. Expenditure of development fees on activities not permitted by the Council;

9. Revocation of certification; or

10. Other good cause demonstrating that the revenues are not being used for the intended purpose.

(b) Consistent with this rule, any ordinance adopted by a municipality for the purpose of imposing and collecting development fees shall provide that, in the event that any of the conditions described in N.J.A.C. 5:92-18.17(a) occur, the Council shall be authorized, on behalf of the municipality, to direct the manner in which all development fees collected pursuant to that ordinance shall be expended. Should any such condition occur, such revenues shall immediately become available for expenditure at the direction of the Council upon the municipal clerk's receipt of written notification from the Council that such a condition has occurred. In furtherance of the foregoing, any such municipality shall, in establishing a bank account pursuant to N.J.A.C. 5:92-18.14, ensure that the municipality has provided whatever express written authorization may be required by the bank to permit the Council to direct the disbursement of such revenues from the account following the delivery to the bank of the aforementioned written notification provided by the Council to the municipality's clerk.

(c) The Council may, after hearing pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., revoke development fee ordinance approval for any municipality that fails to comply with the requirements of this subchapter. Where such approval has been revoked, the Council shall not approve an ordinance permitting such municipality to collect development fees for the remaining period of the substantive certification period *[or judgment of repose]*. With regard to municipalities that qualify for state aid pursuant to P.L. 1978, c.14 (N.J.S.A. 52:27D-178 et seq.) the Council shall not approve any ordinance permitting such municipalities to collect development fees for the remainder of the approval period (of up to six years) following a Council determination that they failed to comply with this subchapter.

(d) Neither loss of development fees, nor loss of the municipality's ability to collect development fees shall alter the municipality's responsibilities pursuant to substantive certification *[or a court ordered judgment of repose]*.

5:92-18.18 Designation of entities to receive development fees

(a) The Council shall solicit plans from public sector entities and non-profit agencies to create or rehabilitate affordable housing.

(b) The Council shall designate such agencies to receive revenues from development fees when the Council takes an action pursuant to N.J.A.C. 5:92-18.17.

(c) To the extent practicable, when the Council takes an action pursuant to N.J.A.C. 5:92-18.17, the Council shall assign development fee revenues to projects planned within the municipality that generated the revenues or within close proximity to the municipality (such as within the county or region).

5:92-18.19 Ongoing collection of fees

(a) Municipalities that qualify for State aid pursuant to P.L. 1978, c.14 (N.J.S.A. 52:27D-178 et seq.) and have received Council approval to collect development fees, shall not collect such fees for more than the period specified by the Council, not to exceed a six year period unless the municipality has refiled an adopted housing element with the Council and received the Council's approval of its development fee ordinance. These municipalities shall submit a plan for spending development fees within one year of the Council's approval of their development fee ordinance. Municipalities that fail to renew their ability to collect development fees within the six year period may resume the collection of development fees by complying with the requirements of this section.

(b) Except as provided for in (a) above, the ability for all other municipalities to collect development fees shall expire with their substantive certification *[or judgment of repose]* unless the municipality has filed an adopted housing element with the Council; petitioned for substantive certification; and received the Council's approval of its development fee ordinance. Municipalities that fail to renew their ability to collect development fees prior to the expiration of their substantive certification *[or judgment of repose]* may resume the collection of development fees by complying with the requirements of this section.

5:92-18.20 Severability

If any part of this subchapter shall be held invalid, the holding shall not affect the validity of the remaining parts of this subchapter. If any part of this subchapter is held invalid in one or more of their applications, the rules shall remain in effect in all valid applications that are severable from the invalid application.

EDUCATION

(a)

DIVISION OF FINANCE

Notice of Administrative Correction
Tuition for Private Schools for the Handicapped
Tuition Rate Procedures
N.J.A.C. 6:20-4.1

Take notice that the Department of Education has requested, and the Office of Administrative Law has agreed to permit, the deletion of the phrase, "(twice the increase in state average net current expense budget)," from N.J.A.C. 6:20-4.1(g)1ii. The most recent amendments to this rule (see 23 N.J.R. 1733(a) and 2634(a)) deleted, pursuant to the Quality Education Act, P.L.1990, c.52, this text concerning the tentative tuition rate calculation set forth in former N.J.A.C. 6:20-4.1(f)2, and replaced it with a new calculation based upon PCI (see N.J.S.A. 18A:7D-2) at N.J.A.C. 6:20-4.1(f)1. This phrase deletion in subparagraph (g)1ii is necessary to eliminate reference to the former calculation. This notice of administrative correction is published in accordance with N.J.A.C. 1:30-2.7.

Full text of the corrected rule follows (deletion indicated in brackets [thus]):

6:20-4.1 Tuition rate procedures

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

(g) The Commissioner may approve a higher tentative tuition rate for any year in which the approved private school for the handicapped can prove to the satisfaction of the Commissioner that the tentative tuition rate for the year is not adequate and would cause an undue financial hardship on the private school.

1. In the event of such hardship, the approved private school for the handicapped shall be required to submit its request for a higher tentative tuition rate for the entire school no later than January 31 preceding the beginning of the ensuing school year. The request shall be forwarded to the Assistant Commissioner, Division of Finance and include, but not be limited to, the following information:

i. (No change.)

ii. A detailed explanation, by major account category, of the need for increases in excess of those already provided in the tentative tuition rate calculation [(twice the increase in state average net current expense budget)]; and

iii. (No change.)

2. (No change.)

(h)-(l) (No change.)

ENVIRONMENTAL PROTECTION AND ENERGY

(a)

ENVIRONMENTAL PROTECTION AND ENERGY AND NEW JERSEY WASTEWATER TREATMENT TRUST

Financial Assistance Programs for Wastewater Treatment Facilities

Readoption With Amendments: N.J.A.C. 7:22

Proposed: November 4, 1991 at 23 N.J.R. 3282(a).

Adopted: December 23, 1991, by Scott A. Weiner, Commissioner, Department of Environmental Protection and Energy as to N.J.A.C. 7:22-2, 3, 5, 6, 7, 8, 9 and 10, and the New Jersey Wastewater Treatment Trust, Ellis S. Vieser, Chairman as to N.J.A.C. 7:22-4, 5 and 9.

Filed: December 27, 1991, as R.1992 d.42, **with substantive and technical changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: Clean Waters Bond Act of 1976 (P.L. 1976, c.92); the Water Conservation Bond Act of 1969 (P.L. 1969, c.127); the Natural Resources Bond Act of 1980 (P.L. 1980, c.70); the Wastewater Treatment Bond Act of 1985 (P.L. 1985, c.329); the Stormwater Management and Combined Sewer Overflow Abatement Bond Act of 1989 (P.L. 1989, c.181); the Pinelands Infrastructure Trust Bond Act of 1985 (P.L. 1985, c.306), the Sewage Infrastructure Improvement Act (N.J.S.A. 58:25-23 et seq.); N.J.S.A. 13:1D-1 et seq.; N.J.S.A. 58:11A-1 et seq.; N.J.S.A. 58:10A-1 et seq.; Executive Order No. 215(1989) and any appropriations to the Department of Environmental Protection and Energy for the purpose of providing financing to eligible projects as to N.J.A.C. 7:22-2, 3, 5, 6, 7, 8, 9 and 10, and the New Jersey Wastewater Treatment Trust Act (N.J.S.A. 58:11B-1 et seq.) and any appropriations to the New Jersey Wastewater Treatment Trust for the purpose of providing financing to eligible projects as to N.J.A.C. 7:22-4, 5 and 9.

DEPE Docket Number: 038-91-10.

Effective Date: December 27, 1991, readoption; January 21, 1992, Amendments.

Expiration Date: December 27, 1996.

Summary of Public Comments and Agency Responses:

The New Jersey Department of Environmental Protection and Energy (the Department) and the New Jersey Wastewater Treatment Trust (the Trust) are readopting N.J.A.C. 7:22, Financial Assistance Programs for Wastewater Treatment Facilities, with amendments. The readoption and amendment of these rules was proposed on November 4, 1991 at 23 N.J.R. 3282(a). A public hearing to accept testimony regarding the proposed readoption with amendments was held on November 22, 1991 in the Large Conference Room, Municipal Wastewater Assistance Element Offices, 1333 Brunswick Avenue, Trenton, New Jersey. The comment period on the proposal closed on December 4, 1991. The Department received one written comment jointly submitted by four organizations during this comment period and three persons made comments regarding the rules at the public hearing (one of which submitted a written statement representing their testimony at the public hearing). The following is a list of the persons and the entities which they represented that made either written or oral comments directly related to the proposed for readoption with amendments rules:

Lynn Combs; Passaic Township
Anthony Buzzoni; Wayne Township
Joseph C. Pantalone; Adams, Rehmann and Heggan
Sally Dudley; Association of New Jersey Environmental Commissions
Douglas Wheat; Great Swamp Watershed Association
Jeanne Jenkins; New Jersey Public Interest Research Group
Dave Peifer; Upper Raritan Watershed Association

N.J.A.C. 7:22-4.36 Reserve capacity

1. COMMENT: One commenter requested clarification as to whether a project eligible for its initial loan award in State fiscal year 1993 would qualify for a Trust loan for the incremental costs related to reserve capacity under proposed N.J.A.C. 7:22-4.36.

RESPONSE: As indicated in N.J.A.C. 7:22-4.36(b), projects which receive their initial loan awards in State fiscal year 1993 and in future years may qualify for reserve capacity funding. Project sponsors must indicate in their initial loan application (due March 2, 1992 for State fiscal year 1993 funding) whether or not they want to exercise their option to receive Trust loan assistance for such projects. Further, as indicated in N.J.A.C. 7:22-4.36(c), projects which receive their initial loan award in State fiscal year 1992 are also eligible for a market rate Trust loan for the incremental costs related to reserve capacity provided the project sponsor submits a complete loan application in State fiscal year 1993 or 1994 for such costs in conjunction with their supplemental Trust loan application to increase the allowable project costs to those based on the actual low bid building costs.

N.J.A.C. 7:22-5.4 Costs related to subagreements

2. COMMENT: One commenter recommended that the Department and the Trust consider allowing projects to receive more than one supplemental loan in cases where there are increased costs due to change orders as a result of unforeseen site conditions, since the costs associated with such change orders can add significantly to a project's overall cost.

RESPONSE: The rules do not directly limit the number of supplemental loans a project may receive. However, N.J.A.C. 7:22-5.4(a)5 limits the allowability for increased costs due to change orders to an amount which, when added to the allowable costs due to the final building cost, does not exceed the allowable costs due to the low bid building cost (that is, cost underruns which occur during building may be used to cover cost increases resulting from change orders). The Department and the Trust are evaluating the possibility of amending the rules to allow recipients to receive another supplemental Fund and Trust loan completion of construction for the allowable increased cost due to change orders as a result of unforeseen site conditions. Because of the significance of this proposed change in the program's structure, it would be outside the scope of the proposal, and any changes regarding this policy will be made through additional agency rulemaking at a future time. The Department and the Trust will make their decision regarding this matter by March of 1992 and, if decided favorably, would initiate the necessary rulemaking immediately thereafter.

3. COMMENT: One commenter requested clarification regarding the cap on architectural/engineering (A/E) fees for construction management services of 12 percent of the low bid building cost in N.J.A.C. 7:22-5.4(b). The commenter was concerned that the 12 percent cap included not only subagreements for construction management services but subagreements for planning and design as well.

RESPONSE: The 12 percent limit in N.J.A.C. 7:22-5.4(b) is intended to offset A/E costs related only to construction management services. Projects which receive funds for construction management services are also eligible to receive a planning and/or design allowance in accordance with N.J.A.C. 7:22-5.12.

Public Participation

4. COMMENT: Several organizations expressed concern that the Department and the Trust did not allow adequate opportunity for public review and comment of the proposal, and that in order to readopt these proposed rules prior to their expiration, due consideration would not be given to public comments.

RESPONSE: The Department and the Trust have complied with the requirements of the Administrative Procedure Act and the applicable State rules governing agency rulemaking during the process of proposing these rules for readoption with amendments. In accordance with N.J.A.C. 1:30-3.3(a), the Department and the Trust have accepted written or oral comments, arguments, data and views for at least 30 days following publication in the New Jersey Register of the notice of proposed readoption with amendments. The proposed readoption with amendments was published in the New Jersey Register on November 4, 1991 and indicated that public comments received through December 4, 1991 would be given due consideration in the adoption document. In addition to the publication in the New Jersey Register, the Department and the Trust sent to over 1,250 interested parties a public hearing notice on October 30, 1991 indicating that the proposed rule would be published in the November 4, 1991 New Jersey Register, the time and date of the public hearing and the deadline for the public comments. These notifications evidence compliance with N.J.A.C. 1:30-3.3A(b) which requires a rulemaking agency to provide at least 15 days notice of the public hearing.

The Department and the Trust have given due consideration to all comments received. Specific concerns identifying conflicts or contradictions in the proposed readoption with amendments were not cited by the public at the public hearing or during the public comment period. The public is encouraged to submit any specific concerns to the Department and the Trust for consideration in the development of future amendments to these rules. Given these circumstances, the Department and the Trust have chosen to proceed with the readoption of the rules.

Summary of Hearing Officers' Recommendations and Agency Response:

Nicholas G. Binder, the Department's Assistant Director of the Municipal Wastewater Assistance Element, and Dirk C. Hofman, the New Jersey Wastewater Treatment Trust's Executive Director, served as hearing officers at the November 22, 1991 public hearing. After reviewing the testimony presented at the public hearing, the hearing officers recommended that the Department and the Trust readopt N.J.A.C. 7:22 with the proposed amendments. Assistant Director Binder and Executive Director Hofman recommended that one commenter's suggestion to consider allowable increased costs due to change orders as a result of unforeseen site conditions should be further evaluated for future rulemaking by the Department and the Trust.

Assistant Director Binder and Executive Director Hofman's recommendations are set forth in more detail in the hearing officers' report. A copy of the record of the public hearing which includes the hearing officers' report is available upon payment of the Department's normal charges for copying. Persons requesting copies should contact:

Samuel A. Wolfe, Esq.
Office of Legal Affairs
Department of Environmental Protection and Energy
CN 402
Trenton, NJ 08625

Summary of Agency-Initiated Changes:

It should be noted that although no public comments were made regarding N.J.A.C. 7:22-3.35(d), 4.35(d) and 6.35(d), these subsections were revised on adoption by the Department and the Trust for clarification purposes. Since the information obtained through the infiltration/inflow (I/I) studies required by the referenced sections is used as a basis for the design capacity of a wastewater treatment facility, I/I studies must be performed by an applicant during the planning stage of the project. This requirement must be performed by the applicant well in advance of the award of funds for the project (that is, prior to becoming a recipient). Therefore, the references to "recipient" in those subsections have been deleted and replaced with references to "applicant." Further, these sections have been revised to use the term "design" rather than "build" to reflect project sponsor's rquirements during the planning phase (that is, an "applicant" would be responsible to "design" the project in the stated manner; a "recipient" would subsequently be responsible to "build" the project as required). Also, typographical errors appearing in the proposal at N.J.A.C. 7:22-2.18, 3.4, 3.5, 3.25, 3.32, 4.4, 4.20 4.22, 5.4, 5.12, 6.4, 6.6, 6.11, 6.22, 9.1, 9.2, 10.5 and 10.11 have been corrected.

Full text of the readoption appears in the New Jersey Administrative Code at N.J.A.C. 7:22.

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

SUBCHAPTER 2. MATCHING GRANT PROCEDURES AND REQUIREMENTS

7:22-2.1 Scope and construction

(a) This subchapter constitutes the rules governing disposition of appropriations for the purposes of planning, design, and construction of wastewater treatment facilities. State matching grants (to match Federal grant awards) will be made pursuant to the Clean Waters Bond Act of 1976 (P.L. 1976, c.92); the Water Conservation Bond Act of 1969 (P.L. 1969, c.127); the Natural Resources Bond Act of 1980 (P.L. 1980, c.70); N.J.S.A. 13:1D-1 et seq.; and N.J.S.A. 58:11A-1 et seq., and any appropriations to the Department of Environmental Protection and Energy for the purpose of providing a State matching share to projects funded under the Federal Clean Water Act and its subsequent amendments.

(b) (No change.)

(c) The rules in this subchapter are promulgated for the following purposes:

1. To implement the purposes and objectives of the Clean Waters Bond Act of 1976 (P.L. 1976, c.92); the Water Conservation Bond Act of 1969 (P.L. 1969, c.127); the Natural Resources Bond Act of 1980 (P.L. 1980, c.70); N.J.S.A. 13:1D-1 et seq.; N.J.S.A. 58:11A-1 et seq., and any appropriations to the Department of Enviromental Protection and Energy for the purpose of providing a State matching share to projects funded under the Federal Clean Water Act and its subsequent amendments;

2.-6. (No change.)

7:22-2.2 Definitions

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

...

"Department" means the New Jersey Department of Environmental Protection and Energy and its successors and assigns.

"Eligible costs" means costs which are determined to be eligible for Federal grant funds in accordance with 40 CFR Part 35.

"Federal Act" means the Federal Water Pollution Control Act Amendments of 1972 (33 U.S.C. 1251 et seq.) and any amendatory or supplementary acts thereto.

...

"NJPDES" means the New Jersey Pollutant Discharge Elimination System, N.J.A.C. 7:14A.

...

7:22-2.3 State matching grants

(a) (No change.)

(b) The Department shall award State matching grants pursuant to N.J.S.A. 13:1D-1 et seq., N.J.S.A. 58:11A-1 et seq., and any appropriations bills providing funds to the Department for the purposes of this subchapter.

1. A project that is eligible for a State matching grant pursuant to this section is not eligible for State assistance from the Wastewater Treatment Fund (P.L. 1985, c.329) pursuant to N.J.A.C. 7:22-3, the Wastewater Treatment Trust Fund pursuant to N.J.A.C. 7:22-4, the Pinelands Infrastructure Trust Fund pursuant to N.J.A.C. 7:22-6, the Sewage Infrastructure Improvement Act pursuant to N.J.A.C. 7:22A-6 or the Stormwater Management and Combined Sewer Overflow Abatement Fund pursuant to N.J.A.C. 7:22-3.

2. (No change.)

3. The maximum amount for each project receiving a State matching grant shall be eight percent of the eligible costs.

7:22-2.4 Pre-application procedures

The Department encourages informal inquiries by potential State grant applicants prior to application submission in order to expedite preparation and evaluation of the grant application documents. Such inquiries may relate to procedural or substantive matters and may range from informal telephone advice to pre-arranged briefings of potential applicants.

7:22-2.5 Application procedures

(a) A grant application includes the completed application forms, technical documents and supplementary materials furnished by the applicant. It is the responsibility of the applicant to ensure that the Department has received all necessary documentation in a timely manner. Submissions which do not substantially comply with this subchapter shall not be processed further. Applications shall comply with the following standards:

1. Applications shall be signed by the person authorized by resolution to obligate the applicant to the terms and conditions of the grant.

2. Each application constitutes an offer to accept the requirements of this subchapter and the terms and conditions of the grant agreement.

3. Applications shall be submitted well in advance of the desired grant award date. Generally, processing of a grant application by the Department requires 60 calendar days after receipt of a complete application by the Department where a Federal grant has been awarded. A State grant shall not be made until a Federal grant has been awarded. A grant shall not be made until a State appropriation is made therefor.

4. (Reserved)

5. The following documents shall be submitted when applying for a State grant:

i.-iv. (No change.)

v. A copy of an executed Federal grant agreement; and

vi. (No change.)

6. (No change.)

7:22-2.8 Supplemental information

At any stage during the evaluation process, the Department may request the applicant to furnish documents or information required by this subchapter as necessary to complete a full review of the application. The Department may suspend its evaluation until such additional information or documents have been received.

7:22-2.13 Effect of the grant award

(a) (No change.)

(b) The approval of a project or the award of any grant shall not commit or obligate the Department to award any continuation grant or to enter into any grant agreement, including grant increases to cover cost overruns, with respect to any approved project or portion thereof.

(c) The Department's approval can not be used as a defense, by the applicant, to any action by any agency for the applicant's failure to obtain all requisite permits, licenses and operating certificates.

7:22-2.17 Fraud and other unlawful or corrupt practices

(a) (No change.)

(b) The recipient shall pursue available judicial and administrative remedies, and take appropriate remedial action with respect to any allegations or evidence of such illegality or corrupt practices. The recipient shall immediately notify the Department when such allegation or evidence comes to its attention, and shall periodically advise the Department of the status and ultimate disposition of any matter.

7:22-2.18 Grant conditions

(a) The following requirements, in addition to such statutes and regulation*s* as may be applicable to particular grants, are conditions to each grant and conditions to each payment under a grant award.

1. (No change.)

2. The recipient shall certify this it is, and shall assure that its contractors and subcontractors are, maintaining their financial records in accordance with generally accepted accounting principles and auditing standards for governmental institutions. The recipient shall comply with the requirements of the Single Audit Act of 1984 (31 U.S.C. 7501-7507), Federal OMB Circular A-128 and State OMB Circular 87-11, incorporated herein by reference. Copies of these documents may be obtained from the Department.

3. The recipient shall comply with the Department's standards of conduct in N.J.A.C. 7:22-8 and the Local Government Ethics Law (P.L. 1991, c.29; N.J.S.A. 40A:9-22).

4. The recipient shall provide a copy of the NJPDES permit or otherwise provide an identification of effluent discharge limitations.

5.-17. (No change.)

(b) (No change.)

7:22-2.21 State payment

Payment of State funds shall be made at intervals as work progresses and expenses are incurred, but in no event shall payment exceed eight percent of the eligible costs which have been incurred to that time. Each payment shall be approved by the Department prior to disbursement to the recipient.

7:22-2.24 Debarment

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

(e) Any person included on the Treasurer's List as a result of action by a State agency other than the Department, who is or may become a bidder on any contract which is or will be funded under this subchapter, may present information to the Department why this section should not apply to such person. If the Department determines that it is essential to the public interest and files a finding thereof with the Attorney General, the Department may grant an exception from the application of this section with respect to a particular contract, in keeping with N.J.A.C. 7:1-5.9. In the alternative, the Department may suspend or debar any such person, or take such action as may be appropriate, pursuant to N.J.A.C. 7:1-5.

7:22-2.25 Project changes and grant modifications

(a) (No change.)

(b) The recipient shall promptly notify the Department in writing (certified mail, return receipt requested) of events or proposed changes which may require a grant modification, including, but not limited to:

1.-8. (No change.)

(c) (No change.)

7:22-2.28 Other changes

All other project changes, which do not require formal grant amendment, require written approval of the Department.

7:22-2.33 Termination of grants

(a) (No change.)

(b) A recipient shall not unilaterally terminate the project work for which a grant has been awarded, except for good cause and subject to negotiation and payment of appropriate termination settlement costs. The recipient shall promptly give written notice to the Department of any complete or partial termination of the project work by the recipient. If the Department determines that there is a good cause for the termination of all or any portion of a project for which the grant has been awarded, the Department may enter into a termination agreement or unilaterally terminate the grant effective with the date of cessation of the project work by the recipient. If the Department determines that a recipient has ceased work on a project without good cause, the Department may unilaterally terminate the grant pursuant to this section or rescind the grant pursuant to N.J.A.C. 7:22-2.34.

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

7:22-2.34 Rescission of grants

(a) The Department may, in writing, rescind the grant if it determines that:

1. Without good cause, substantial performance of the project work has not occurred;

2.-3. (No change.)

(b) (No change.)

7:22-2.36 Administrative hearings

(a) The Department shall attempt to decide all disputes arising under a grant. When a recipient so requests, the Department shall reduce a decision to writing and mail or otherwise furnish a copy thereof to the recipient.

(b) If a recipient wishes to appeal the Department's decision under (a) above, the recipient shall request a hearing within 15 calendar days of a decision by the Department. Where required by law, the Department shall grant an administrative hearing based upon such request and file the matter with the Office of Adminis-

trative Law. Administrative hearings shall be conducted in accordance with the provisions of the Administrative Procedure Act, N.J.S.A. 52:14D-1 et seq., N.J.S.A. 52:14F-1 et seq. and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1, promulgated pursuant to those acts.

SUBCHAPTER 3. FUND PROCEDURES AND REQUIREMENTS

7:22-3.1 Scope

This subchapter constitutes the rules of the New Jersey Department of Environmental Protection and Energy governing the disposition of appropriations pursuant to the Wastewater Treatment Bond Act, the Stormwater Management and Combined Sewer Overflow Abatement Bond Act, the Federal Water Pollution Control Act Amendments or any other monies available to the Wastewater Treatment Fund or to the Stormwater Management and Combined Sewer overflow Abatement Fund.

7:22-3.3 Purpose

(a) This subchapter is promulgated for the following purposes:

1. To implement the purposes and objectives of the Wastewater Treatment Bond Act and the Stormwater Management and Combined Sewer Overflow Abatement Bond Act;

2. To establish policies and procedures for the distribution of funds appropriated pursuant to the Bond Acts, the Federal Water Pollution Control Act Amendments and other moneys available to the Wastewater Treatment Fund or to the Stormwater Management and Combined Sewer Overflow Abatement Fund, for the purpose of providing financial assistance to local government units through the issuance of Fund loans for the costs of the construction of wastewater treatment facilities or stormwater management facilities;

3.-8. (No change.)

7:22-3.4 Definitions

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

"Ad valorem tax" means a tax based upon the value of real property.

"Allowable costs" means those costs that are eligible, reasonable, necessary allocable to the project; permitted by generally accepted accounting principles; and approved by the Department in the Fund loan agreement. Allowable costs shall be determined on a project specific basis in accordance with N.J.A.C. 7:22-5.

...

"Alternative technology" means proven wastewater treatment processes and techniques which provide for the reclaiming and reuse of water, productively recycle wastewater constituents or otherwise eliminate the discharge of pollutants, or recover energy. Specifically, alternative technology includes, but is not limited to, land application of effluent and sludge, aquifer recharge, aquaculture, direct reuse (non-potable), horticulture, revegetation of disturbed land, containment ponds, sludge composting and drying prior to land application, self-sustaining incineration, methane recovery, individual and onsite systems, and small diameter pressure and vacuum sewers and small diameter gravity sewers carrying partially or fully treated wastewater.

...

"Best Management Practices" means proven procedures for reducing nonpoint source pollution through both structural and nonstructural controls, including improvements to operation and maintenance procedures.

"Best Practicable Waste Treatment Technology" (BPWTT) means the most cost-effective technology that can treat wastewater, combined sewer overflows and nonexcessive infiltration and inflow in publicly owned or individual wastewater treatment facilities, to meet the applicable provisions of:

1. 40 CFR Part 133—secondary treatment of wastewater;

2. 40 CFR Part 125, Subpart G-marine discharge waivers;

3. 40 CFR 122.44(d)—more stringent water quality standards and State standards; and/or

4. 41 FR 6190 (February 11, 1976)—Alternative Waste Management Techniques for Best Practicable Waste Treatment (treatment and discharge, land application techniques and utilization practices, and reuse).

"Bond Acts" mean the Wastewater Treatment Bond Act and the Stormwater Management and Combined Sewer Overflow Abatement Bond Act.

"Bonds" mean the bonds authorized to be issued, or issued, under the Bond Acts.

...

"Change order" means an alteration of the cost, scope or time of performance of a subagreement occurring subsequent to the execution of that subagreement.

...

"Combined sewer" means a sewer that is designed to function as both a sanitary sewer and a storm sewer.

...

"Contract" means a subagreement as defined in this subchapter.

"Conventional technology" means the processes and techniques involving the treatment of wastewater at a centralized treatment plant by means of biological or physical/chemical unit processes followed by direct point source discharge to surface waters.

...

"DAC" means "Discharge Allocation Certificate."

"Department" means the New Jersey Department of Environmental Protection and Energy and its successors and assigns.

"Design life" means the length of time during which a wastewater treatment facility is planned and designed to be operated.

"Discharge Allocation Certificate" (DAC) means the certificate issued by the Department pursuant to N.J.A.C. 7:14A which designates the quantity and quality of pollutants which may be discharged by any person planning to undertake any activity which will result in a discharge to surface water or a substantial modification in a discharge to surface water.

...

"EPA" means the United States Environmental Protection Agency.

...

"Federal grant" means a grant awarded pursuant to section 201 of the Federal Water Pollution Control Act Amendments.

"Federal Water Pollution Control Act Amendments" means the Federal Water Pollution Control Act Amendments of 1972 (33 U.S.C. 1251 et seq.) and any amendatory or supplementary acts thereto.

"Final building cost" means the total actual allowable cost of the final work in place for the project in accordance with the project scope as defined in the Fund loan agreement.

...

"Fund", "Stormwater Management and Combined Sewer Overflow Abatement Fund" or "Wastewater Treatment Fund" means the Wastewater Treatment Fund and/or the Stormwater Management and Combined Sewer Overflow Abatement Fund established pursuant to the applicable Bond Acts.

"Fund loan" means a loan from the Wastewater Treatment Fund or the Stormwater Management and Combined Sewer Overflow Abatement Fund or both Funds for the allowable costs of a project.

...

"Innovative technology" means developed wastewater treatment processes and techniques which have not been fully proven under the circumstances of their contemplated use and which represent a significant advancement over the state of the art in terms of significant reduction in life cycle cost or significant environmental benefits through the reclaiming and reuse of water, otherwise eliminating the discharge of pollutants, utilizing recycling techniques such as land treatment, more efficient use of energy and resources, improved or new methods of waste treatment management for combined municipal and industrial systems, or the confined disposal of pollutants so that they will not migrate to cause water or other environmental pollution.

...

"Low bid building cost" means the total allowable cost for the project due to the award of all contracts within a project scope to the lowest responsible and responsive bidder(s). Excluded from this cost is any cost due to change orders.

"Operation and maintenance" means the following activities required to assure the dependable and economical functioning of wastewater treatment facilities:

1. Maintenance: Preservation of functional integrity and efficiency of equipment and structures, including, but not limited to, preventive maintenance, corrective maintenance, and replacement of equipment as needed.

2. Operation: Control of the unit processes and equipment which make up the wastewater treatment facilities, including but not limited to financial and personnel management, recordkeeping, laboratory control, process control, safety and emergency operation planning.

"Priority System, Intended Use Plan and Project Priority List" means the document through which projects are evaluated and ranked for funding eligibility by the Department in conformance with the Federal Water Pollution Control Act Amendments and State law. The Priority System establishes the ranking methodology. The Intended Use Plan establishes various funding policies and provides general information regarding the use of Federal funds for financing wastewater treatment facilities. The Project Priority List presents the eligible projects in rank order.

...

"Project performance standards" means the performance and operations requirements applicable to a project including the enforceable requirements of the Federal Water Pollution Control Act Amendments and the specifications, including the quantity of excessive infiltration and inflow proposed to be eliminated which the project is planned and designed to meet.

"Project scope" or "scope of work" means the scope of services and/or activities for which a Fund loan agreement has been executed by the Department and a recipient.

"Recipient" means any local government unit which has received preaward approval pursuant to N.J.A.C. 7:22-3.32 or a Fund loan pursuant to this subchapter.

"Responsible bidder" means a bidder that satisfactorily demonstrates to the Department that it has:

1. Financial resources, technical qualifications, experience, organization and facilities adequate to carry out the project, or a demonstrated ability to obtain these;

2. Resources to meet the completion schedule contained in the subagreement;

3. A satisfactory performance record for completion of subagreements;

4. Accounting and auditing procedures adequate to control property, funds and assets; and

5. A demonstrated record of compliance or willingness to comply with the civil rights, equal employment opportunity, labor law and other statutory requirements under this subchapter.

...

"Sewage Infrastructure Improvement Act" means the Sewage Infrastructure Improvement Act (N.J.S.A. 58:25-23 et seq.) and any amendatory or supplementary acts thereto.

...

"State" means the State of New Jersey.

"Stormwater Management and Combined Sewer Overflow Abatement Bond Act" means the Stormwater Management and Combined Sewer Overflow Abatement Bond Act of 1989 (P.L. 1989, c.181) and any amendatory or supplementary acts thereto.

"Stormwater management facilities" includes, but is not limited to, any equipment, plants, structures, machinery, apparatus, or land, or any combination thereof, acquired, used, constructed or operated by or on behalf of a local government unit to prevent non-point source pollution, minimize stormwater runoff, reduce soil erosion, correct interconnections or cross-connections, or induce groundwater recharge or any combination thereof.

"Subagreement" means a written agreement between a recipient and another party (other than another public agency) and may include the prime building agreement for the project, any lower tier agreement for services, supplies, or construction necessary to complete the project; agreements for personal and professional services with consultants; and purchase orders.

...

"User charge" means a charge levied on users of a wastewater treatment facility or that portion of the ad valorem taxes paid by a user, for the user's proportionate share of the cost of *[operaton]* ***operation*** and maintenance (including replacement) of such facilities and may include debt service.

...

Wastewater Treatment Bond Act" means the Wastewater Treatment Bond Act of 1985 (P.L. 1985, c.329) and any amendatory or *[supplemntary]* ***supplementary*** acts thereto.

"Wastewater treatment facilities" includes, but is not limited to, any equipment, plants, structures, machinery, apparatus, land that will be an integral part of the treatment process or used for the ultimate disposal of residues resulting from such treatment, or any combination thereof, acquired, used, constructed or operated by or on behalf of a local government unit for the storage, collection, reduction, recycling, reclamation, disposal, separation or other treatment of wastewater, wastewater sludges, septage or industrial wastes, including, but not limited to, pumping and ventilating stations, treatment systems, plants and works, connections, extensions, outfall sewers, combined sewer overflows, intercepting sewers, trunklines, sewage collection systems, stormwater runoff collection systems, and other equipment, personal property and appurtenances necessary thereto. Included in this definition are stormwater management facilities.

...

7:22-3.5 Wastewater Treatment Fund and Stormwater Management and Combined Sewer Overflow Abatement Fund

(a) The proceeds from the sale of bonds, allocated and issued pursuant to the Bond Acts shall be paid to the State Treasurer and held thereby in separate interest bearing accounts specifically dedicated to making zero or low interest Fund loans to local government units for financing the cost of the construction of wastewater treatment facilities.

(b) Any Federal or State funds which may be made available to the State for loans to local government units for the construction of wastewater treatment facilities may be deposited into the Wastewater Treatment Fund or the Stormwater Management and Combined Sewer Overflow Abatement Fund, as appropriate.

(c) The moneys in the Fund are specifically dedicated and shall be used for the purposes identified in N.J.A.C. 7:22-3.3; however, no moneys shall be expended from the Fund for those purposes without the specific *[appropriaton]* ***appropriation*** thereof by the Legislature.

(d) (No change.)

7:22-3.6 Terms of the loans from the Wastewater Treatment Fund and the Stormwater Management and Combined Sewer Overflow Abatement Fund

(a) (No change.)

(b) The term of the Fund loans will generally be 20 years or as indicated in the Fund loan agreement. Fund loan repayments shall be made by the recipient in accordance with the repayment schedule indicated in the Fund loan agreement. Principal and accrued interest, if any, with respect to a particular Fund loan may, however, be prepaid in accordance with the provisions of the relevant Fund loan agreement. Interest, if any, on the Fund loan will accrue as indicated in the Fund loan agreement.

(c) (No change.)

(d) Fund loan proceeds will be disbursed to recipients in accordance with N.J.A.C. 7:22-3.24.

(e) (No change.)

7:22-3.7 Criteria for project loan priority

(a) Each year, the Department shall develop a Priority System, Intended Use Plan and Project Priority List for the forthcoming Federal fiscal year. The Priority System includes the ranking methodology which evaluates projects individually for their anticipated impacts on existing and potential water uses in combination with present water quality conditions. The Intended Use Plan includes information on the timing, use and distribution of Federal funds anticipated to be made available to New Jersey for financing

the construction of wastewater treatment facilities. The Project Priority List presents the projects initially eligible for funding according to their cumulative scores derived from application of the Priority System.

(b) Each year, the proposed Priority System, Intended Use Plan and Project Priority List will be the subject of at least one public hearing, including a public comment period. Local government units desiring to be included in the Project Priority List shall request inclusion before the close of the public comment period. Concurrently, all local government units included or eligible for inclusion in the Project Priority List shall be required to advise the Department in writing whether they will commit to the project document submittal schedule identified in the annual Priority System, Intended Use Plan and Project Priority List proposal. The authorized representative of the local government unit shall submit the following when requesting inclusion in the Project Priority List:

1.-2. (No change.)

3. Estimated costs associated with building the project excluding planning and design expenses.

(c) The Department shall consider a project eligible for funding in the forthcoming State fiscal year only where the local government unit commits to the project document submittal schedule as identified in the annual Priority System, Intended Use Plan and Project Priority List.

(d) The Department shall give a project funding priority over other projects on the Priority System, Intended Use Plan and Project Priority List in instances where the project conditions are determined to constitute a public health hazard.

(e) The Department shall give funding priority to a project which has previously received a Fund loan in instances where the allowable loan amount due to low bid building costs as determined by the Department exceeds the Fund loan amount previously awarded.

7:22-3.8 Eligibility for State and Federal funding

(a) The Department, in conjunction with the Trust, shall develop and submit to the Legislature for the forthcoming State fiscal year a priority system and project priority list as required by the Trust Act and the Stormwater Management and Combined Sewer Overflow Abatement Bond Act, which is based, in all substantial respects, upon the applicable sections of the Priority System, Intended Use Plan and Project Priority List.

(b) Local government units receiving funding through a Federal grant, State matching funds pursuant to N.J.A.C. 7:22-2, the Sewage Infrastructure Improvement Act pursuant to N.J.A.C. 7:22A-6, or from the Pinelands Infrastructure Trust Fund pursuant to N.J.A.C. 7:22-6 and 7 shall be ineligible for a Fund loan for the same scope of work (planning, design or building) of the wastewater treatment facilities project for which they received a Federal grant, State matching funds, Sewage Infrastructure Improvement Act funding or Pinelands Infrastructure Trust funding. Further, local government units which have executed a loan agreement to receive a Fund loan pursuant to this subchapter shall be ineligible to receive a Federal grant, Pinelands Infrastructure Trust funds, Sewage Infrastructure Improvement Act funding or State matching funds for the same scope of work for the planning, design or building of that wastewater treatment faciliites project.

7:22-3.9 Project bypassing

(a) Failure of the local government unit to advise the Department, in writing of the local government unit's commitment to meet the project document submittal schedule by the close of the comment period for the proposed Priority System, Intended Use Plan and project Priority List will, without further notice by the Department, result in the project becoming ineligible for a Fund loan for the forthcoming State fiscal year.

(b) Failure of the local government unit to submit complete planning documents, design documents and applications within the time periods specified in the Priority System, Intended Use Plan and Project Priority List for the forthcoming State fiscal year will result in the Department's bypassing of the local government unit's project unless the Department, at its discretion approves, for good cause, an extension to these periods.

(c) (No change.)

(d) The Department shall bypass a local government unit's project on the Project Priority List in cases where the Department has given priority to funding other projects on the Project Priority List in accordance with N.J.A.C. 7:22-3.7(d) or (e).

7:22-3.10 Pre-application procedures

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

7:22-3.11 Application procedures

(a) Each application for a Fund loan shall be submitted to the Department in conformance with the time period specified in the Proposed Priority System, Intended Use Plan and Project Priority List or as otherwise extended by the Department and shall include full and complete documentation and any supplementary materials that the Department requires an applicant to furnish.

(b) Submissions which do not substantially comply with this subchapter will not be processed further and the applicant shall be so advised.

(c) Processing of a Fund loan application generally requires 60 calendar days after receipt of a complete application by the Department.

(d) The following shall be submitted when applying for a Fund loan, as applicable:

1. An application (CGA Form LP-3) for a Fund loan pursuant to this subchapter for the construction of wastewater treatment facilities. Each application constitutes an agreement to accept the requirements of this subchapter;

2. A resolution passed by the local government unit authorizing the filing of an application for a Fund loan and specifying the individual authorized to sign the Fund loan application on behalf of the local government unit. If two or more local government units are involved in the project, a resolution indicating the lead applicant and the authorized representative is required from each;

3.-4. (No change.)

5. Project Report/Facilities Plan including evidence of compliance with the appropriate Water Quality Management Plans in accordance with the provisions of N.J.A.C. 7:15 and the Environmental Assessment Requirements for State Assisted Wastewater Treatment Facilities (N.J.A.C. 7:22-10). A complete Project Report/Facilities Plan must include:

i. A description of both the proposed wastewater treatment facilities and the complete wastewater treatment system of which it is a part;

ii. A description of the Best Practicable Wastewater Treatment Technology or, for stormwater management facilities, a description of the Best Management Practices that shall be utilized;

iii. A cost effectiveness analysis of the feasible conventional, innovative and alternative technologies capable of meeting the applicable effluent, water quality and public health requirements over the design life of the facility while recognizing environmental and other non-monetary considerations. The planning period for cost effectiveness analysis must be 20 years. The monetary costs to be considered must include the present worth or equivalent annual value of all capital costs and operation and maintenance costs. The population forecasting in the analysis must be consistent with the appropriate Water Quality Management Plan. A cost effectiveness analysis must include:

(1) An evaluation of flow reduction methods. If the applicant demonstrates that the existing average daily base flow (ADBF) from the area is less than 70 gallons per capita per day (gpcd), or if the Department determines the area has an effective existing flow reduction program, this evaluation is not required;

(2) A description of the relationship between the capacity of alternatives analyzed and the needs to be served, including capacity for future growth expected after the wastewater treatment facilities become operational. This includes letters of intent from significant industrial users and all industries intending to increase their flows or relocate in the area documenting capacity needs and characteristics for existing or projected flows;

(3) An evaluation of improved effluent quality attainable by upgrading the operation and maintenance and efficiency of existing

facilities as an alternative or supplement to construction of new facilities;

(4) An evaluation of the alternative methods for the reuse or ultimate disposal of treated wastewater and sludge material resulting from the treatment process;

(5) A consideration of systems with revenue generating applications;

(6) An evaluation of opportunities to reduce use of or recover energy; and

(7) Cost information on total capital costs, and annual operation and maintenance costs, as well as estimated annual or monthly costs to residential and industrial users;

iv. An infiltration/inflow analysis of the sewer system in accordance with N.J.A.C. 7:22-3.35;

v. An analysis of the potential open space and recreation opportunities associated with the project;

vi. An adequate evaluation of the environmental impacts of the alternatives analyzed in (d)5iii above;

vii. An evaluation of the water supply implications of the project;

viii. For the selected alternative, a concise description, at an appropriate level of detail, of at least the following:

(1) Relevant design parameters, including a description of the treatment units and/or sewer system to be built, schematic flow diagrams, hydraulic profiles and preliminary design criteria;

(2) Estimated capital construction and operation and maintenance costs identifying the Fund, Trust and local shares, and a description of the manner in which local costs will be financed;

(3) Estimated cost of future expansion and long-term needs for reconstruction of facilities following their design life;

(4) Cost impacts on wastewater system users; and

(5) Institutional and management arrangements necessary for successful implementation;

6. For sewer rehabilitation projects, a Sewer System Evaluation Survey in accordance with N.J.A.C. 7:22-3.35;

7. (No change.)

8. A description of the public participation process to date. Public participation activities undertaken in connection with the environmental review process should be coordinated with any other applicable public participation program wherever possible;

9. A report on the participation by socially and economically disadvantaged individuals during planning and design as required by N.J.A.C. 7:22-9.12(a);

10. Project cost breakdown for each subagreement;

11. Projected cash flow schedule to be used to establish the Fund loan disbursement schedule;

12. Project construction schedule. A court-sanctioned order or a Department-issued Administrative Consent Order indicating a compliance schedule shall be required where applicable;

13. A sewer use ordinance, user charge system and draft plan of operation acceptable to the Department;

i. The sewer use ordinance or other legally binding document must include provisions that prohibit any new connections from inflow sources into the treatment facilities and require that new sewers and connections to the treatment facilities are properly designed and constructed. The ordinance or other legally binding document must require the local unit to diligently investigate any existing inflow sources (such as sump pumps) and eliminate such sources within a reasonable time period. The ordinance or other legally binding document must also require that all wastewater introduced into the treatment facilities not contain toxics or other pollutants in amounts or concentrations that endanger public safety and physical integrity of the treatment facilities; not violate effluent or water quality limitations; or not preclude the selection of the most cost effective alternative for wastewater treatment and sludge disposal.

ii. The user charge system shall be designed to produce adequate revenues required for operation and maintenance (including replacement) and, in most cases, to cover debt service costs for the local government unit's wastewater treatment facilities. It must provide that each user which discharges pollutants that cause an increase in the cost of managing the effluent or sludge from the treatment facilities shall pay for such increased cost. Unless otherwise approved by the Department, the user charge system must be based on either actual use under (d)13ii(1) below, ad valorem taxes under (d)13ii(2) below or a combination of the two. It must also meet the requirements set forth in (d)13ii(3) through (8) below.

(1) A user charge system based on actual use (or estimated use) of wastewater treatment services must provide that each user (or user class) pays its proportionate share of operation and maintenance (including replacement) costs of treatment facilities within the service area, based on the user's proportionate contribution to the total wastewater loading from all users (or user classes).

(2) A user charge system which is based on ad valorem taxes may be approved if:

(A) On December 27, 1977, the applicant had in existence a system of dedicated ad valorem taxes which collected revenues to pay the cost of operation and maintenance of wastewater treatment facilities within the service area and the applicant has continued to use that system;

(B) The ad valorem user charge system distributes the operation and maintenance costs for all treatment facilities in the applicant's jurisdiction to the residential and small nonresidential user class (including at the applicant's option nonresidential, commercial and industrial users that introduce no more than the equivalent of 25,000 gallons per day of domestic sanitary wastes to the treatment facilities), in proportion to the use of the treatment facilities by this class; and

(C) Each member of the industrial user and commercial user class which discharges more than 25,000 gallons per day of sanitary waste pays its share of the costs of operation and maintenance of the treatment facilities based upon charges for actual use.

(3) Each user charge system must provide that each user be notified, at least annually, in conjunction with a regular bill (or other means acceptable to the Department) of the rate and that portion of the user charges or ad valorem taxes which are attributable to wastewater treatment services.

(4) Each user charge system must include an adequate financial management system that will accurately account for revenues generated by the system and expenditures for operation and maintenance (including replacement) of the treatment system, based on an adequate budget identifying the basis for determining the annual operation and maintenance costs and the costs of personnel, material, energy and administration.

(5) The user charge system must provide that the costs of operation and maintenance for all flow not directly attributable to users (that is, infiltration/inflow) be distributed among all users based upon either of the following:

(A) In the same manner that it distributes the costs for their actual use; or

(B) Under a system which uses one or any combination of the following factors on a reasonable basis:

(I) Flow volume of the users;

(II) Number of hookups or discharges of the users; and/or

(III) Property valuation of the users, if the applicant has an approved user charge system based on ad valorem taxes.

(6) After completion of construction of a project, revenue from the project (for example, sale of a treatment-related by-product, lease of the land, or sale of crops grown on the land purchased under the Fund loan agreement) shall be used to offset the costs of operation and maintenance. The applicant shall proportionately reduce all user charges.

(7) One or more municipal legislative enactments or other appropriate authority must incorporate the user charge system. If the project accepts wastewater from other municipalities, the subscribers receiving waste treatment services from the applicant shall adopt user charge systems in accordance with this section. These user charge systems shall also be incorporated in appropriate municipal legislative enactments or other appropriate authority of all municipalities contributing wastes to the treatment facilities.

iii. The applicant shall submit a draft plan of operation that addresses development of: an operation and maintenance manual, an emergency operating program, personnel training, an adequate

budget consistent with the user charge system, operational reports, laboratory testing needs, and an operation and maintenance (including replacement) program for the complete waste treatment system;

14. (No change.)

15. An affidavit (CGA Form LP-8) certifying that required permits and approvals for building the wastewater treatment facilities, were received from applicable Federal, State and local agencies;

16.-17. (No change.)

18. Executed service, and/or deficiency or other intermunicipal agreements, if applicable. If the project will serve two or more local government units, the applicant shall submit the executed service agreements, contracts or other legally binding instruments necessary for the financing, building and operation of the proposed wastewater treatment facilities. At a minimum, these documents must include the basis upon which costs are allocated, the formula by which costs are allocated, and the manner in which the cost allocation system will be administered;

19.-22. (No change.)

(e) Applicants shall obtain all necessary Federal, State and local permits and approvals prior to the award of a loan unless prior approval for an extension for one or more specific permits has been granted by the Department that does not significantly affect the loan award. Excluded from prior acquisition are permits and approvals which are impractical to obtain prior to the loan award (for example, road opening permit, blasting permit, etc.).

7:22-3.13 Evaluation of application

(a) Each application shall be subject to:

1.-4. (No change.)

(b) Upon the completion of a full review and evaluation of each application, the Department shall either certify the project for funding or bypass the project for funding in the State fiscal year for which the application was submitted.

(c) The Department shall promptly notify an applicant by certified mail if its project has been bypassed. As a result of a project bypass action, the next highest ranked project on the Project Priority List may fall within the fundable range.

7:22-3.14 Supplemental information

At any stage during the evaluation process, the Department may require supplemental documents or information necessary to complete full review of the application. The Department may suspend its evaluation until such additional information or documents have been received.

7:22-3.15 Fund loan agreement

(a) The Department shall prepare and transmit the Fund loan agreement to the applicant. The Fund loan agreement sets forth the terms and conditions of the Fund loan, approved project scope, allowable and unallowable project costs, estimated Fund loan disbursement schedule, estimated loan repayment schedule and the approved commencement and completion dates for the project or major phases thereof.

(b) The Fund loan agreement shall be executed by the applicant within such period of time and pursuant to such terms and conditions as the Department may determine.

(c) The Department, pursuant to such terms and conditions as it may determine, may require the applicant to irrevocably commit itself through a loan commitment letter, escrow agreement or other similar document to borrow the amount for which it has made application under the terms and conditions of the Fund loan agreement transmitted to the applicant.

(d) The Fund loan agreement and/or loan commitment letter, escrow agreement or other similar document shall be executed by a person authorized by resolution to obligate the applicant to the terms and conditions of the particular document for the project specified therein. A certified copy of the authorizing resolution shall be delivered to the Department at the time that the executed Fund loan agreement, loan commitment letter, escrow agreement or other similar document is delivered to the Department.

(e) The Fund loan agreement is deemed to incorporate all requirements, provisions, and information in documents or papers submitted to the Department in the application process.

(f) The Fund loan agreement shall not be executed by the State if the applicant is in current default on any State loan.

7:22-3.16 Fund loan award and closing

(a) Upon the execution of the Fund loan agreement by the State and the recipient, the Fund loan is awarded and the agreement becomes effective and constitutes an obligation of the Wastewater Treatment Fund and/or the Stormwater Management and Combined Sewer Overflow Abatement Fund, as appropriate in accordance with its terms and conditions. The obligation of the State under a Fund loan agreement is contingent upon the availability of appropriated funds from which disbursements can be made. The Fund loan is considered closed as indicated in the Fund loan agreement.

(b) The award or closing of the Fund loan does not commit or obligate the State to award any continuation or supplemental Fund loan to cover cost overruns of the project. Cost overruns for any project or portion thereof are the sole responsibility of the recipient.

(c) The award or closing of a Fund loan by the State cannot be used as a defense by the applicant to any action by any agency for the applicant's failure to obtain all requisite permits, licenses and operating certificates for its respective projects.

7:22-3.17 Loan conditions

(a) The following requirements, in addition to N.J.A.C. 7:22-3.18 through 3.30, as well as such statutes, rules, terms and conditions which may be applicable to particular loans, are conditions to each Fund loan, and conditions to each disbursement under a Fund loan agreement:

1. (No change.)

2. The recipient shall certify that it is, and shall assure that its contractors and subcontractors are, maintaining their financial records in accordance with generally accepted accounting principles and auditing standards for governmental institutions. The recipient shall comply with the requirements of the Single Audit Act of 1984 (31 U.S.C. 7501-7507), Federal OMB Circular A-128 and State OMB Circular 87-11, incorporated herein by reference. Copies of these documents may be obtained from the Department;

3. The recipient shall comply with the Department's standards of conduct (N.J.A.C. 7:22-8) and the Local Government Ethics Law (P.L. 1991, c.29; N.J.S.A. 40A:9-22);

4. The recipient shall comply with the requirements of the NJPDES permit pursuant to N.J.A.C. 7:14A;

5. The recipient shall adopt a sewer use ordinance and implement the user charge system consistent with the provisions of N.J.A.C. 7:22-3.11(d)13;

6.-7. (No change.)

8. The recipient shall pay the unallowable costs of the construction of the project and shall pay the allowable costs not covered by the Fund loan, or supplemental Fund loan, if any;

9.-12. (No change.)

13. An amount of any Fund loan disbursement equal to any unpaid portion of a finally determined State assessed penalty pursuant to N.J.A.C. 7:14-8, Assessment of Civil Administrative Penalties, shall at the discretion of the Department, be held in escrow until said penalty is paid in full. In no case will the total amount withheld under this subsection exceed the unpaid amount of said penalty;

14.-15. (No change.)

16. The recipient shall certify to the Department that an operations and maintenance manual, acceptable to the local government unit, has been developed for the project;

17.-18. (No change.)

19. The recipient shall certify that it and its contractors and subcontractors shall comply with all insurance requirements of the Fund loan agreement and certify, when appropriate, that the insurance is in full force and effect and that the premiums have been paid. The recipient shall include the State and its agencies, employees and officers as additional "named insureds" on any certificate of liability insurance (or other similar document evidenc-

ing liability insurance coverage) of the contractor. The recipient shall provide the Department with such certificate of liability insurance (or other similar document evidencing liability insurance coverage) prior to the issuance of the notice to proceed with the project. Such certificate shall be maintained in full force and represent a continuing obligation to include the State and its agencies, employees and officers as additional "named insureds" through the completion of construction. The recipient shall not alter or cancel such certificate without prior notification to the Department, in writing, 15 days in advance of any alteration or cancellation. In addition, when required, the recipient shall acquire or have the contractor acquire, as appropriate, flood insurance made available under the National Flood Insurance Act of 1968 (P.L. 90-448), as amended. Flood insurance coverage must begin with the period of building and continue for the entire period during which the wastewater treatment facility operates. The insurance must be in an amount at least equal to the allowable improvements or the maximum limit of coverage made available to the recipient under the National Flood Insurance Act of 1968, whichever is less. The recipient shall comply with each requirement of this subsection prior to the release of the initial Fund loan disbursement for building the project;

20. The recipient shall certify that it and its contractors and subcontractors shall comply with the discrimination and affirmative action provisions of N.J.S.A. 10:2-1 through 10:2-4, the New Jersey Law Against Discrimination (N.J.S.A. 10:5-1 et seq.), and the rules and regulations promulgated pursuant thereto, including but not limited to N.J.A.C. 17:27;

21. The recipient shall certify that it has established an affirmative action program for the hiring of minority workers in the performance of any construction contract for that project, consistent with the provisions of the New Jersey Law Against Discrimination (N.J.S.A. 10:5-1 et seq.);

22. The recipient shall designate an officer or employee, who may be an existing officer or employee, to serve as its public agency compliance officer, pursuant to N.J.A.C. 17:27-3.5 and N.J.A.C. 7:22-9.11;

23. The recipient shall certify that it shall comply with the Rules and Regulations for Awarding Contracts for State Assisted Projects to Small Business Concerns Owned and Controlled by Socially and Economically Disadvantaged Individuals (N.J.A.C. 7:22-9);

24. A goal of not less than 10 percent of the total amount of all contracts for building, materials or services for a project shall be awarded to small business concerns owned and controlled by socially and economically disadvantaged individuals as defined in the Small Business Act (15 U.S.C. 637(a) and 637(d)), and any regulations promulgated pursuant thereto. Where a local government unit has Minority Business Enterprise/Women's Business Enterprise (MBE/WBE) goals which exceed 10 percent of the total amount of all contracts, the local government unit's goals shall take precedence over State goals; and

25. The recipient shall pay not less than the prevailing wage rate to workers employed in the performance of any contract for the project, in accordance with the rate determined by the Commissioner of the New Jersey Department of Labor pursuant to N.J.S.A. 34:11-56.25 et seq. or the United States Secretary of Labor pursuant to 29 CFR Part 5, whichever is greater.

(b) (No change.)

(c) The Department may impose such other conditions as may be necessary and appropriate to implement the laws of the State and effectuate the purpose and intent of the Bond Acts.

(d) The recipient shall insert in all contracts or subcontracts awarded pursuant to this subchapter the Department's Subcontractor Certification Form.

(e) The recipient shall insert into the contracts for building the project EPA Form 5720-4 (5-13), Labor Standards Provisions for Federally Assisted Construction Contracts.

(f) The recipient shall insert into the contracts, and shall ensure that their contractor(s) include within their subcontract(s), the following statement:

"In accordance with the provisions of N.J.S.A. 58:11B-26, N.J.A.C. 7:22-3.17(a)24 and 4.17(a)24, the contractor (subcontractor) shall comply with all of the provisions of N.J.A.C. 7:22-9."

(g) All applicable surety bonds required in connection with the advertisement and award of building contracts or subagreements must be written by a surety company listed on the Federal Treasury List (Department Circular 570—Surety Companies Acceptable on Federal Bonds), incorporated herein by reference. Copies of this document may be obtained from the Department.

7:22-3.18 Administration and performance of loan

The recipient bears primary responsibility for the administration and success of the project, including any subagreements made by the recipient for accomplishing the Fund loan objectives. Although recipients are encouraged to seek the advice and opinion of the Department on problems that may arise, the giving of such advice does not shift the responsibility for final decisions from the recipient to the Department.

7:22-3.19 Project changes and loan modifications

(a) A Fund loan modification means any written alteration of the terms or conditions, budget or project method or other administrative, technical or financial provisions of the Fund loan agreement.

(b) The recipient shall promptly notify the Department in writing (certified mail, return receipt requested) of events or proposed changes which may require a Fund loan modification, including, but not limited to:

1.-6. (No change.)

(c) If the Department determines that a Fund loan modification by means of a Fund loan agreement amendment is necessary in accordance with N.J.A.C. 7:22-3.20, the recipient shall be notified and a Fund loan agreement amendment shall be processed. If the Department determines that a Fund loan agreement amendment is not necessary, the Department and the recipient shall follow the procedures of N.J.A.C. 7:22-3.21 or 3.22, as applicable.

7:22-3.20 Fund loan agreement amendments

(a) The Department shall require a Fund loan agreement amendment to change principal provisions of a Fund loan agreement where the Department determines that project changes substantially alter the objective or scope of the project or time of performance of the project or any major phase thereof, or to change substantially a term or condition of the Fund loan agreement.

(b) In the event that a project has a need for additional moneys due to the low bid building cost being higher than the original Fund loan amount, the local government unit may request a supplemental Fund loan. The Department may award a supplemental Fund loan only after passage of a subsequent legislative appropriations act providing moneys for the specific project of concern and only with a Fund loan agreement. The recipient shall be responsible for all other increased costs.

7:22-3.22 Other changes

All other project changes, which do not require a Fund loan agreement amendment as stated in N.J.A.C. 7:22-3.20 require written approval of the Department.

7:22-3.24 State disbursement

Disbursement of Fund loan moneys shall be made as indicated in the Fund loan agreement at intervals as work progresses and expenses are incurred by the local government unit and as approved by the Department, but in no event will total disbursements at any time exceed the cumulative Fund loan amounts indicated in the disbursement schedule of the Fund loan agreement or the allowable costs which have been incurred at that time. No disbursement shall be made until the Department receives satisfactory cost documentation which must include all forms and information required by the Department and completed in a manner satisfactory to the Department.

7:22-3.25 Assignment

The right of a recipient to receive disbursements from the State under a Fund loan may not be assigned, nor may repayments due under a Fund loan be similarly encumbered, unless such assignment

or *[encumberance]* ***encumbrance*** has been approved in writing pursuant to the conditions set forth in the Fund loan agreement.

7:22-3.26 Unused funds

Where the total amount disbursed under a Fund loan due to the low bid building cost is less than the initial Fund loan award, and/or where the total amount disbursed under a Fund loan due to the final building cost is less than the Fund loan amount due to the low bid building cost, the Fund loan shall be adjusted, if necessary, and the difference shall be retained by the Fund to be reallocated, pursuant to the provisions of a legislative appropriations act, to other wastewater treatment facilities projects. However, where allowable cost overruns occur, Fund moneys may be used to cover these cost overruns up to the loan amount adjusted due to the low bid building cost. Line item adjustments for allowable project costs may be made at the request of the recipient provided the Fund loan amount in the Fund loan agreement is not exceeded and provided all project related contracts have been awarded. However, the Department shall not allow line item adjustments to reallocate funds resulting from cost underruns due to a reduction in project scope.

7:22-3.28 Land acquisition

The cost for land may be determined to be an allowable cost by the Department in accordance with N.J.A.C. 7:22-5.7. If required by Federal law, the recipient shall comply with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646 (84 Stat. 1894) approved January 2, 1971). Further, if required by Federal law, the local government unit shall not acquire real property the cost of which the Department has determined to be allowable for Fund loan moneys until the Regional Administrator of EPA or his or her designee has determined that the applicable provisions of 40 CFR Part 4 have been met.

7:22-3.29 Project initiation

(a) (No change.)

(b) The recipient shall not advertise any contract or any addendum thereto for the building of the project until authorization to advertise the contract or any addendum thereto has been granted by the Department. Further, the recipient shall be required to execute the engineering agreement for building services prior to, or concurrently with, receipt of authorization to advertise. The recipient shall transmit an executed copy of the engineering agreement for building services to the Department immediately upon its execution.

(c) Once bids for building the project are received, the recipient shall not award any subagreement(s) until authorization to award has been given by the Department.

(d) (No change.)

(e) The recipient shall award the subagreement(s) and issue notice(s) to proceed, where required, for building all significant elements of the project no later than 12 months after the loan closing unless a specific extension has been approved by the Department.

(f) (No change.)

7:22-3.30 Project performance

(a) Within 30 days of the actual date of initiation of operation of the project, the recipient shall, in writing, notify the Department.

(b) On the date one year after the initiation of operation, the recipient shall certify to the Department the performance record of the project. If the Department or the recipient concludes that the project does not meet the wastewater treatment facilities' performance standards as specified in the Fund loan agreement, the recipient shall submit the following:

1.-2. (No change.)

3. The scheduled date for certifying to the Department that the project is meeting the specified performance standards.

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

(e) At a minimum, unless further specified, the project performance standards consist of the effluent discharge limitations in the NJPDES permit (if applicable) and the design criteria in the Department-approved Engineer's Technical Design Report submitted by the local government unit for the Project.

7:22-3.32 Preaward costs

(a) The Department shall not consider allowable those costs incurred for building performed prior to closing the loan for the project, except:

1. Where the local government unit's project is ranked one through 70, inclusive, on the most currently approved Priority System, Intended Use Plan and Project Priority List or is part of the Department's request to the Legislature for inclusion in an appropriations bill providing Fund moneys in the forthcoming fiscal year for that project and of the following conditions has met (a)1i through iii or *[(d)1iv]* ***(a)1iv*** below:

i. The local government unit has submitted items required at N.J.A.C. 7:22-3.11(d)3 through 19, to the Department prior to any advertisement of any contract for which cost reimbursement is being sought.

ii. The local government unit has not advertised any contract or any addendum thereto, for which cost reimbursement is being sought, without the authorization to advertise the contracts or any addendum thereto being given by the Department.

iii. The local government unit has not awarded any contract for which cost reimbursement is being sought without the authorization to award the contracts being given by the Department.

iv. The local government unit has submitted items required at N.J.A.C. 7:22-3.11(d)3 through 19 to the Department prior to the issuance of a notice to proceed with building the project and has met the provisions of the New Jersey Wastewater Treatment Privatization Act (N.J.S.A. 58:27-1 et seq.).

2. In emergencies or instances where delay could result in significant cost increases or significant environmental impairment, the Department may approve preliminary building activities such as procurement of major equipment requiring long lead times, minor sewer rehabilitation, acquisition of allowable land or advance building of minor portions of the wastewater treatment facilities. However, advance approval shall not be given until after the Department reviews and approves an environmental assessment and any specific documents necessary to adequately evaluate the proposed action.

(b) If the Department approves preliminary building activities, such approval is not an actual or implied commitment of Fund loan moneys and the local government unit proceeds at its own financial risk. The local government unit shall receive cost reimbursement of approved activities only upon receiving legislative approval in the form of an appropriations act and closing a Fund loan for the project.

(c) (No change.)

7:22-3.33 Force account work

(a) A recipient must secure the Department's prior written approval for use of force account work for construction, construction-related activities or for repairs or improvements to a facility where costs exceed $25,000.

(b) (No change.)

7:22-3.34 Planning and design

The costs associated with the planning and design of wastewater treatment facilities are not allowable for reimbursement from the Fund. However, an allowance to assist in defraying the planning and design costs shall be provided to a project as a percentage of the allowable building cost in accordance with N.J.A.C. 7:22-5.12. Projects which have received financial assistance through a Federal grant, Pinelands Infrastructure Trust funding, or the Sewage Infrastructure Improvement Act for costs associated with any portion of the project scope or for costs to address the project need, will not be eligible to receive an allowance for planning and/or design as appropriate in accordance with N.J.A.C. 7:22-5.12.

7:22-3.35 Infiltration/Inflow

(a) An infiltration/inflow analysis is required as part of the Project Report/Facilities Plan.

(b) The applicant shall demonstrate to the Department's satisfaction that each sewer system discharging into the wastewater treatment facility is not or will not be subject to excessive infiltration/inflow. For combined sewer overflow projects, in no case shall inflow be considered excessive.

(c) If the rainfall induced peak inflow rate results or will result in chronic operational problems or system surcharging during storm events or the rainfall induced total flow rate exceeds 275 gallons per capita per day during storm events, the applicant shall perform a sewer system evaluation survey including a cost effectiveness analysis to determine the quantity of excessive inflow and shall propose a rehabilitation program to eliminate the excessive inflow.

(d) If the flow rate at the existing wastewater treatment facility is less than 120 gallons per capita per day during periods of high groundwater, the *[recipient]* ***applicant*** shall *[build]* ***design*** the project including sufficient capacity to transport and treat any existing infiltration. If the *[recipient]* ***applicant*** demonstrates that its sewer system is subject to excessive infiltration of 120 gallons per capita per day or more during periods of high groundwater, the *[recipient]* ***applicant*** shall perform a sewer system evaluation survey including a cost effectiveness analysis and shall propose a rehabilitation program to eliminate the excessive infiltration.

(e) The provisions of (a) through (d) above are not intended to apply to stormwater management facilities projects. However, a similar analysis regarding the quality and quantity of infiltration/inflow into a stormwater sewer system may be required.

7:22-3.36 Reserve capacity

(a) (No change.)

(b) For any project providing for capacity in excess of that provided by this section, all incremental costs shall be paid by the recipient. Incremental costs include all costs which would not have been incurred but for the additional excess capacity (that is, any cost in addition to the most cost effective alternative with allowable capacity as described in (a) above.)

7:22-3.38 Fraud and other unlawful or corrupt practices

(a) (No change.)

(b) The recipient shall pursue available judicial and administrative remedies and take appropriate remedial action with respect to any allegations or evidence of such illegality or corrupt practices. The recipient shall immediately notify the Department when such allegation or evidence comes to its attention, and shall periodically advise the Department of the status and ultimate disposition of any related matter.

7:22-3.39 Debarment

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

(e) Any person included on the State Treasurer's list as a result of action by a State agency, who is or may become a bidder on any contract which is or will be funded by a Fund loan under this subchapter, may present information to the Department why this section shall not apply to such person. If the Department determines that it is essential to the public interest and files a finding thereof with the New Jersey Attorney General, the Department may grant an exception from the application of this section with respect to a particular contract, in keeping with N.J.A.C. 7:1-5.9. In the alternative, the Department may suspend or debar any such person, or take such action as may be appropriate, pursuant to N.J.A.C. 7:1-5.

7:22-3.44 Termination of loans

(a) (No change.)

(b) Project termination by the recipient shall be subject to the following:

1. A recipient shall not unilaterally terminate the project work for which a Fund loan has been awarded, except for good cause and subject to negotiation and payment of appropriate termination settlement costs. The recipient shall promptly give written notice to the Department of any complete or partial termination of the project work by the recipient.

2.-3. (No change.)

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

(e) The recipient shall reduce the amount of outstanding commitments insofar as possible and report to the Department the uncommitted balance of Fund moneys awarded under the Fund loan. The recipient shall make no new commitments without the Department's specific approval thereof. The Department shall make the final determination of the allowability of termination costs.

(f) (No change.)

7:22-3.45 Administrative hearings

(a) The Department shall make the initial decision regarding all disputes arising under a loan. The recipient shall specifically detail in writing the basis for its appeal. When a recipient so requests, the Department shall produce a decision in writing and mail or otherwise furnish a copy thereof to the recipient.

(b) If a recipient wishes to appeal the Department's decision under (a) above, the recipient shall request an administrative hearing within 15 calendar days of a decision by the Department. The request for an administrative hearing must specify in detail the basis for the appeal.

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

SUBCHAPTER 4. WASTEWATER TREATMENT TRUST PROCEDURES AND REQUIREMENTS

7:22-4.1 Scope

This subchapter constitutes the rules of the New Jersey Wastewater Treatment Trust established pursuant to the Trust Act governing the disposition of appropriations made available pursuant to the Wastewater Treatment Bond Act or any other moneys available to the New Jersey Wastewater Treatment Trust.

7:22-4.3 Purpose

(a) This subchapter is promulgated for the following purposes:

1. (No change.)

2. To establish policies and procedures for the distribution of funds appropriated or otherwise available to the New Jersey Wastewater Treatment Trust for the purpose of providing financial assistance to local government units through the issuance of Trust loans for the costs of the construction of wastewater treatment facilities;

3.-8. (No change.)

7:22-4.4 Definitions

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

"Ad valorem tax" means a tax based upon the value of real property.

"Allowable costs" means those costs that are eligible, reasonable, necessary and allocable to the project; permitted by generally accepted accounting principles; and approved by the Trust in the Trust loan agreement. Allowable costs shall be determined on a project specific basis in accordance with N.J.A.C. 7:22-5.

. . .

"Alternative technology" means proven wastewater treatment processes and techniques which provide for the reclaiming and reuse of water, productively recycle wastewater constituents or otherwise eliminate the discharge of pollutants, or recover energy. Specifically, alternative technology includes, but is not limited to, land application of effluent and sludge, aquifer recharge, aquaculture, direct reuse (non-potable), horticulture, revegetation of disturbed land, containment ponds, sludge composting and drying prior to land application, self-sustaining incineration, methane recovery, individual and onsite systems, and small diameter pressure and vacuum sewers and small diameter gravity sewers carrying *[a]* partially or fully treated wastewater.

. . .

"Best Management Practices" means proven procedures for reducing nonpoint source pollution through both structural and nonstructural controls, including improvements to operation and maintenance procedures.

"Best Practicable Waste Treatment Technology" (BPWTT) means the most cost-effective technology that can treat wastewater, combined sewer overflows and nonexcessive infiltration and inflow in publicly owned or individual wastewater treatment facilities, to meet the applicable provisions of:

1. 40 CFR Part 133—secondary treatment of wastewater;

2. 40 CFR Part 125, Subpart G—marine discharge waivers;
3. 40 CFR 122.44(d)—more stringent water quality standards and State standards; and/or
4. 41 FR 6190 (February 11, 1976)—Alternative Waste Management Techniques for Best Practicable Waste Treatment (treatment and discharge, land application techniques and utilization practices, and reuse).

"Bond Act" means the Wastewater Treatment Bond Act.

"Bond Acts" mean the Wastewater Treatment Bond Act of 1985 and the Stormwater Management and Combined Sewer Overflow Abatement Bond Act.

...

"Change order" means an alteration of the cost, scope or time of performance of a subagreement occurring subsequent to the execution of that subagreement.

...

"Combined sewer" means a sewer that is designed to function as both a sanitary sewer and a storm sewer.

...

"Contract" means a subagreement as defined in this subchapter.

"Conventional technology" means wastewater treatment processes and techniques involving the treatment of wastewater at a centralized treatment plant by means of biological or physical/chemical unit processes followed by direct point source discharge to surface waters.

"DAC" means "Discharge Allocation Certificate."

"Department" means the New Jersey Department of Environmental Protection and Energy and its successors and assigns, duly authorized agent of the Trust.

"Design life" means the length of time during which a wastewater treatment facility is planned and designed to be operated.

"Discharge Allocation Certificate" (DAC) means the certificate issued by the Department pursuant to N.J.A.C. 7:14A which designates the quantity and quality of pollutants which may be discharged by any person planning to undertake any activity which will result in a discharge to surface water or a substantial modification in a discharge to surface water.

...

"EPA" means the United States Environmental Protection Agency.

...

"Federal grant" means a grant awarded pursuant to section 201 of the Federal Water Pollution Control Act Amendments.

"Federal Water Pollution Control Act Amendments" means the Federal Water Pollution Control Act Amendments of 1972 (33 U.S.C. 1251 et seq.) and any amendatory or supplementary acts thereto.

"Final building cost" means the total actual allowable cost of the final work in place for the project, in accordance with the project scope as defined in the Trust loan agreement.

...

"Fund", "Stormwater Management and Combined Sewer Overflow Abatement Fund" or "Wastewater Treatment Fund" means the Wastewater Treatment Fund and/or the Stormwater Management and Combined Sewer Overflow Abatement Fund established pursuant to the applicable Bond Acts.

"Fund loan" means a loan from the Wastewater Treatment Fund or the Stormwater Management and Combined Sewer Overflow Abatement Fund or both Funds for the allowable costs of the project.

...

"Innovative technology" means developed wastewater treatment processes and techniques which have not been fully proven under the circumstances of their contemplated use and which represent a significant advancement over the state of the art in terms of signficant reduction in life cycle cost or significant environmental benefits through the reclaiming and reuse of water, otherwise eliminating the discharge of pollutants, utilizing recycling techniques such as land treatment, more efficient use of energy and resources, improved or new methods of waste treatment management for combined municipal and industrial systems, or the confined disposal of pollutants so that they will not migrate to cause water or other environmental pollution.

...

"Low bid building cost" means the total allowable cost for the project due to the award of all contracts within a project scope to the lowest responsible and responsive bidder(s). Excluded from this cost is any cost due to change orders.

...

"Operation and maintenance" means the following activities required to assure the dependable and economical functioning of wastewater treatment facilities:
1. Maintenance: Preservation of functional integrity and efficiency of equipment and structures, including, but not limited to, preventive maintenance, corrective maintenance, and replacement of equipment as needed.
2. Operation: Control of the unit processes and equipment which make up the wastewater treatment facilities, including, but not limited to, financial and personnel management, recordkeeping, laboratory control, process control, safety and emergency operation planning.

"Priority System, Intended Use Plan and Project Priority List" means the document through which projects are evaluated and ranked for funding eligibility by the Department in conformance with the Federal Water Pollution Control Act Amendments and State law. The Priority System establishes the ranking methodology. The Intended Use Plan establishes various funding policies and provides general information regarding the use of federal funds for financing wastewater treatment facilities. The Project Priority List presents the eligible projects in rank order.

...

"Project performance standards" means the performance and operations requirements applicable to a project including the enforceable requirements of the Federal Water Pollution Control Act Amendments and the specifications, including the quantity of excessive infiltration and inflow proposed to be eliminated, which the project is planned and designed to meet.

"Project scope" or "scope of work" means the scope of services and/or activities for which a Trust loan agreement has been executed by the Trust and a recipient.

"Recipient" means any local government unit which has received preaward approval pursuant to N.J.A.C. 7:22-4.32 or a Trust loan pursuant to this subchapter.

"Responsible bidder" means a bidder that satisfactorily demonstrates to the Trust that it has:
1. Financial resources, technical qualifications, experience, organization and facilities adequate to carry out the project, or a demonstrated ability to obtain these;
2. Resources to meet the completion schedule contained in the subagreement;
3. A satisfactory performance record for completion of subagreements;
4. Accounting and auditing procedures adequate to control property, funds and assets; and
5. A demonstrated record of compliance or willingness to comply with the civil rights, equal employment opportunity, labor law and other statutory requirements under this subchapter.

...

"Sewage Infrastructure Improvement Act" means the Sewage Infrastructure Improvement Act (N.J.S.A. 58:25-23 et seq.) and any amendatory or supplementary acts thereto.

...

"State" means the State of New Jersey.

"Stormwater Management and Combined Sewer Overflow Abatement Bond Act" means the Stormwater Management and Combined Sewer Overflow Abatement Bond Act of 1989 (P.L. 1989, c.181) and any amendatory or supplementary acts thereto.

"Stormwater runoff collection systems" includes, but is not limited to, any equipment, plants, structures, machinery, apparatus, or land, or any combination thereof, acquired, used, constructed or operated by or on behalf of a local government unit to minimize stormwater runoff, correct interconnections or cross-connections, or induce groundwater recharge or any combination thereof.

"Subagreement" means a written agreement between a recipient and another party (other than another public agency) and may

include the prime building agreement for the project, any lower tier agreement for services, supplies, or construction necessary to complete the project; agreements for personal and professional services with consultants; and purchase orders.

...

"Trust bond resolution" means any resolution together with any amendments or supplements, adopted by the Trust in accordance with the Trust Act, governing the issuance of Bonds.

...

"User charge" means a charge levied on users of a wastewater treatment facility or that portion of the ad valorem taxes paid by a user, for the user's proportionate share of the cost of operation and maintenance (including replacement) of such facilities and may include debt service.

...

"Wastewater Treatment Bond Act" means the Wastewater Treatment Bond Act of 1985 (P.L. 1985, c.329) and any amendatory or supplementary acts thereto.

...

7:22-4.5 New Jersey Wastewater Treatment Trust

(a) (No change.)

(b) The Trust shall establish reserve and guarantee funds into which shall be deposited the proceeds from any State bonds issued pursuant to section 6b of the Bond Act authorized for deposit in the Trust or other funds appropriated by law to the Trust for deposit in the reserve and guarantee funds. The reserve funds shall be used by the Trust to secure debt issued by the Trust. The guarantee funds shall be used by the Trust to secure debt issued by a local government unit.

(c) (No change.)

7:22-4.6 Terms of the loans from the New Jersey Wastewater Treatment Trust

(a) (No change.)

(b) The term of the Trust loans will not exceed 20 years or as indicated in the Trust loan agreement. Trust loan repayments shall be made by the recipient in accordance with the repayment schedule indicated in the Trust loan agreement. Principal and accrued interest with respect to a particular Trust loan may, however, be prepaid in accordance with the provisions of the relevant Trust loan agreement. Interest on the Trust loan will accrue as indicated in the financial plan submitted to the Legislature pursuant to Section 21 of the Trust Act.

(c) (No change.)

(d) Trust loan proceeds will be disbursed to recipients in accordance with N.J.A.C. 7:22-4.24.

(e) (No change.)

7:22-4.7 Criteria for project loan priority

(a) Each year, the Department shall develop a Priority System, Intended Use Plan and Project Priority List for the forthcoming Federal fiscal year. The Priority System includes the ranking methodology which evaluates projects individually for their anticipated impacts on existing and potential water uses in combination with present water quality conditions. The Intended Use Plan includes information on the timing, use and distribution of federal funds anticipated to be made available to New Jersey for financing the construction of wastewater treatment facilities. The Project Priority List presents the projects initially eligible for funding according to their cumulative scores derived from application of the Priority System. Criteria for project loan priority shall be developed by the Department in accordance with the provisions of N.J.A.C. 7:22-3.7.

(b) Each year, the proposed Priority System, Intended Use Plan and Project Priority List will be the subject of at least one public hearing, including a public comment period. Local government units desiring to be included in the Project Priority List shall request inclusion before the close of the public comment period. Concurrently, all local government units included or eligible for inclusion in the Project Priority List shall be required to advise the Department in writing whether they will commit to the project document submittal schedule identified in the annual Priority System, Intended Use Plan and Project Priority List proposal in conformance with the provisions of N.J.A.C. 7:22-3.7(b).

(c) The Trust shall consider a project eligible for funding in the forthcoming State fiscal year only where the local goverment unit commits to the project document submittal schedule identified in the annual Priority System, Intended Use Plan and Project Priority List.

(d) The Trust shall give a project funding priority over other projects on the Project Priority List, in instances where the project conditions are determined to constitute a public health hazard.

(e) The Trust shall give funding priority over other projects on the Project Priority List to a project which has previously received a Trust loan in instances where the allowable loan amount due to low bid building costs as determined by the Trust exceeds the Trust loan amount previously awarded or in instances where a project has been certified by the Trust for Trust financial assistance for costs related to reserve capacity under the provisions of N.J.A.C. 7:22-4.36.

7:22-4.8 Eligibility for State and Federal funding

(a) The Department, in conjunction with the Trust, shall develop and submit to the Legislature for the forthcoming State fiscal year a priority system and project priority list as required by the Trust Act and the Stormwater Management and Combined Sewer Overflow Abatement Bond Act, which shall be based, in all substantial respects, upon the applicable sections of the Priority System, Intended Use Plan and Project Priority List.

(b) Local government units receiving funding through a Federal grant, State matching funds pursuant to N.J.A.C. 7:22-2, the Sewage Infrastructure Improvement Act pursuant to N.J.A.C. 7:22A-6, or from the Pinelands Infrastructure Trust Fund pursuant to N.J.A.C. 7:22-6 and 7:22-7 shall be ineligible for a Trust loan for the same scope of work (planning, design or building) of the wastewater treatment facilities project for which they received a Federal grant, State matching funds, Sewage Infrastructure Improvement Act funding or Pinelands Infrastructure Trust funding. Further, local government units which have executed a loan agreement to receive a Trust loan pursuant to this subchapter shall be ineligible to receive a Federal grant, Pinelands Infrastructure Trust funds, Sewage Infrastructure Improvement Act funding or State matching funds for the same scope of work for the planning, design or building of that wastewater treatment facilities project.

7:22-4.9 Project bypassing

(a) Failure of the local government unit to advise the Department, in writing, of the local government unit's commitment to meet the project document submittal schedule by the close of the comment period for the proposed Priority System, Intended Use Plan and Project Priority List will, without further notice by the Department, result in the project becoming ineligible for a Trust loan for the forthcoming State fiscal year.

(b) Failure of the local government unit to submit complete planning documents, design documents and applications within the time periods specified in the Priority System, Intended Use Plan and Project Priority List for the forthcoming State fiscal year will result in the Trust's bypassing of the local government unit's project unless the Trust, at its discretion approves, for good cause, an extension to these periods.

(c) (No change.)

(d) The Trust shall bypass a local government unit's project on the Project Priority List in cases where the Trust has given priority to funding other projects on the Project Priority List in accordance with N.J.A.C. 7:22-4.7(d) or (e).

7:22-4.10 Pre-application procedures

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

7:22-4.11 Application procedures

(a) Each application for a Trust loan shall be submitted to the trust in conformance with the time period specified in the Proposed Priority System, Intended Use Plan and Project Priority List or otherwise extended by the Trust and must include full and complete documentation and any supplementary materials that the Trust requires an applicant to furnish.

(b) Submissions which do not substantially comply with this subchapter shall not be processed further and the applicant shall be so advised.

(c) (No change.)

(d) The following shall be submitted when applying for a Trust loan, as applicable:

1. An application (CGA Form LP-2) for a Trust loan pursuant to this subchapter for the construction of wastewater treatment facilities. Each application constitutes an agreement to accept the requirements of this subchapter;

2. A resolution passed by the local government unit authorizing the filing of an application for a Trust loan and specifying the individual authorized to sign the Trust loan application on behalf of the local government unit. If two or more local government units are involved in the project, a resolution indicating the lead applicant and the authorized representative is required from each;

3.-4. (No change.)

5. Project Report/Facilities Plan including evidence of compliance with the appropriate Water Quality Management Plans in accordance with the provisions of N.J.A.C. 7:15 and the Environmental Assessment Requirements for State Assisted Wastewater Treatment Facilities (N.J.A.C. 7:22-10). A complete Project Report/Facilities Plan must include:

i. A description of both the proposed wastewater treatment facilities and the complete wastewater treatment system of which it is a part;

ii. A description of the Best Practicable Wastewater Treatment Technology or, for stormwater runoff collection systems, a description of the Best Management Practices that will be utilized;

iii. A cost effectiveness analysis of the feasible conventional, innovative and alternative technologies capable of meeting the applicable effluent, water quality and public health requirements over the design life of the facility while recognizing environmental and other non-monetary considerations. The planning period for cost effectiveness analysis must be 20 years. The monetary costs to be considered must include the present worth or equivalent annual value of all capital costs and operation and maintenance costs. The population forecasting in the analysis must be consistent with the appropriate Water Quality Management Plan. A cost effectiveness analysis must include:

(1) An evaluation of flow reduction methods. If the applicant demonstrates that the existing average daily base flow (ADBF) from the area is less than 70 gallons per capita per day (gpcd), or if the Department determines the area has an effective existing flow reduction program, this evalution is not required;

(2) A description of the relationship between the capacity of alternatives analyzed and the needs to be served, including capacity for future growth expected after the wastewater treatment facilities become operational. This includes letters of intent from significant industrial users and all industries intending to increase their flows or relocate in the area documenting capacity needs and characteristics for existing or projected flows;

(3) An evaluation of improved effluent quality attainable by upgrading the operation and maintenance and efficiency of existing facilities as an alternative or supplement to construction of new facilities;

(4) An evaluation of the alternative methods for the reuse or ultimate disposal of treated wastewater and sludge material resulting from the treatment process;

(5) A consideration of systems with revenue generating applications;

(6) An evaluation of opportunities to reduce use of or recover energy; and

(7) Cost information on total capital costs, and annual operation and maintenance costs, as well as estimated annual or monthly costs to residential and industrial users;

iv. An infiltration/inflow analysis of the sewer system in accordance with N.J.A.C. 7:22-4.35;

v. An analysis of the potential open space and recreation opportunities associated with the project;

vi. An adequate evaluation of the environmental impacts of the alternatives analyzed in N.J.A.C. 7:22-4.11(d)5iii;

vii. An evaluation of the water supply implications of the project; and

viii. For the selected alternative, a concise description at an appropriate level of detail, of at least the following:

(1) Relevant design parameters, including a description of the treatment units and/or sewer system to be built, schematic flow diagrams, hydraulic profiles and preliminary design criteria;

(2) Estimated capital construction and operation and maintenance costs identifying the Fund, Trust and local shares, and a description of the manner in which local costs will be financed;

(3) Estimated cost of future expansion and long-term needs for reconstruction of facilities following their design life;

(4) Cost impacts on wastewater system users; and

(5) Institutional and management arrangements necessary for successful implementation;

6. For sewer rehabilitation projects, a Sewer System Evaluation Survey in accordance with N.J.A.C. 7:22-4.35;

7. (No change.)

8. A description of the public participation process to date. Public participation activities undertaken in connection with the environmental review process should be coordinated with any other applicable public participation program wherever possible;

9. A report on the participation by socially and economically disadvantaged individuals during planning and design as required by N.J.A.C. 7:22-9.12(a);

10. Project cost breakdown for each subagreement;

11. Projected cash flow schedule to be used to establish the Trust loan disbursement schedule;

12. Project construction schedule. A court-sanctioned order or a Department-issued Administrative Consent Order indicating a compliance schedule will be required where applicable;

13. A sewer use ordinance, user charge system and draft plan of operation acceptable to the Trust;

i. The sewer use ordinance or other legally binding document must include provisions that prohibit any new connections from inflow sources into the treatment facilities and require that new sewers and connections to the treatment facilities are properly designed and constructed. The ordinance or other legally binding document must require the local unit to diligently investigate any existing inflow sources (such as sump pumps) and eliminate such sources within a reasonable time period. The ordinance or other legally binding document must also require that all wastewater introduced into the treatment facilities not contain toxics or other pollutants in amounts or concentrations that endanger public safety and physical integrity of the treatment facilities; not violate effluent or water quality limitations; or not preclude the selection of the most cost effective alternative for wastewater treatment and sludge disposal.

ii. The user charge system shall be designed to produce adequate revenues required for operation and maintenance (including replacement) and, in most cases, to cover debt service costs for the local government unit's wastewater treatment facilities. It must provide that each user which discharges pollutants that cause an increase in the cost of managing the effluent or sludge from the treatment facilities shall pay for such increased cost. Unless otherwise approved by the Department, the user charge system must be based on either actual use under (d)13ii(1) below, ad valorem taxes under (d)13ii(2) below or a combination of the two. It must meet the requirements set forth in (d)13ii(3) through (8) below.

(1) A user charge system based on actual use (or estimated use) of wastewater treatment services must provide that each user (or user class) pays its proportionate share of operation and maintenance (including replacement) costs of treatment facilities within the service area, based on the user's proportionate contribution to the total wastewater loading from all users (or user classes).

(2) A user charge system which is based on ad valorem taxes may be approved if:

(A) On December 27, 1977, the applicant had in existence a system of dedicated ad valorem taxes which collected revenues to

pay the cost of operation and maintenance of wastewater treatment facilities within the service area and the applicant has continued to use that system;

(B) The ad valorem user charge system distributes the operation and maintenance costs for all treatment facilities in the applicant's jurisdiction to the residential and small nonresidential user class (including at the applicant's option nonresidential, commercial and industrial users that introduce no more than the equivalent of 25,000 gallons per day of domestic sanitary wastes to the treatment facilities), in proportion to the use of the treatment facilities by this class; and

(C) Each member of the industrial user and commercial user class which discharges more than 25,000 gallons per day of sanitary waste pays its share of the costs of operation and maintenance of the treatment facilities based upon charges for actual use.

(3) Each user charge system must provide that each user be notified, at least annually, in conjunction with a regular bill (or other means acceptable to the Department) of the rate and that portion of the user charges or ad valorem taxes which are attributable to wastewater treatment services.

(4) Each user charge system must include an adequate financial management system that will accurately account for revenues generated by the system and expenditures for operation and maintenance (including replacement) of the treatment system, based on an adequate budget identifying the basis for determining the annual operation and maintenance costs and the costs of personnel, material, energy and administration.

(5) The user charge system must provide that the costs of operation and maintenance for all flow not directly attributable to users (that is, infiltration/inflow) be distributed among all users based upon either of the following:

(A) In the same manner that it distributes the costs for their actual use; or

(B) Under a system which uses one or any combination of the following factors on a reasonable basis:

(I) Flow volume of the users;

(II) Number of hookups or discharges of the users;

(III) Property valuation of the users, if the applicant has an approved user charge system based on ad valorem taxes.

(6) After completion of construction of a project, revenue from the project (for example, sale of a treatment-related by-product, lease of the land, or sale of crops grown on the land purchased under the Trust loan agreement) must be used to offset the costs of operation and maintenance. The applicant shall proportionately reduce all user charges.

(7) One or more municipal legislative enactments or other appropriate authority must incorporate the user charge system. If the project accepts wastewater from other municipalities, the subscribers receiving waste treatment services from the applicant shall adopt user charge systems in accordance with this section. These user charge systems must also be incorporated in appropriate municipal legislative enactments or other appropriate authority of all municipalities contributing wastes to the treatment facilities.

iii. The applicant shall submit a draft plan of operation that addresses development of: an operation and maintenance manual, an emergency operating program, personnel training, an adequate budget consistent with the user charge system, operational reports, laboratory testing needs, and an operation and maintenance (including replacement) program for the complete waste treatment system;

14. (No change.)

15. An affidavit (CGA Form LP-8) certifying that required permits and approvals for building the wastewater treatment facilities, were received from applicable Federal, State and local agencies;

16.-17. (No change.)

18. Executed service, joint and/or deficiency or other intermunicipal agreements, if applicable. If the project will serve two or more local government units, the applicant shall submit the executed service agreements, contracts or other legally binding instruments necessary for the financing, building and operation of the proposed wastewater treatment facilities. At a minimum, these documents must include the basis upon which costs are allocated, the formula by which costs are allocated, and the manner in which the cost allocation system will be administered;

19.-22. (No change.)

(e) Applicants shall obtain all necessary Federal, State and local permits and approvals prior to the award of a loan unless prior approval for an extension for one or more specific permits has been granted by the Trust that does not significantly affect the loan award. Excluded from prior acquisition are permits and approvals which are impractical to obtain prior to the loan award (for example, road opening permit, blasting permit, etc.).

7:22-4.13 Evaluation of application

(a) Each applicant shall be subject to:

1.-4. (No change.)

(b) Upon the completion of a full review and evaluation of each application, the Trust shall either certify the project for funding or bypass the project for funding in the State fiscal year for which the application was submitted.

(c) The Trust shall promptly notify an applicant by certified mail if its project has been bypassed. As a result of a project bypass action, the next highest ranked project on the Project Priority List may fall within the fundable range.

7:22-4.15 Trust loan agreement

(a) The Trust shall prepare and transmit the Trust loan agreement to the applicant. The Trust loan agreement shall set forth the terms and conditions of the Trust loan, approved project scope, allowable and unallowable project costs, estimated Trust loan disbursement schedule, estimated loan repayment schedule and the approved commencement and completion dates for the project or major phases thereof.

(b) The Trust loan agreement shall be executed by the applicant within such period of time and pursuant to such terms and conditions as the Trust may determine.

(c) The Trust, pursuant to such terms and conditions as it may determine, may require the applicant to irrevocably commit itself through a loan commitment letter, escrow agreement or other similar document to borrow the amount for which it has made application under the terms and conditions of the Trust loan agreement transmitted to the applicant.

(d) The Trust loan agreement and/or loan commitment letter, escrow agreement or other similar document shall be executed by a person authorized by resolution to obligate the applicant to the terms and conditions of the particular document for the project specified therein. A certified copy of the authorizing resolution shall be delivered to the Trust at the time that the executed Trust loan agreement, loan commitment letter, escrow agreement or similar document is delivered to the Trust.

(e) The Trust loan agreement is deemed to incorporate all requirements, provisions, and information in documents or papers submitted to the Trust in the application process.

(f) The Trust loan agreement shall not be executed by the Trust if the applicant is in current default on any State loan.

7:22-4.16 Trust loan award and closing

(a) Upon the execution of the Trust loan agreement by the Trust and the recipient, the Trust loan is awarded and the agreement becomes effective and constitutes an obligation of the Trust in accordance with its terms and conditions. The obligation of the Trust under a Trust loan agreement is contingent upon the availablity of funds from which disbursements can be made. The Trust loan is considered closed as indicated in the Trust loan agreement.

(b) The award or closing of the Trust loan does not commit or obligate the Trust to award any continuation or supplemental Trust loan to cover cost overruns of the project. Cost overruns for any project or portion thereof are the sole responsibility of the recipient.

(c) The award or closing of a Trust loan by the Trust shall not be used as a defense by the applicant to any action by any agency for the applicant's failure to obtain all requisite permits, licenses and operating certificates for its respective projects.

7:22-4.17 Loan conditions

(a) The following requirements, in addition to N.J.A.C. 7:22-4.18 through 4.30, as well as such statutes, rules, terms and conditions which may be applicable to particular loans, are conditions to each Trust loan, and conditions to each disbursement under a Trust loan agreement:

1. (No change.)

2. The recipient shall certify that it is, and shall assure that its contractors and subcontractors are, maintaining their financial records in accordance with generally accepted accounting principles and auditing standards for governmental institutions. The recipient shall comply with the requirements of the Single Audit Act of 1984 (31 U.S.C. 7501-7507), Federal OMB Circular A-128 and State OMB Circular 87-11, incorporated herein by reference. Copies of these documents may be obtained from the Department;

3. The recipient shall comply with the Department's standards of conduct (N.J.A.C. 7:22-8) and the Local Government Ethics Law (P.L. 1991, c.29; N.J.S.A. 40A:9-22);

4. The recipient shall comply with the requirements of the NJPDES permit pursuant to N.J.A.C. 7:14A;

5. The recipient shall adopt a sewer use ordinance and implement the user charge system consistent with the provisions of N.J.A.C. 7:22-4.11(d)13;

6.-7. (No change.)

8. The recipient shall pay the unallowable costs of the construction of the project (that is, facilities planning, design, building and related costs) and shall pay the allowable costs not covered by the Trust loan, or supplemental Trust loan, if any;

9.-12. (No change.)

13. (Reserved);

14.-15. (No change.)

16. The recipient shall certify to the Department that an operations and maintenance manual, acceptable to the local government unit, has been developed for the project;

17.-18. (No change.)

19. The recipient shall certify that it and its contractors and subcontractors shall comply with all insurance requirements of the Trust loan agreement and certify, when appropriate, that the insurance is in full force and effect and that the premiums have been paid. The recipient shall include the State and its agencies, employees and officers as additional "named insureds" on any certificate of liability insurance (or other similar document evidencing liability insurance coverage) of the contractor. The recipient shall provide the trust with such certificate of liability insurance (or other similar document evidencing liability insurance coverage) prior to the issuance of the notice to proceed with the project. Such certificate shall be maintained in full force and represent a continuing obligation to include the State and its agencies, employees and officers as additional "named insureds" through the completion of construction. The recipient shall not alter or cancel such certificate without prior notification to the Trust, in writing, 15 days in advance of any alteration or cancellation. In addition, when required, the recipient shall acquire or have the contractor acquire, as appropriate, flood insurance made available under the National Flood Insurance Act of 1968 (P.L. 90-448), as amended. Flood insurance coverage must begin with the period of building and continue for the entire period during which the wastewater treatment facility operates. The insurance must be in an amount at least equal to the allowable improvements or the maximum limit of coverage made available to the recipient under the National Flood Insurance Act, whichever is less. The recipient shall comply with every requirement of this subsection prior to the release of the initial Trust loan disbursement for building the project;

20. The recipient shall certify that it and its contractors and subcontractors shall comply with the discrimination and affirmative action provisions of N.J.S.A. 10:2-1 through 10:2-4, the New Jersey Law Against Discrimination (N.J.S.A. 10:5-1 et seq.), and the rules and regulations promulgated pursuant thereto, including but not limited to N.J.A.C. 17:27;

21. The recipient shall certify that it has established an affirmative action program for the hiring of minority workers in the performance of any construction contract for that project consistent with the provisions of the New Jersey Law Against Discrimination (N.J.S.A. 10:5-1 et seq.);

22. The recipient shall designate an officer or employee, who may be an existing officer or employee, to serve as its public agency compliance officer, pursuant to N.J.A.C. 17:27-3.5 and N.J.A.C. 7:22-9.11;

23. The recipient shall certify that it shall comply with the Rules and Regulations for Awarding Contracts for State Assisted Projects to Small Business Concerns Owned and Controlled by Socially and Economically Disadvantaged Individuals (N.J.A.C. 7:22-9);

24. A goal of not less than 10 percent of the total amount of all contracts for building, materials or services for a project shall be awarded to small business concerns owned and controlled by socially and economically disadvantaged individuals as defined in the Small Business Act (15 U.S.C. 637(a) and 637(d)), and any regulations promulgated pursuant thereto. Where a local government unit has Minority Business Enterprise/Women's Business Enterprise (MBE/WBE) goals which exceed 10 percent of the total amount of all contracts, the local government unit's goals will take precedence over State goals; and

25. The recipient shall pay not less than the prevailing wage rate to workers employed in the performance of any contract for the project, in accordance with the rate determined by the Commissioner of the New Jersey Department of Labor pursuant to N.J.S.A. 34:11-56.25 et seq. or the United States Secretary of Labor pursuant to 29 CFR Part 5, whichever is greater.

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

(d) The recipient shall insert in all contracts or subcontracts awarded pursuant to this subchapter the Department's Subcontractor Certification Form.

(e) The recipient shall insert into the contracts for building the project EPA Form 5720-4 (5-13), Labor Standards Provisions for Federally Assisted Construction Contracts.

(f) The recipient shall insert into the contracts, and shall ensure that their contractor(s) include within their subcontract(s), the following statement:

"In accordance with the provisions of N.J.S.A. 58:11B-26, N.J.A.C. 7:22-3.17(a)24 and 4.17(a)24, the contractor (subcontractor) shall comply with all of the provisions of N.J.A.C. 7:22-9."

(g) All applicable surety bonds required in connection with the advertisement and award of building contracts or subagreements must be written by a surety company listed on the Federal Treasury List (Department Circular 570-Surety Companies Acceptable on Federal Bonds), incorporated herein by reference. Copies of this document may be obtained from the Department.

7:22-4.18 Administration and performance of loan

The recipient bears primary responsibility for the administration and success of the project, including any subagreements made by the recipient for accomplishing the Trust loan objectives. Although recipients are encouraged to seek the advice and opinion of the Trust on problems that may arise, the giving of such advice does not shift the responsibility for final decisions from the recipient to the Trust.

7:22-4.19 Project changes and loan modifications

(a) A Trust loan modification means any written alteration of the terms or conditions, budget or project method or other administrative, technical or financial provisions of the Trust loan agreement.

(b) The recipient shall promptly notify the Trust in writing (certified mail, return receipt requested) of events or proposed changes which may require a Trust loan modification, including but not limited to:

1.-6. (No change.)

(c) If the Trust determines that a Trust loan modification by means of a Trust loan agreement amendment is necessary in accordance with N.J.A.C. 7:22-4.20, the recipient shall be notified and a Trust loan agreement amendment shall be processed. If the Trust decides a Trust loan agreement amendment is not necessary, the Trust and the recipient shall follow the procedures of N.J.A.C. 7:22-4.21 or 4.22, as applicable.

7:22-4.20 Trust loan agreement amendments

(a) The Trust shall require a Trust loan agreement amendment to change principal provisions of a Trust loan agreement where the Trust determines that project changes substantially alter the objective or scope of the project or time of performance of the project or any major phase thereof or to change substantially a term or condition of the Trust loan agreement.

(b) In the event that a project has a need for additional moneys due to the low bid building cost being higher than the original Trust loan amount, the local government unit may request a supplemental Trust loan. The Trust may award a supplemental Trust loan only after passage of a subsequent legislative *[appropriatons]* ***appropriations*** act providing moneys for the specific project of concern and only with a Trust loan agreement. The recipient shall be responsible for all other increased costs.

7:22-4.22 *[other]* ***Other*** changes

All other project changes, which do not require a Trust loan agreement amendment as stated in N.J.A.C. 7:22-4.20, require written approval of the Trust.

7:22-4.24 Trust disbursement

Disbursement of Trust loan moneys shall be made as indicated in the Trust loan agreement at intervals as work progresses and expenses are incurred by the local government unit and as approved by the Trust, but in no event shall total disbursements at any time exceed the cumulative Trust loan amounts indicated in the disbursement schedule of the Trust loan agreement or the allowable costs which have been incurred at that time. No disbursement shall be made until the Trust receives satisfactory cost documentation which must include all forms and information required by the Trust and completed in a manner satisfactory to the Trust.

7:22-4.26 Unused funds

Where the total amount disbursed under a Trust loan due to the low bid building cost is less than the initial Trust loan award, and/or where the total amount disbursed under a Trust loan due to the final building cost is less than the Trust loan amount due to the low bid building cost, the difference shall be retained by the Trust to be used for making a recipient's debt service payments until exhausted or for any other purpose as determined by the Trust in accordance with the applicable Trust loan agreement and Trust bond resolution. Line item adjustments for allowable project costs may be made at the request of the recipient as long as the Trust loan amount in the Trust loan agreement is not exceeded and provided all project related contracts have been awarded. However, the Trust shall not allow line item adjustments to reallocate funds resulting from cost underruns due to a reduction in project scope.

7:22-4.28 Land acquisition

The cost for land may be determined to be an allowable cost by the Department in accordance with N.J.A.C. 7:22-5.7. If required by Federal law, the recipient shall comply with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646 (84 Stat. 1894) approved Janaury 2, 1971). Further, if required by Federal law, the local government unit shall not acquire real property the cost of which the Department has determined to be allowable for Trust loan moneys until the Regional Administrator of EPA or his or her designee has determined that the applicable provisions of 40 CFR Part 4 have been met.

7:22-4.29 Project initiation

(a) (No change.)

(b) The recipient shall not advertise any contract or any addendum thereto for the building of the project until authorization to advertise the contract or any addendum thereto has been granted by the Department.

(c) Once bids for building the project are received, the recipient shall not award any subagreement(s) until authorization to award has been given by the Department.

(d) The recipient and the contractor to whom the subagreement(s) has been awarded shall attend a preconstruction conference with Department personnel prior to the issuance of a notice to proceed.

(e) The recipient shall award the subagreement(s) and issue notice(s) to proceed, where required, for building all significant elements of the project no later than 12 months after the loan closing, unless a specific extension has been approved by the Trust.

(f) (No change.)

7:22-4.30 Project performance

(a) (No change.)

(b) On the date one year after the initiation of operation, the recipient shall certify to the Trust the performance record of the project. If the Trust or the recipient concludes that the project does not meet the wastewater treatment facilities' performance standards as spcified in the Trust loan agreement, the recipient shall submit the following:

1.-3. (No change.)

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

(e) At a minimum, unless further specified, the project performance standards consist of the effluent discharge limitations in the NJPDES permit (if applicable) and the design criteria in the Department-approved Engineer's Technical Design Report submitted by the local government unit for the Project.

7:22-4.32 Preaward costs

(a) The Trust shall not consider allowable those costs incurred for building performed prior to closing the loan for the project, except:

1. Where the local government unit's project is ranked one through seventy, inclusive, on the most currently approved Priority System, Intended Use Plan and Project Priority List or is part of the Department's request to the Legislature for inclusion in an appropriations bill providing Trust moneys in the forthcoming fiscal year for that project and of the following conditions has met (a)1i through iii or (a)1iv below:

i. The local government unit has submitted items required at N.J.A.C. 7:22-4.11(d)3 through 19, to the Department prior to the advertisement of any contract for which cost reimbursement is being sought.

ii. The local government unit has not advertised any contract or any addendum thereto, for which cost reimbursement is being sought, without the authorization to advertise the contracts or any addendum thereto being given by the Department.

iii. The local government unit has not awarded any contract, for which cost reimbursement is being sought, without the authorization to award the contracts being given by the Department.

iv. The local government unit has submitted items required at N.J.A.C. 7:22-4.11(d)3 through 19 to the Department prior to the issuance of a notice to proceed with building the project and has met the provisions of the New Jersey Wastewater Treatment Privatization Act (N.J.S.A 58:27-1 et seq.).

2. (No change.)

(b) If the Department approves preliminary building activities, such approval is not an actual or implied commitment of Trust loan moneys and the local government unit proceeds at its own financial risk. The local government unit shall receive cost reimbursement of approved activities only upon receiving legislative approval in the form of an appropriations act and closing a Trust loan for the project.

(c) (No change.)

7:22-4.34 Planning and design

The costs associated with the planning and design of wastewater treatment facilities are not allowable for reimbursement from the Trust. However, an allowance to assist in defraying the planning and design costs will be provided to a project as a percentage of the allowable building cost in accordance with N.J.A.C. 7:22-5.12. Projects which have received financial assistance through a Federal grant, Pinelands Infrastructure Trust funding, or the Sewage Infrastructure Improvement Act for costs associated with any portion of the project scope or for costs to address the project need, will not be eligible to receive an allowance for planning and/or design as appropriate in accordance with N.J.A.C. 7:22-5.12.

7:22-4.35 Infiltration/Inflow

(a) An infiltration/inflow analysis shall be required as part of the Project Report/Facilities Plan.

(b) The applicant shall demonstrate to the Department's satisfaction that each sewer system discharging into the wastewater treatment facility is not or will not be subject to excessive infiltration/inflow. For combined sewer overflow projects, in no case shall inflow be considered excessive.

(c) If the rainfall induced peak inflow rate results or will result in chronic operational problems or system surcharging during storm events or the rainfall induced total flow rate exceeds 275 gallons per capita per day during storm events, the applicant shall perform a sewer system evaluation survey including a cost effectiveness analysis to determine the quantity of excessive inflow and shall propose a rehabilitation program to eliminate the excessive inflow.

(d) If the flow rate at the existing wastewater treatment facility is less than 120 gallons per capita per day during periods of high groundwater, the *[recipient]* ***applicant*** shall *[build]* ***design*** the project including sufficient capacity to transport and treat any existing infiltration. If the *[recipient]* ***applicant*** demonstrates that its sewer system is subject to excessive infiltration of 120 gallons per capita per day or more during periods of high groundwater, the *[recipient]* ***applicant*** shall perform a sewer system evaluation survey including a cost effectiveness analysis and shall propose a rehabilitation program to eliminate the excessive infiltration.

(e) The provisions of (a) through (d) above are not intended to apply to stormwater runoff collection systems. However, a similar analysis regarding the quality and quantity of infiltration/inflow into a stormwater runoff collection system may be required.

7:22-4.36 Reserve capacity

(a) For those projects eligible for Trust loans in State fiscal year 1993 and beyond whose sponsor indicates in their initial loan application that they do not want to exercise their option to receive Trust loan assistance for those costs related to reserve capacity that the Department determines to be unallowable under the provisions of N.J.A.C. 7:22-3.36, the Trust shall limit the recipient's Trust loan assistance to the cost of the project with a capacity based upon flow records, existing unsewered needs and flows anticipated prior to the date of initiation of operation as established in the Trust loan agreement. For any project providing for capacity in excess of that provided by this subsection, all incremental costs shall be paid by the recipient. Incremental costs include all costs which would not have been incurred but for the additional excess capacity.

(b) For those projects eligible for Trust loans in State fiscal year 1993 and beyond in which the local government unit indicates in their initial loan application that they want to exercise their option to receive Trust loan assistance for those costs related to reserve capacity that the Department determines to be unallowable under the provisions of N.J.A.C. 7:22-3.36, the Trust may offer a market rate Trust loan for such costs.

(c) For those projects which received their initial Trust loan in State fiscal year 1992, the Trust may offer a market rate Trust loan for the costs related to the reserve capacity that the Department determines to be unallowable under the provisions of N.J.A.C. 7:22-3.36 provided the local government unit submits a Trust loan application for such costs in State fiscal year 1993 or 1994 and provided the local government unit submits the loan application for such costs in conjunction with their supplemental Trust loan application (if eligible to receive a supplemental Trust loan).

(d) In no case, however, shall the allowable capacity for existing systems exceed 120 gallons per capita per day. Design flows of 70 gallons per capita per day plus a reasonable allowance for infiltration (100 gallons per day per inch diameter per mile of new sewer or less) or 75 gallons per capita per day, whichever is less, shall be allowable for existing unsewered needs and for collection systems projected to be built during the design life.

(e) For those projects which received Trust loans in State fiscal year 1991 or earlier, the Trust shall limit the recipient's Trust loan assistance as described in (a) above.

7:22-4.45 Administrative hearings

(a) (No change.)

(b) If a recipient wishes to appeal the Department's decision under (a) above, the recipient shall request an administrative hearing within 15 calendar days of a decision by the Trust. The request for an administrative hearing must specify in detail the basis for the appeal.

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

7:22-4.46 Assistance in the administration of trust rules

In evaluating whether a project has complied with or satisfied any requirement or criteria under these New Jersey Wastewater Treatment Rules, including, but not limited to, N.J.A.C. 7:22-4.11, 4.13, 4.17, 4.29, 4.31, 4.35, 4.36, 4.37, 4.43 or 4.45, or in determining what course of action the Trust may decide upon regarding those sections, the Trust shall be entitled to rely upon any advice, certifications or opinions which may be provided to it by the engineering, professional or legal staff of the Department or of any other State governmental unit to which it may call upon for assistance pursuant to N.J.S.A. 58:11B-5(f) of the Trust Act.

SUBCHAPTER 5. DETERMINATION OF ALLOWABLE COSTS: FUND AND TRUST

7:22-5.4 Costs related to subagreements

(a) Allowable costs related to subagreements include:

1. (No change.)

2. The costs for establishing or using liaison services for small business concerns owned and controlled by socially and economically disadvantaged individuals pursuant to N.J.A.C. 7:22-9;

3. (No change.)

4. The costs (including legal, technical, and administrative costs) of assessing the merits of or negotiating the settlement of a claim by or against a recipient under a subagreement, provided that:

i.-iii. (No change.)

iv. The Department or Trust, as appropriate, determines that there is a significant State interest in the issues involved in the claim; and

v. (No change.)

5. Change orders for increased costs under subagreements as follows:

i. Change orders provided the costs are:

(1) Within the scope of the project;

(2) Not caused by the recipient's mismanagement;

(3) Not caused by the recipient's vicarious liability for the improper action of others; and

(4) The cost of which when added to the allowable costs due to the final building cost, does not exceed the allowable costs due to the low bid building cost.

ii. Provided the requirements of (a)5i above are met, the following is an example of allowable change orders and contractor claim costs:

(1) (No change.)

iii. Settlements, arbitration awards, or court judgements, which resolve contractor claims shall be reviewed by the Department or the Trust, as appropriate, and are allowable only to the extent that they meet the requirements of (a)5i above, are reasonable, and do not attempt to pass on to the Department or the Trust the cost of events that were the responsibility of the recipient, the contractor, or others.

iv. (No change.)

6. The costs of the recipient required by N.J.A.C. 7:22-3.30 or N.J.A.C. 7:22-4.30, as applicable, during the first year following initiation of operation of the project;

7.-8. (No change.)

(b) The sum total of the allowable costs in (a)2 through 8 above will not exceed 12 percent of the low bid building cost.

(c) Unallowable costs related to subagreements include:

1. (No change.)

2. Except as provided in (a)5 above, architectural or engineering services or other services necessary to correct defects in a planning document, design drawings and specifications, or other subagreement documents;

3. The costs (including legal, technical and administrative) of *[definding]* ***defending*** against a contractor claim for increased costs under a subagreement or of prosecuting a claim to enforce any subagreement unless:

i.-iv. (No change.)

v. The Department or the Trust, as appropriate, determines that there is a significant State interest in the issues involved in the claim; and

vi. (No change.)

4. (No change.)

5. All costs associated with the award of any subagreement for building significant elements of the project more than 12 months after the Fund or Trust closing unless an extension is specified in the project schedule approved by the Department or the Trust, as appropriate.

7:22-5.5 Mitigation

(a) Allowable costs related to mitigation include:

1. (No change.)

2. The costs of site screening necessary to comply with the Environmental Assessment Requirements for State Assisted Wastewater Treatment Facilities (N.J.A.C. 7:22-10), to complete related studies and plans, or necessary to screen adjacent properties;

3. (No change.)

(b) Unallowable costs related to mitigation include:

1. (No change.)

2. The costs of land acquired for the mitigation of adverse environmental effects identified pursuant to an environmental review under the provisions of N.J.A.C. 7:22-10.

7:22-5.6 Publicly owned small and onsite systems

(a) Allowable costs for publicly owned small and onsite systems serving residences and small commercial establishments include:

1. The cost of major rehabilitation, upgrading, enlarging and installing publicly owned small and onsite systems;

2.-5. (No change.)

(b) Unallowable costs for small and onsite systems include:

1. Modification to the physical structure of homes or commercial establishments;

2. (No change.)

3. Wastewater generating fixtures such as commodes, sinks, tubs, and drains; and

4. The cost of rehabilitation, upgrade, enlarging and installing privately owned small and onsite systems (unless the Department determines that such a system constitutes, or is included within, a septage management district, in which case the Department may deem the public ownership requirement to be satisfied).

7:22-5.7 Real property

(a) Allowable costs for land and rights-of-way include:

1. The cost (including associated legal, administrative and engineering costs) of land acquired in fee simple or by lease or easement that will be an integral part of the treatment process or that will be used for the ultimate disposal of residues resulting from such treatment provided the Department or the Trust, as appropriate, approves it and it is identified as such in the Fund or Trust loan agreement. These costs include:

i.-iv. (No change.)

2.-4. (No change.)

(b) Unallowable costs for land and rights-of-way include:

1. (No change.)

2. Any amount paid by the recipient for eligible land in excess of just compensation, based on the appraised value, as determined by the Department or the Trust, as appropriate.

3. (No change.)

7:22-5.8 Equipment, materials and supplies

(a) Allowable costs of equipment, materials and supplies include:

1.-6. (No change.)

7. Replacement parts identified and approved in advance by the Department or the Trust, as appropriate, as necessary to assure uninterrupted operation of the facility, provided they are critical parts or major systems components which are:

i.-iii. (No change.)

(b) (No change.)

7:22-5.9 Industrial and Federal users

(a) (No change.)

(b) Unallowable costs for wastewater treatment facilities serving industrial and Federal users include:

1.-3. (No change.)

4. The cost of interceptor or collector sewers constructed exclusively, or almost exclusively, to serve industrial users; and

5. The cost for control or removal of pollutants in wastewater introduced into the wastewater treatment facilities by industrial users, unless the local government unit is required to remove such pollutants introduced from nonindustrial users.

7:22-5.10 Infiltration/inflow and reserve capacity

(a) Allowable costs related to infiltration/inflow and reserve capacity include:

1. The cost of the wastewater treatment facilities' capacity adequate to transport and treat nonexcessive infiltration/inflow under N.J.A.C. 7:22-3.35 or 4.35, as applicable, and reserve capacity in accordance with N.J.A.C. 7:22-3.36 or 4.36, as applicable.

2. (No change.)

(b) Unallowable costs related to infiltration/inflow and reserve capacity include:

1. (No change.)

2. All costs related to reserve capacity are unallowable except as provided for under the provisions of N.J.A.C. 7:22-4.36.

7:22-5.11 Miscellaneous costs

(a) Allowable miscellaneous costs include:

1. The costs of salaries, benefits and expendable materials the recipient incurs for the project. However, the allowable portion of these administrative costs will be limited to one percent of the low bid building cost;

2. The costs of additions to wastewater treatment facilities that were assisted under the Federal Water Pollution Control Act Amendments, the Wastewater Treatment Bond Act, the Trust Act, the Pinelands Infrastructure Trust Bond Act of 1985 (P.L. 1985, c. 302) or its amendments, or the Stormwater Management and Combined Sewer Overflow Abatement Bond Act and that fails to meet its performance standards as specified in the Fund or Trust loan agreement, provided:

i. The project is identified on the Project Priority List as a project for additions to wastewater treatment facilities that have received previous State or Federal funds;

ii. (No change.)

iii. The additions could have been included in the original grant or loan award; and

(1) Are the result of one of the following:

(A)-(B) (No change.)

(C) A written understanding between the Department and the recipient prior to or included in the original Federal grant award;

(D)-(E) (No change.)

(F) A written direction by the Regional Administrator of EPA or the Department or the Pinelands Commission or the Trust to delay building part of the wastewater treatment facilities; or

(G) (No change.)

(2) (No change.)

iv. (No change.)

3. Costs of royalties for the use of or rights in a patented process or product with the prior approval of the Department or the Trust, as appropriate.

4. Costs of recipient's employees attending training workshops/seminars that are necessary to provide instruction in administrative, fiscal or contracting procedures required to complete the construction of the wastewater treatment facilities, if approved in advance by the Department or the Trust, as appropriate.

(b) Unallowable miscellaneous costs include:

1.-4. (No change.)

5. The costs of replacing, through reconstruction or substitution, wastewater treatment facilities that were assisted under the Federal Water Pollution Control Act Amendments, the Wastewater Treat-

ment Bond Act, the Trust Act, the Pinelands Infrastructure Trust Bond Act of 1985 (P.L. 1985 c. 302) or its amendments, or the Stormwater Management and Combined Sewer Overflow Abatement Bond Act and that fail to meet its project performance standards. This provision applies to failures that occur either before or after the initiation of operation but does not apply to wastewater treatment facilities that fail at the end of its design life;

6.-12. (No change.)

7:22-5.12 Allowance for planning and design

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

(d) The estimated and final allowance will be determined in accordance with this section and Tables 1 and 2. Table 2 is to be used in the event that the recipient received a Federal grant, *[Sewerage]* ***Sewage*** Infrastructure Improvement Act funding, or Pinelands funding for facilities planning. The amount of the allowance is computed by applying the resulting allowance percentage to the initial allowable building cost.

(e)-(h) (No change.)

(i) The allowance does not include architect or engineering services provided during the building of the project, for example, reviewing bids, checking shop drawings, reviewing change orders, making periodic visits to job sites, etc. Architect or engineering services during the building of the project are allowable costs subject to this regulation and the Local Public Contracts Law, (N.J.S.A. 40A:11-1 et seq.) or the New Jersey Wastewater Treatment Privatization Act (N.J.S.A. 58:27-1 et seq.).

TABLE 1—ALLOWANCE FOR FACILITIES PLANNING AND DESIGN

Building Cost	Allowance as a Percentage of Building Cost+
$ 100,000 or less	14.4945
120,000	14.1146
150,000	13.6631
175,000	13.3597
200,000	13.1023
250,000	12.6832
300,000	12.3507
350,000	12.0764
400,000	11.8438
500,000	11.4649
600,000	11.1644
700,000	10.9165
800,000	10.7062
900,000	10.5240
1,000,000	10.3637
1,200,000	10.0920
1,500,000	9.7692
1,750,000	9.5523
2,000,000	9.3682
2,500,000	9.0686
3,000,000	8.8309
3,500,000	8.6348
4,000,000	8.4684
5,000,000	8.1975
6,000,000	7.9827
7,000,000	7.8054
8,000,000	7.6550
9,000,000	7.5248
10,000,000	7.4101
12,000,000	7.2159
15,000,000	6.9851
17,500,000	6.8300
20,000,000	6.6984
25,000,000	6.4841
30,000,000	6.3142
35,000,000	6.1739
40,000,000	6.0550
50,000,000	5.8613
60,000,000	5.7077
70,000,000	5.5809
80,000,000	5.4734
90,000,000	5.3803
100,000,000	5.2983
120,000,000	5.1594
150,000,000	4.9944
175,000,000	4.8835
$200,000,000	4.7984

NOTE: The allowance does not reimburse for costs incurred. Accordingly, the allowance Tables should not be used to determine the compensation for planning or design services. The compensation for planning or design services should be based upon the nature, scope and complexity of the services required by the community.

+Interpolate between values.

TABLE 2—ALLOWANCE FOR DESIGN ONLY

(No change.)

SUBCHAPTER 6. PINELANDS PROCEDURES AND REQUIREMENTS

7:22-6.1 Scope

This subchapter shall constitute the rules of the New Jersey Department of Environmental Protection and Energy governing the disposition of appropriations pursuant to the Pinelands Infrastructure Trust Bond Act of 1985 (P.L. 1985, c. 302) or other moneys appropriated to the Pinelands Infrastructure Trust Fund, for the purposes of awarding financial assistance to local government units through the issuance of Pinelands grants or loans for the planning, design, and construction of wastewater treatment facilities. These rules prescribe the procedures to be followed by the applicant and the Department respectively, in the application for grants and loans from the Pinelands Infrastructure Trust as well as the administration of these funds, including accounting and recordkeeping procedures, loan repayment requirements, minimum standards of conduct for recipients, and standards for the construction of wastewater treatment facilities.

7:22-6.4 Definitions

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

"Ad valorem tax" means a tax based upon the value of real property.

"Allowable costs" means those costs that are eligible, reasonable, necessary and allocable to the project; permitted by generally accepted accounting principles; and approved by the Department in the Pinelands grant or loan agreement. Allowable costs will be determined on a project specific basis in accordance with N.J.A.C. 7:22-7.

...

"Alternative technology" means proven wastewater treatment processes and techniques which provide for the reclaiming and reuse of water, productively recycle wastewater constituents or otherwise eliminate the discharge of pollutants, or recover energy. Specifically, alternative technology includes, but is not limited to, land application of effluent and sludge, *[acquifer]* ***aquifer*** recharge, aquaculture, direct reuse (non-potable), horticulture, revegetation of disturbed land, containment ponds, sludge composting and drying prior to land application, self-sustaining incineration, methane recovery, individual and on-site systems, and small diameter pressure and vacuum sewers and small diameter gravity sewers carrying partially or fully treated wastewater.

...

"Best Practicable Waste Treatment Technology" (BPWTT) means the cost-effective technology that can treat wastewater, combined sewer overflows and nonexcessive infiltration and inflow in publicly owned or individual wastewater treatment facilities, to meet the applicable provisions of:

1. 40 CFR Part 133-secondary treatment of wastewater;
2. 40 CFR Part 125, Subpart G-marine discharge waivers;

3. 40 CFR 122.44(d)-more stringent water quality standards and State standards; and/or

4. 41 FR 6190 (February 11, 1976)-Alternative Waste Management Techniques for Best Practicable Waste Treatment (treatment and discharge, land application techniques and utilization practices, and reuse).

"Bond Act" means the Pinelands Infrastructure Trust Bond Act of 1985 (P.L. 1985, c.302) and any amendatory or supplementary acts thereto.

...

"Change order" means an alteration of the cost, scope or time of performance of a subagreement occurring subsequent to the execution of that subagreement.

...

"Combined sewer" means a sewer that is designed to function as both a sanitary sewer and storm sewer.

...

"Contract" means a subagreement as defined in this subchapter.

"Conventional technology" means the processes and techniques involving the treatment of wastewater at a centralized treatment plant by means of biological or physical/chemical unit processes followed by direct point source discharge to surface waters.

"DAC" means "Discharge Allocation Certificate".

"Department" means the New Jersey Department of Environmental Protection and Energy and its successors and assigns.

"Design life" means the length of time during which a wastewater treatment facility is planned and designed to be operated.

"Discharge Allocation Certificate" (DAC) means the certificate issued by the Department pursuant to N.J.A.C. 7:14A which designates the quantity and quality of pollutants which may be discharged by any person planning to undertake any activity which will result in a discharge to surface water or a substantial modification in a discharge to surface water.

...

"EPA" means the United States Environmental Protection Agency.

...

"Federal grant" means a grant awarded pursuant to section 201 of the Federal Water Pollution Control Act Amendments.

"Federal Water Pollution Control Act Amendments" means the Federal Water Pollution Control Act Amendments of 1972 (33 U.S.C. 1251 et seq.) and any amendatory of supplementary acts thereto.

"Final building cost" means the total actual allowable cost of the final work in place for the project, in accordance with the project scope as defined in the Pinelands grant or loan agreement.

...

"Innovative technology" means developed wastewater treatment processes and techniques which have not been fully proven under the circumstances of their contemplated use and which represent a significant advancement over the state of the art in terms of significant reduction in life cycle cost or significant environmental benefits through the reclaiming and reuse of water, otherwise eliminating the discharge of pollutants, utilizing recycling techniques such as land treatment, more efficient use of energy and resources, improved or new methods of waste treatment management for combined municipal and industrial systems, or the confined disposal of pollutants so that they will not migrate to cause water or other environmental pollution.

...

"Low bid building cost" means the total allowable cost for the project due to the award of all contracts within a project scope to the lowest responsible and responsive bidder(s). Excluded from this cost is any cost due to change orders.

"Operation and maintenance" means the following activities required to assure the dependable and economical functioning of wastewater treatment facilities:

1. Maintenance: Preservation of functional integrity and efficiency of equipment and structures, including, but not limited to, preventive maintenance, corrective maintenance, and replacement of equipment as needed.

2. Operation: Control of the unit processes and equipment which make up the wastewater treatment facilities, including, but not limited to, financial and personnel management, recordkeeping, laboratory control, process control, safety and emergency operation planning.

...

"Pinelands Bond Act" means the Pinelands Infrastructure Trust Bond Act of 1985 (P.L. 1985 c.302) and any amendatory or supplementary acts thereto.

"Project performance standards" means the performance and operations requirements applicable to a project including the enforceable requirements of the Federal Water Pollution Control Act Amendments and the specifications, including the quantity of excessive infiltration and inflow proposed to be eliminated, which the project is planned and designed to meet.

"Project scope" or "scope of work" means the scope of services and/or activities for which a Pinelands grant or loan agreement has been executed by the Department and a recipient.

"Recipient" means any local government unit which has received preaward approval pursuant to N.J.A.C. 7:22-6.32 or a Pinelands grant or loan pursuant to this subchapter.

"Responsible bidder" means a bidder that satisfactorily demonstrates to the Department that it has:

1. Financial resources, technical qualfications, experience, organization and facilities adequate to carry out the project, or a demonstrated ability to obtain these;

2. Resources to meet the completion schedule contained in the subagreement;

3. A satisfactory performance record for completion of subagreements;

4. Accounting and auditing procedures adequate to control property, funds and assets; and

5. A demonstrated record of compliance or willingness to comply with the civil rights, equal employment opportunity, labor law and other statutory requirements under this subchapter.

...

"State" means the State of New Jersey.

...

"Subagreement" means a written agreement between a recipient and another party (other than another public agency) which may include the prime building agreement for the project, and any lower tier agreement for services, supplies, or construction necessary to complete the project; agreements for personal and professional services with consultants; and purchase orders.

...

"User charge" means a charge levied on users of a wastewater treatment facility or that portion of the ad valorem taxes paid by a user, for the user's proportionate share of the cost of operation and maintenance (including replacement) of such facilities and may include debt service.

...

7:22-6.5 Pinelands Infrastructure Trust Fund

(a) (No change.)

(b) The moneys in the Pinelands Fund are specifically dedicated and shall be used for the purposes identified in N.J.A.C. 7:22-6.3; however, no moneys shall be expended from the Pinelands Fund for those purposes without the specific appropriation thereof by the Legislature.

(c) (No change.)

7:22-6.6 Terms of grants and loans from the Pineland*s* Infrastructure Trust Fund

(a) (No change.)

(b) The term of the Pinelands loans will generally be 20 years or as indicated in the Pinelands grant or loan agreement. The interest rate will not exceed 50 percent of the Bond Buyer Municipal Bond Index for bonds available for purchase during the last 26 weeks preceding the date of the execution of the loan agreement by the Department. Pinelands loan repayments shall be made by the recipient in accordance with the repayment schedule indicated in the Pinelands loan agreement. Principal and accrued interest with

respect to a particular Pinelands loan may, however, be prepaid in accordance with the provisions of the relevant Pinelands loan agreement.

(c) (No change.)

(d) Pinelands grant and loan proceeds will be disbursed to recipients in accordance with N.J.A.C. 7:22-6.24.

(e) (No change.)

7:22-6.7 Criteria for project funding priority

(a) The Department shall utilize a Pinelands Infrastructure Trust Funding List which will be the same as the priority list of projects contained within the Pinelands Infrastructure Master Plan developed by the Pinelands Commission. The Pinelands Infrastructure Master Plan will be the subject of at least one public hearing held by the Pinelands Commission including a public comment period. Local government units are only eligible for Pinelands Infrastructure Trust funding if they are on the priority list and are ranked by the Pinelands Infrastructure Master Plan. Eligible projects placed on the Pinelands Infrastructure Trust Funding List shall be eligible to receive a Notice of Project Eligibility in accordance with N.J.A.C. 7:22-6.8. The following must be submitted by the authorized representative of the local government unit to be considered for ranking on the Pinelands Infrastructure Trust Funding List:

1.-2. (No change.)

3. Estimated costs associated with building the project, excluding planning and design except as provided in 7:22-6.11(e), (f), and (g). Significant changes in estimated costs shall be outlined.

(b) (No change.)

7:22-6.8 Pinelands Infrastructure Trust State and Federal funding

(a) Local government units which receive funding through a grant from any Federal program shall also be eligible to receive financial assistance from the Pinelands Infrastructure Trust Fund for the construction of the same scope of work (planning, design, or building). However, in no case shall the total funding assistance under a Federal grant and the Pinelands Fund exceed the total eligible project costs. However, local government units which receive funding through a loan from the Wastewater Treatment Fund pursuant to N.J.A.C. 7:22-3 and the New Jersey Wastewater Treatment Trust pursuant to N.J.A.C. 7:22-4 shall not be eligible to receive financial assistance from the Pinelands Infrastructure Trust Fund for construction of the same wastewater treatment facilities.

(b) (No change.)

7:22-6.10 Pre-application procedures

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

7:22-6.11 Application procedures

(a) Each application for Pinelands Infrastructure Trust funds shall be submitted to the Department in conformance with the time period specified in the Notice of Project Eligibility or as otherwise extended by the Department and must include full and complete documentation and any supplementary materials that the Department requires an applicant to furnish.

(b) Submissions which do not substantially comply with this subchapter shall not be processed further and the applicant shall be so advised.

(c) Processing of a Pinelands grant or loan application generally requires 60 calendar days after receipt of a complete application by the Department.

(d) The following shall be submitted when applying for Pinelands Infrastructure Trust funding for the construction of wastewater treatment facilities:

1. An application for Pinelands Infrastructure Trust funding pursuant to this subchapter for the construction of wastewater treatment facilities. Each application constitutes an agreement to accept the requirements of this subchapter;

2. A resolution passed by the local government unit authorizing the filing of an application for Pinelands Infrastructure Trust funding and specifying the individual authorized to sign the Pinelands grant or loan application on behalf of the local government unit. If two or more local government units are involved in the project, a resolution indicating the lead applicant and the authorized representative is required from each;

3.-4. (No change.)

5. Project Report/Facilities Plan including evidence of compliance with the appropriate Water Quality Management Plans in accordance with the provisions of N.J.A.C. 7:15 and the Environmental Assessment Requirements for State Assisted Wastewater Treatment Facilities (N.J.A.C. 7:22-10). A complete Project Report/Facilities Plan must include:

i. A description of both the proposed wastewater treatment facilities and the complete wastewater treatment system of which it is a part;

ii. A description of the Best Practicable Wastewater Treatment Technology;

iii. A cost effectiveness analysis of the feasible conventional, innovative and alternative technologies capable of meeting the applicable effluent, water quality and public health requirements over the design life of the facility while recognizing environmental and other non-monetary considerations. The planning period for cost effectiveness analysis must be 20 years. The monetary costs to be considered must include the present worth or equivalent annual value of all capital costs and operation and maintenance costs. The population forecasting in the analysis must be consistent with the appropriate Water Quality Management Plan. A cost effectiveness analysis must include:

(1) An evaluation of flow reduction methods. If the applicant demonstrates that the existing average daily base flow (ADBF) from the area is less than 70 gallons per capita per day (gpcd), or if the Department determines the area has an effective existing flow reduction program, this evaluation is not required;

(2) A description of the relationship between the capacity of alternatives analyzed and the needs to be served, including capacity for future growth expected after the wastewater treatment facilities become operational. This includes letters of intent from significant industrial users and all industries intending to increase their flows or relocate in the area documenting capacity needs and characteristics for existing or projected flows;

(3) An evaluation of improved effluent quality attainable by upgrading the operation and maintenance and efficiency of existing facilities as an alternative or supplement to construction of new facilities;

(4) An evaluation of the alternative methods for the reuse or ultimate disposal of treated wastewater and sludge material resulting from the treatment process;

(5) A consideration of systems with revenue generating applications;

(6) An evaluation of opportunities to reduce use of or recover energy; and

(7) Cost information on total capital costs, and annual operation and maintenance costs, as well as estimated annual or monthly costs to residential and industrial users;

iv. An infiltration/inflow analysis of the sewer system in accordance with N.J.A.C. 7:22-6.35;

v. An analysis of the potential open space and recreation opportunities associated with the project;

vi. An adequate evaluation of the environmental impacts of the alternatives analyzed in N.J.A.C. 7:22-6.11(d)5iii;

vii. An evaluation of the water supply implications of the project; and

viii. For the selected alternative, a concise description at an appropriate level of detail, of at least the following:

(1) Relevant design parameters, including a description of the treatment units and/or sewer system to be built, schematic flow diagrams, hydraulic profiles and preliminary design criteria;

(2) Estimated capital construction and operation and maintenance costs identifying the Pinelands Funds and local (or other source) shares, and a description of the manner in which local costs will be financed;

(3) Estimated cost of future expansion and long-term needs for reconstruction of facilities following their design life;

(4) Cost impacts on wastewater system users; and

(5) Institutional and management arrangements necessary for successful implementation;

6. For sewer rehabilitation projects, a Sewer System Evaluation Survey in accordance with N.J.A.C. 7:22-6.35;

7. (No change.)

8. A description of the public participation process to date. Public participation activities undertaken in connection with the environmental review process should be coordinated with any other applicable public participation program wherever possible;

9. A report on the participation by socially and economically disadvantaged individuals during planning and design as required by N.J.A.C. 7:22-9.12(a);

10. Project cost breakdown for each subagreement;

11. Projected cash flow schedule to be used to establish the disbursement schedule;

12. Project construction schedule. A court-sanctioned order or a Department-issued Administrative Consent Order indicating a compliance schedule will be required where applicable;

13. A sewer use ordinance, user charge system and draft plan of operation acceptable to the Department;

i. The sewer use ordinance or other legally binding document must include provisions that prohibit any new connections from inflow sources into the treatment facilities and require that new sewers and connections to the treatment facilities are properly designed and contructed. The ordinance or other legally binding document must require the local unit to diligently investigate any existing inflow sources (such as sump pumps) and eliminate such sources within a reasonable time period. The ordinance or other legally binding document must also require that all wastewater introduced into the treatment facilities not contain toxics or other pollutants in amounts or concentrations that endanger public safety and physical integrity of the treatment facilities; not violate effluent or water quality limitations; or not preclude the selection of the most cost effective alternative for wastewater treatment and sludge disposal.

ii. The user charge system shall be designed to produce adequate revenues required for operation and maintenance (including replacement) and, in most cases, to cover debt service costs for the local government unit's wastewater treatment facilities. It must provide that each user which discharges pollutants that cause an increase in the cost of managing the effluent or sludge from the treatment facilities shall pay for such increased cost. Unless otherwise approved by the Department, the user charge system shall be based on either actual use under (d)13ii(1) below, ad valorem taxes under (d)13ii(2) below, or a combination of the two. It must also meet the requirements set forth in (d)13ii(3) through (8) below.

(1) A user charge system based on actual use (or estimated use) of wastewater treatment services must provide that each user (or user class) pays its proportionate share of operation and maintenance (including replacement) costs of treatment facilities within the service area, based on the user's proportionate contribution to the total wastewater loading from all users (or user classes).

(2) A user charge system which is based on ad valorem taxes may be approved if:

(A) On December 27, 1977, the applicant had in existence a system of dedicated ad valorem taxes which collected revenues to pay the cost of operation and maintenance of wastewater treatment facilities within the service area and the applicant has continued to use that system;

(B) The ad valorem user charge system distributes the operation and maintenance costs for all treatment facilities in the applicant's jurisdiction to the residential and small nonresidential user class (including at the applicant's option nonresidential, commercial and industrial users that introduce no more than the equivalent of 25,000 gallons per day of domestic sanitary wastes to the treatment facilities), in proportion to the use of the treatment facilities by this class; and

(C) Each member of the industrial user and commercial user class which discharges more than 25,000 gallons per day of sanitary waste pays its share of the costs of operation and maintenance of the treatment facilities based upon charges for actual use.

(3) Each user charge system must provide that each user be notified, at least annually, in conjunction with a regular bill (or other means acceptable to the Department) of the rate and that portion of the user charges or ad valorem taxes which are attributable to wastewater treatment services.

(4) Each user charge system must include an adequate financial management system that will accurately account for revenues generated by the system and expenditures for operation and maintenance (including replacement) of the treatment system, based on an adequate budget identifying the basis for determining the annual operation and maintenance costs and the costs of personnel, material, energy and administration.

(5) The user charge system must provide that the costs of operation and maintenance for all flow not directly attributable to user*s* (that is, infiltration/inflow) be distributed among all users based upon either of the following:

(A) In the same manner that it distributes the costs for their actual use; or

(B) Under a system which uses one or any combination of the following factors on a reasonable basis:

(I) Flow volume of the users;

(II) Number of hookups or discharges of the users;

(III) Property valuation of the users, if the applicant has an approved user charge system based on ad valorem taxes.

(6) After completion of construction of a project, revenue from the project (for example, sale of a treatment-related by-product, lease of the land, or sale of crops grown on the land purchased under the Pinelands grant or loan agreement) must be used to offset the costs of operation and maintenance. The applicant shall proportionately reduce all user charges.

(7) One or more municipal legislative enactments or other appropriate authority must incorporate the user charge system. If the project accepts wastewater from other municipalities, the subscribers receiving waste treatment services from the applicant shall adopt user charge systems in accordance with this section. These user charge systems must also be incorporated in appropriate municipal legislative enactments or other appropriate authority of all municipalities contributing wastes to the treatment facilities.

iii. The applicant shall submit a draft plan of operation that addresses development of: an operation and maintenance manual, an emergency operating program, personnel training, an adequate budget consistent with the user charge system, operational reports, laboratory testing needs, and an operation and maintenance (including replacement) program for the complete waste treatment system;

14. (No change.)

15. An affidavit (CGA Form LP-8) certifying that required permits and approvals for building the wastewater treatment facilities, were received from applicable Federal, State, and local agencies;

16.-17. (No change.)

18. Executed service, and/or deficiency or other intermunicipal agreements, if applicable. If the project will serve two or more local government units, the applicant shall submit the executed service agreements, contracts or other legally binding instruments necessary for the financing, building and operation of the proposed wastewater treatment facilities. At a minimum, these documents must include the basis upon which costs are allocated, the formula by which costs are allocated, and the manner in which the cost allocation system will be administered;

19. (No change.)

20. A description of how the applicant plans to repay the Pinelands loan, if applicable, and pay any other expenses necessary to fully complete and implement the project, the steps it has taken to implement this plan, and steps it plans to take before receiving the Pinelands loan that guarantee that at the time of the signing of the Pinelands loan agreement it is irrevocably committed to repay the Pinelands loan and pay any other expenses necessary to fully complete, implement, operate and maintain the project. The descrip-

tion must include: pro forma projections of the applicant's financial operations during the construction period of the project and five years thereafter; a summary of the sources and uses of all funds anticipated to be used for the project to be financed by the Pinelands Fund loan; and a statement of the assumptions used in creating these projections. Applicants shall secure all loans in a manner acceptable to the State pledging to provide funds to repay the debt, even if the Pinelands loan is terminated pursuant to N.J.A.C. 7:22-6.43. Acceptable security arrangements include, but are not limited to, general obligation bonds of the local government unit, municipal bond insurance, and service/deficiency agreement(s) with government units with general taxing power and surety bonds.

21.-22. (No change.)

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

(h) Applicants shall obtain all necessary Federal, State, and local permits and approvals prior to the award of a Pinelands grant or loan unless prior approval for an extension for one or more specific permits has been granted by the Department that does not significantly affect the grant or loan award. Excluded from prior acquisition are permits and approvals which are impractical to obtain prior to the loan award (such as, road opening permit and blasting permit).

7:22-6.13 Evaluation of application

(a) Each application shall be subject to:

1.-4. (No change.)

(b) Upon the completion of a full review and evaluation of each application, the Department shall either certify the project for funding or make the determination that the awarding of Pinelands Infrastructure Trust funds shall be deferred. An approval by the Department shall only be issued after certification by the Pinelands Commission that the master plan and zoning ordinance of the municipalities and the Master Plan of the county wherein the project is to take place is in conformance with the Comprehensive Management Plan.

(c) The Department shall promptly notify applicants in writing of any deferral action, indicating the reasons for the deferral and a time frame for the resolution of any outstanding issues. A deferral action results in one of the following:

1. An approval of the application if the outstanding issues are addressed to the satisfaction of the Department within the specified time frame; or

2. A disapproval of the application if the outstanding issues are not addressed to the satisfaction of the Department within the specified time frame.

(d) The Department shall promptly notify an appplicant by certified mail of any disapproval. A disapproval of an application will not preclude its reconsideration if resubmitted by the applicant. However, reconsideration of a revised Pinelands application and/or processing of a Pinelands grant or loan agreement for the project within the current fiscal year may be bypassed, precluding funding of the project until a future fiscal year. Affected applicants shall be notified in writing of such action. As a result of a disapproval and project bypass action, the next highest ranked project on the Pinelands Infrastructure Trust Funding List may fall within the fundable range.

7:22-6.15 Pinelands Infrastructure Trust Fund grant and loan agreements

(a) The Department shall prepare and transmit the Pinelands Infrastructure Trust Fund grant or loan agreement to the applicant. The Pinelands grant or loan agreement sets forth the terms and conditions of the Pinelands Infrastructure Trust Fund grant or loan, approved project scope, allowable and unallowable project costs, estimated disbursement schedule, estimated loan repayment schedule and the approved commencement and completion dates for the project or major phases thereof.

(b) The Pinelands Infrastructure Trust Fund grant or loan agreement shall be executed by the applicant within such period of time and pursuant to such terms and conditions as the Department may determine. Such determinations shall be made in consultation with the Pinelands Commission and in consideration of any conditions identified in the Pinelands Infrastructure Master Plan.

(c) The Department, pursuant to such terms and conditions as it may determine, may require the applicant to irrevocably commit itself through a loan commitment letter, escrow agreement or other similar document to borrow the amount for which it has made application under the terms and conditions of the Pinelands Infrastructure Trust Fund grant or loan agreement transmitted to the applicant.

(d) The Pinelands grant or loan agreement and/or loan commitment letter, escrow agreement or other similar document shall be executed by a person authorized by resolution to obligate the applicant to the terms and conditions of the particular document for the project specified therein. A certified copy of the authorizing resolution shall be delivered to the Department at the time that the executed Pinelands grant or loan agreement, loan commitment letter, escrow agreement or other similar document is delivered to the Department.

(e) The Pinelands grant or loan agreement is deemed to incorporate all requirements, provisions, and information in documents or papers submitted to the Department in the application process.

(f) The Pinelands grant or loan agreement shall not be executed by the State if the applicant is in current default on any State loan.

7:22-6.16 Grant and loan awards and closing

(a) Upon the execution of the Pinelands grant or loan agreement by the Department and the recipient, the grant or loan shall be deemed awarded and the agreement becomes effective and constitutes an obligation of the Pinelands Infrastructure Trust Fund in accordance with its terms and conditions. The obligation of the State under a Pinelands grant or loan agreement is contingent upon the availability of appropriated funds from which disbursements can be made. The Pinelands grant or loan is considered closed as indicated in the Pinelands grant or loan agreement.

(b) The award or closing of the Pinelands grant or loan does not commit or obligate the Department to award any continuation or supplemental funds to cover cost overruns of the project. Cost overruns for any project or portion thereof are the sole responsibility of the recipient.

(c) The award or closing of a Pinelands grant or loan by the State can not be used as a defense by the applicant to any action by any agency for the applicant's failure to obtain all requisite permits, licenses and operating certificates.

7:22-6.17 Grant and loan conditions

(a) The following requirements, in addition to N.J.A.C. 7:22-6.18 through 6.30, as well as such statutes, rules, terms and conditions which may be applicable to particular loans, are conditions to each Pinelands grant and loan, and conditions to each disbursement under a Pinelands grant or loan agreement:

1. (No change.)

2. The recipient shall certify that it is, and shall assure that its contractors and subcontractors are, maintaining their financial records in accordance with generally accepted accounting principles and auditing standards for governmental institutions. The recipient shall comply with the requirements of the Single Audit Act of 1984 (31 U.S.C. 7501-7507), Federal OMB Circular A-128 and State OMB Circular 87-11, incorporated herein by reference. Copies of these documents may be obtained from the Department;

3. The recipient shall comply with the Department's standards of conduct (N.J.A.C. 7:22-8) and the Local Government Ethics Law (P.L.1991, c.29; N.J.S.A. 40A:9-22);

4. The recipient shall comply with the requirements of the NJPDES permit pursuant to N.J.A.C. 7:14A;

5. The recipient shall adopt a sewer use ordinance and implement the user charge system consistent with the provisions of N.J.A.C. 7:22-6.11(d)13;

6.-7. (No change.)

8. The recipient shall pay the unallowable costs of the construction of the project and shall pay the allowable costs not covered by the Pinelands grant or loan, if any;

9.-12. (No change.)

13. An amount of any Pinelands grant or loan disbursement equal to any unpaid portion of a finally determined State assessed penalty pursuant to N.J.A.C. 7:14-8, Assessment of Civil Administrative Penalties, shall, at the discretion of the Department, be held in escrow until said penalty is paid in full. In no case will the total amount withheld under this subsection exceed the unpaid amount of said penalty;

14. The Department may assess penalties to late loan repayments as appropriate as specified in the Pinelands grant or loan agreement;

15. The recipient shall comply with the Environmental Assessment Requirements for State Assisted Wastewater Treatment Facilities (N.J.A.C. 7:22-10);

16. The recipient shall certify to the Department that an operations and maintenance manual, acceptable to the local government unit, has been developed for the project;

17.-18. (No change.)

19. The recipient shall certify that it and its contractors and subcontractors shall comply with all insurance requirements of the Pinelands grant or loan agreement and certify, when appropriate, that the insurance is in full force and effect and that the premiums have been paid. The recipient shall include the State and its agencies, employees and officers as additional "named insureds" on any certificate of liability insurance coverage of the contractor. The recipient shall provide the Department with such certificate of liability insurance (or other similar document evidencing liability insurance coverage) prior to the issuance of the notice to proceed with the project. Such certificate shall be maintained in full force and represent a continuing obligation to include the State and its agencies, employees and officers as additional "named insureds" through the completion of construction. The recipient shall not alter or cancel such certificate without prior notification to the Department, in writing, 15 days in advance of any alteration or cancellation. In addition, when required, the recipient shall acquire or have the contractor acquire, as appropriate, flood insurance made available under the National Flood Insurance Act of 1968 (P.L.90-448), as amended. Flood insurance coverage shall begin with the period of building and continue for the entire period during which the wastewater treatment facility operates. The insurance must be in an amount at least equal to the allowable improvements or the maximum limit of coverage made available to the recipient under the National Flood Insurance Act, whichever is less. The recipient shall comply with each requirement of this subsection prior to the release of the initial disbursement for building the project;

20. The recipient shall certify that it and its contractors and subcontractors shall comply with the discrimination and affirmative action provisions of N.J.S.A. 10:2-1 through 10:2-4, the New Jersey Law Against Discrimination (N.J.S.A. 10:5-1 et seq.), and the rules and regulations promulgated pursuant thereto, including, but not limited to, N.J.A.C. 17:27;

21. The recipient shall certify that it has established an affirmative action program for the hiring of minority workers in the performance of any construction contract for that project, consistent with the provisions of the New Jersey Law Against Discrimination (N.J.S.A. 10:5-1 et seq.);

22. The recipient shall designate an officer or employee, who may be an existing officer or employee, to serve as its public agency compliance officer, pursuant to N.J.A.C. 17:27-3.5 and N.J.A.C. 7:22-9.11;

23. The recipient shall certify that it shall comply with the Rules and Regulations for Awarding Contracts for State Assisted Projects to Small Business Concerns Owned and Controlled by Socially and Economically Disadvantaged Individuals (N.J.A.C. 7:22-9);

24. A goal of not less than 10 percent of the total amount of all contracts for building, materials or services for a project shall be awarded to small business concerns owned and controlled by socially and economically disadvantaged individuals as defined in the Small Business Act (15 U.S.C. 637(a) and 637(d)), and any regulations promulgated pursuant thereto. Where a local government unit has Minority Business Enterprise/Women's Business Enterprise (MBE/WBE) goals which exceed 10 percent of the total amount of all contracts, the local government unit's goals will take precedence over State goals; and

25. The recipient shall pay not less than the prevailing wage rate to workers employed in the performance of any contract for the project, in accordance with the rate determined by the Commissioner of the New Jersey Department of Labor pursuant to N.J.S.A. 34:11-56.25 et seq. or the United States Secretary of Labor pursuant to 29 CFR Part 5, whichever is greater.

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

(d) The recipient shall insert in all contracts or subcontracts awarded pursuant to this subchapter the Department's Subcontractor Certification Form.

(e) The recipient shall insert into the contracts for building the project EPA Form 5720-4 (5-13), Labor Standards Provisions for Federally Assisted Construction Contracts.

(f) The recipient shall insert into the contracts, and shall ensure that their contractor(s) include within their subcontractor(s), the following statement:

"In accordance with the provisions of N.J.S.A. 58:11B-26 and N.J.A.C. 7:22-6.17(a)24, the contractor (subcontractor) shall comply with all of the provisions of N.J.A.C. 7:22-9."

(g) All applicable surety bonds required in connection with the advertisement and award of building contracts or subagreements shall be written by a surety company listed on the Federal Treasury List (Department Circular 570—Surety Companies Acceptable on Federal Bonds), incorporated herein by reference. Copies of this document may be obtained from the Department.

7:22-6.18 Administration and performance of funds

The recipient bears primary responsibility for the administration and success of the project, including any subagreements made by the recipient for accomplishing funding objectives. Although recipients are encouraged to seek the advice and opinion of the Department on problems that may arise, the giving of such advice does not shift the responsibility for final decisions from the recipient to the Department.

7:22-6.19 Project changes and grant or loan modifications

(a) A Pinelands grant or loan modification means any written alteration of the terms or conditions, budget or project method or other administrative, technical or financial provisions of the Pinelands grant or loan agreement.

(b) The recipient shall promptly notify the Department in writing (certified mail, return receipt requested) of events or proposed changes which may require a Pinelands grant or loan modification, including, but not limited to:

1.-6. (No change.)

(c) If the Department determines that a Pinelands grant or loan modification by means of a Pinelands grant or loan agreement amendment is necessary in accordance with N.J.A.C. 7:22-6.20, the recipient shall be notified and a Pinelands grant or loan agreement amendment shall be processed. If the Department decides a Pinelands grant or loan agrement amendment is not necessary, the Department and the recipient shall follow the procedures of N.J.A.C. 7:22-6.21 or 6.22, as applicable.

7:22-6.20 Pinelands grant or loan agreement amendments

(a) The Department, in consultation with the Pinelands Commission, shall require a Pinelands grant or loan agreement amendment to change principal provisions of a Pinelands grant or loan agreement where the Department determines that project changes substantially alter the objective or scope of the project or time of performance of the project or any major phase thereof, or to change substantially a term or condition of the Pinelands grant or loan agreement.

(b) In the event that a project has a need for additional moneys due to the low bid building cost being higher than the original Pinelands grant or loan amount, the local government unit may request a supplemental Pinelands grant or loan. After consultation with the Pinelands Commission, the Department may award a supplemental Pinelands grant or loan only after legislative approval, and only with a Pinelands grant or loan agreement. The recipient shall be responsible for all other increased costs.

7:22-6.22 Other changes

All other project changes, which do not require *a* Pinelands grant or loan agreement amendment*[,]* as stated in N.J.A.C. 7:22-6.20*,* require written approval of the Department.

7:22-6.24 State disbursement

Disbursement of Pinelands grant and loan moneys shall be made as indicated in the Pinelands grant or loan agreement at intervals as work progresses and expenses are incurred by the local government unit and as approved by the Department, but in no event shall total disbursements at any time exceed the cumulative Pinelands grant and loan amounts indicated in the disbursement schedule of the Pinelands grant and loan agreement or the allowable costs which have been incurred at that time. No disbursement shall be made until the Department receives satisfactory cost documentation which must include all forms and information required by the Department and completed in a manner satisfactory to the Department.

7:22-6.25 Assignment

The right of a recipient to receive disbursements from the State under a Pinelands grant or loan may not be assigned, nor may repayments due under a Pinelands loan be similarly encumbered, unless such assignment or encumbrance has been approved in writing pursuant to the conditions set forth in the Pinelands grant or loan agreement.

7:22-6.26 Unused funds

Where the total amount disbursed under a grant or loan due to the low bid building cost is less than the initial Pinelands grant or loan award, and/or where the total amount disbursed under a Pinelands grant or loan due to the final building cost is less than the Pinelands grant or loan amount due to the low bid building cost, the Pinelands grant or loan shall be adjusted, if necessary, and the difference shall be retained by the Pinelands Infrastructure Trust Fund to be reallocated, pursuant to the provisions of a legislative appropriations act, to other wastewater treatment facilities projects. However, where allowable cost overruns occur, Pinelands moneys may be used to cover these cost overruns up to the grant or loan amount adjusted due to the low bid building cost. Line item adjustments for allowable project costs may be made at the request of the recipient provided the Pinelands grant or loan amount in the Pinelands grant or loan agreement is not exceeded and provided all project related contracts have been awarded. However, the Department shall not allow line item adjustments to reallocate funds resulting from cost underruns due to a reduction in project scope.

7:22-6.28 Land acquisition

The acquisition of land (including sewer rights-of-way) shall be eligible for Pinelands Infrastructure Trust funding in accordance with N.J.A.C. 7:22-7.7.

7:22-6.29 Project initiation

(a) (No change.)

(b) The recipient shall not advertise any contract and or addendum thereto for the building of the wastewater treatment facilities until authorization to advertise the contract or any addendum thereto has been granted by the Department. Further, the recipient shall be required to execute the engineering agreement for building services prior to, or concurrently with, receipt of authorization to advertise. The recipient shall transmit an executed copy of the engineering agreement for building services to the Department immediately upon its execution.

(c) Once bids for building the wastewater treatment facilities are received, the recipient shall not award any subagreement(s) until authorization to award has been given by the Department.

(d) (No change.)

(e) The recipient shall award the subagreement(s) and issue notice(s) to proceed, where required, for building all significant elements of the project no later than 12 months after the grant or loan closing, unless a specific extension has been approved by the Department.

(f) (No change.)

7:22-6.30 Project performance

(a) Within 30 days of the actual date of initiation of operation of the wastewater treatment facilities the recipient shall, in writing, notify the Department.

(b) For the wastewater treatment process portion of the project, on the date one year after the initiation of operation, the recipient shall certify to the Department the performance record of the project. If the Department or the recipient concludes that the project does not meet the wastewater treatment facilities' performance standards as specified in the Pinelands grant or loan agreement, the recipient shall submit the following:

1.-2. (No change.)

3. The scheduled date for certifying to the Department that the project is meeting the specified performance standards.

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

(e) At a minimum, unless further specified, the project performance standards consist of the effluent discharge limitations in the NJPDES permit (if applicable) and the design criteria in the Department-approved Engineer's Technical Design Report submitted by the local government unit for the Project.

7:22-6.31 Allowable project costs

(a) (No change.)

(b) Notwithstanding (a) above, the Department shall not participate in costs for work that the Department determines is not in compliance with specifications or requirements of project contracts or Pinelands grant or loan agreement. Costs for work not in compliance with the contracts or agreement are unallowable.

7:22-6.32 Preaward costs

(a) The Department shall not consider allowable those costs incurred for building performed prior to closing the grant or loan for the project, except:

1. For building costs, otherwise eligible for funding that of the following conditions has met (a)1i through iii or (a)1iv below:

i. The local government unit has submitted items required at N.J.A.C. 7:22-6.11(d)3 through 20, to the Department prior to the advertisement of any contract for which cost reimbursement is being sought.

ii. The local government unit has not advertised any contract or any addendum thereto, for which cost reimbursement is being sought, without the authorization to advertise the contracts or any addendum thereto being given by the Department.

iii. The local government unit has not awarded any contract for which cost reimbursement is being sought without the authorization to award the contracts being given by the Department.

iv. The local government unit has submitted items required at N.J.A.C. 7:22-6.11(d)3 through 20 to the Department prior to the issuance of a notice to proceed for building the project and has met the provisions of the New Jersey Wastewater Treatment Privatization Act (N.J.S.A. 58:27-1 et seq.).

2. In emergencies or instances where delay could result in significant cost increases or significant environmental impairment, the Department may approve preliminary building activities such as procurement of major equipment requiring long lead times, minor sewer rehabilitation, acquisition of allowable land or advance building of minor portions of wastewater treatment facilities. However, advance approval shall not be given until after the Department reviews and approves an environmental assessment and any specific documents necessary to adequately evaluate the proposed action.

(b) If the Department approves preliminary building activities, such approval is not an actual or implied commitment of Pinelands Infrastructure Trust funds and the local government unit proceeds at its own financial risk. The local government unit shall receive cost reimbursement of approved activities only upon receiving legislative approval in the form of an appropriations act and closing a Pinelands grant or loan for the project.

(c) (No change.)

7:22-6.33 Force account work

(a) A recipient must secure the Department's prior written approval for use of force account work for construction, construction-

related activities or for repairs or improvements to a facility where costs exceed $25,000.

(b) (No change.)

7:22-6.35 Infiltration/Inflow

(a) An infiltration/inflow analysis shall be required as part of the Project Report/Facilities Plan.

(b) The applicant shall demonstrate to the Department's satisfaction that each sewer system discharging into the wastewater treatment facility is not or will not be subject to excessive infiltration/inflow. For combined sewer overflow projects, in no case shall inflow be considered excessive.

(c) If the rainfall induced peak inflow rate results or will result in chronic operational problems or system surcharging during storm events or the rainfall induced total flow rate exceeds 275 gallons per capita per day during storm events, the applicant shall perform a study of the sewer system to determine the quantity of excessive inflow and shall propose a rehabilitation program to eliminate the excessive inflow.

(d) If the flow rate at the existing wastewater treatment facility is less than 120 gallons per capita per day during periods of high groundwater, the *[recipient]* ***applicant*** shall *[build]* ***design*** the project including sufficient capacity to transport and treat any existing infiltration. If the *[recipient]* ***applicant*** demonstrates that its sewer system is subject to excessive infiltration of 120 gallons per capita per day or more during periods of high groundwater, the *[recipient]* ***applicant*** shall perform a sewer system evaluation survey including a cost effectiveness analysis and shall propose a rehabilitation program to eliminate the excessive infiltration.

7:22-6.36 Reserve capacity

The Department shall limit the recipient's Pinelands grant or loan assistance to the cost of the project based on the ultimate buildout capacity as defined by the Pinelands Commission. Design shall be based on up to 120 gallons per capita per day for existing systems and 70 gallons per capita per day plus a reasonable allowance for infiltration (100 gallons per day per inch diameter per mile of new sewer or less) or 75 gallons per capita per day, whichever is less, for systems projected to be built during the design life.

7:22-6.37 Fraud and other unlawful or corrupt practices

(a) (No change.)

(b) The recipient shall pursue available judicial and administrative remedies and take appropriate remedial action with respect to any allegations or evidence of such illegality or corrupt practices. The recipient shall immediately notify the Department when such allegation or evidence comes to its attention, and shall periodically advise the Department of the status and ultimate disposition of any related matter.

7:22-6.38 Debarment

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

(e) Any person included on the State Treasurer's list as a result of action by a State agency, who is or may become a bidder on any contract which is or will be funded by a Pinelands grant or loan under this subchapter, may present information to the Department why this section should not apply to such person. If the Department determines that it is essential to the public interest and files a finding thereof with the New Jersey Attorney General, the Department may grant an exception from the application of this section with respect to a particular contract, in keeping with N.J.A.C. 7:1-5.9. In the alternative, the Department may suspend or debar any such person, or take such action as may be appropriate, pursuant to N.J.A.C. 7:1-5.

7:22-6.43 Termination of grants or loans

(a) (No change.)

(b) Project termination by the recipient will be subject to the following:

1. A recipient shall not unilaterally terminate the project work for which a Pinelands grant or loan has been awarded, except for good cause and subject to negotiation and payment of appropriate termination settlement costs. The recipient shall promptly give written notice to the Department of any complete or partial termination of the project work by the recipient or intent thereof.

2.-3. (No change.)

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

(e) The recipient shall reduce the amount of outstanding commitments insofar as possible and report to the Department the uncommitted balance of Pinelands Infrastructure Trust funds awarded under the Pinelands loan. The recipient shall make no new commitments without the Department's specific approval thereof. The Department shall make the final determination of the allowability of termination costs.

(f) (No change.)

7:22-6.45 Administrative hearings

(a) The Department shall make the initial decision regarding all disputes arising under a Pinelands grant or loan. The recipient shall specifically detail in writing and in detail the basis for its appeal. When a recipient so requests, the Department shall produce a decision in writing and mail or otherwise furnish a copy thereof to the recipient.

(b) If a recipient wishes to appeal the Department's decision under (a) above, the recipient shall request an administrative hearing within 15 calendar days of a decision by the Department. The request for an administrative hearing must specify in detail the basis for the appeal.

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

SUBCHAPTER 7. DETERMINATION OF ALLOWABLE COSTS: PINELANDS

7:22-7.4 Costs related to subagreements

(a) Allowable costs related to subagreements include:

1. (No change.)

2. The costs for establishing or using liaison services for small business concerns owned and controlled by socially and economically disadvantaged individuals pursuant to N.J.A.C. 7:22-9;

3. (No change.)

4. The costs (including legal, technical, and administrative costs) of assessing the merits of or negotiating the settlement of a claim by or against a recipient under a subagreement, provided that:

i.-iii. (No change.)

iv. The Department determines that there is a significant State interest in the issues involved in the claim; and

v. (No change.)

5. Change orders for increased costs under subagreements as follows:

i. Change orders provided the costs are:

(1) Within the scope of the project;

(2) Not caused by the recipient's mismanagement;

(3) Not caused by the recipient's vicarious liability for the improper action of others; and

(4) The cost of which when added to the allowable costs due to the final building cost, does not exceed the allowable costs due to the low bid building cost.

ii.-iii. (No change.)

6. The costs of the recipient required by N.J.A.C. 7:22-6.30 during the first year following initiation of operation of the project;

7.-8. (No change.)

(b) The sum total of the allowable costs in (a)2 through 8 above will not exceed 12 percent of the low bid building cost.

(c) Unallowable costs related to subagreements include:

1. (No change.)

2. The costs (including legal, technical and administrative) of defending against a contractor claim for increased costs under a subagreement or of prosecuting a claim to enforce any subagreement unless:

i.-iv. (No change.)

v. The Department determines that there is a significant State interest in the issues involved in the claim; and

vi. (No change.)

3. (No change.)

4. All costs associated with the award of any subagreement for building significant elements of the project more than 12 months after the grant or loan closing, unless an extension is specified in the project schedule approved by the Department.

7:22-7.5 Mitigation

(a) Allowable costs related to mitigation include:

1. (No change.)

2. The costs of site screening necessary to comply with the provisions of N.J.A.C. 7:22-10, to complete related studies and plans, or necessary to screen adjacent properties;

3. (No change.)

(b) Unallowable costs related to mitigation include:

1. (No change.)

2. The costs of land acquired for the mitigation of adverse environmental effects identified pursuant to an environmental review under the provisions of N.J.A.C. 7:22-10.

7:22-7.7 Real property

(a) (No change.)

(b) Unallowable costs for land and rights-of-way include:

1. Any amount paid by the recipient for eligible land in excess of just compensation, based on the appraised value, the recipient's record of negotiation or any condemnation proceeding, as determined by the Department;

2. (No change.)

7:22-7.8 Equipment, materials and supplies

(a) Allowable costs of equipement, materials and supplies include:

1.-6. (No change.)

7. Replacement parts identified and approved in advance by the Department as necessary to assure uninterrupted operation of the facility, provided they are critical parts or major systems components which are:

i.-iii. (No change.)

(b) Unallowable costs of equipment, materials and supplies include:

1.-5. (No change.)

7:22-7.9 Industrial and federal users

(a) (No change.)

(b) Unallowable costs for wastewater treatment facilities serving industrial and Federal users include;

1.-3. (No change.)

4. Costs for control or removal of pollutants in wastewater introduced into the wastewater treatment facilities by industrial users, unless the local government unit is required to remove such pollutants introduced from nonindustrial users.

7:22-7.10 Infiltration/inflow and reserve capacity

(a) Allowable costs related to infiltration/inflow and reserve capacity include:

1. The cost of the wastewater treatment facilities capacity adequate to transport and treat nonexcessive infiltration/inflow under N.J.A.C. 7:22-6.35 and reserve capacity in accordance with N.J.A.C. 7:22-6.36.

2. (No change.)

(b) Unallowable costs related to infiltration/inflow and reserve capacity include:

1. (No change.)

7:22-7.11 Miscellaneous costs

(a) Allowable miscellaneous costs include:

1. The costs of salaries, benefits and expendable materials the recipient incurs for the project. However, the allowable portion of these administrative costs shall be limited to one percent of the low bid building cost.

2. The costs of additions to wastewater treatment facilities that were assisted under the Federal Water Pollution Control Act Amendments, the Wastewater Treatment Bond Act, the Trust Act, the Pinelands Infrastructure Trust Bond Act of 1985 (P.L. 1985, c.302) or its amendments or the Stormwater Management and Combined Sewer Overflow Abatement Bond Act and that fails to meet its performance standards provided:

i.-ii. (No change.)

iii. The additions could have been included in the original Federal grant or State assistance award; and

(1) Are the results of one of the following:

(A)-(B) (No change.)

(C) A written understanding between the Department and the recipient prior to or included in the original Fund loan award;

(D) (No change.)

(E) A written understanding between the Department and the recipient prior to or included in the original Pinelands grant or loan award:

(F) A written direction by the Regional Administrator of EPA or the Department to delay building part of the wastewater treatment facilities; or

(G) (No change.)

(2) (No change.)

iv. (No change.)

3. Costs of royalties for the use of or rights in a patented process or product with the prior approval of the Department.

4. Costs of recipient's employees attending training workshops/seminars that are necessary to provide instruction in administrative, fiscal or contracting procedures required to complete the construction of the wastewater treatment facilities, if approved in advance by the Department.

(b) Unallowable miscellaneous costs include:

1.-4. (No change.)

5. The costs of replacing, through reconstruction or substitution, wastewater treatment facilities that were assisted under the Federal Water Pollution Control Act Amendments, the Wastewater Treatment Bond Act, the Trust Act, the Pinelands Infrastructure Trust Bond Act of 1985 (P.L. 1985, c.302) or its amendments, or the Stormwater Management and Combined Sewer Overflow Abatement Bond Act and that fail to meet its project performance standards. This provision applies to failures that occur either before or after the initiation of operation but does not apply to wastewater treatment facilities that fail at the end of its design life;

6.-12. (No change.)

7:22-7.12 Allowance for planning and design

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

(h) The recipient may request payment of 50 percent of the Pinelands Infrastructure Trust share of the estimated allowance immediately after the Pinelands Infrastructure Trust loan award. Final payment of the Pinelands Infrastructure Trust share of the allowance may be requested in the first disbursement after the recipient has awarded all prime subagreements for building the project, received the Department's approval for force account work, and completed the acquisition of all eligible real property.

(i) (No change.)

SUBCHAPTER 8. MINIMUM STANDARDS OF CONDUCT FOR OFFICERS, EMPLOYEES, AGENTS AND MEMBERS OF WASTEWATER UTILITIES

7:22-8.4 (Reserved)

SUBCHAPTER 9. AWARDING CONTRACTS FOR STATE ASSISTED PROJECTS TO SMALL BUSINESS CONCERNS OWNED AND CONTROLLED BY SOCIALLY AND ECONOMICALLY DISADVANTAGED INDIVIDUALS

7:22-9.1 Scope and purpose

(a) This subchapter establishes procedures for providing opportunities for socially and economically disadvantaged ("SED") contractors and vendors to supply materials and services under State financed construction contracts for wastewater treatment facilities. To implement the policies established in N.J.S.A. 58:11B-26, N.J.S.A. 40:11A-41 et seq., and N.J.S.A. 52:32-17 et seq., this subchapter applies to wastewater treatment projects receiving financial assistance from the New Jersey Department of *[Environnmental]*

Environmental Protection and Energy and the New Jersey Wastewater Treatment Trust pursuant to N.J.A.C. 7:22-3, 7:22-4, 7:22-6 and 7:22A-6. Under the provisions of N.J.A.C. 7:22-3, 7:22-4, 7:22-6 and 7:22A-6, the Department and the Trust require recipients of Trust and Fund loans and other Departmental financial assistance to establish such programs for socially and economically disadvantaged small business concerns, to designate a public agency compliance officer, and to submit to the Department and Trust procurement plans for implementing the SED program. In addition, N.J.A.C. 7:22-3.17(a)24, 4.17(a)24, 6.17(a)24 and 7:22A-2.4(a) provide that a goal of not less than 10 percent of the total amount of all contracts for building, materials and equipment, or services for a construction project shall be awarded to small business concerns owned and controlled by one or more socially and economically disadvantaged individuals. Where a local government unit has a SED participation goal which exceeds 10 percent of the total amount of all contracts, the local government unit must comply with both the Department's rules and the local set-aside ordinance.

(b) (No change.)

7:22-9.2 Definitions

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

...

"Department" means the New Jersey Department of Environmental Protection and Energy and its successors and assigns.

...

"New Jersey wastewater treatment financing program" means financing provided to local government units pursuant to N.J.A.C. 7:22-3, 4 and 6, and 7:22A-6.

...

"Office" means the Office of Equal Opportunity and Public Contract Assistance or other program of the Department of Environmental Protection and Energy with the responsibility for administration of this subchapter.

...

"Socially and economically disadvantaged small business concern" or "SED" means any small business concern:

1. Which is at least 51 percent owned by one or more socially and economically disadvantaged individuals; or, in the case of *[any]* ***a*** publicly owned business, at least 51 percent of the stock of which is owned by one or more socially and economically disadvantaged individuals; or, in the case of a joint venture, at least 51 percent of the beneficial ownership interests are legitimately held by ***a*** SED*[s]*; and

2. Whose management and daily business operations are controlled by one or more socially and economically disadvantaged individuals; and

3. Which is a full participation subcontractor in that the SED is responsible for the execution of a distinct element of work and carries out the work responsibility by actually performing, managing and supervising the task involved. Any deviation from this definition will automatically classify the SED as a broker, middleman or passive conduit. These three functions are contrary to the spirit of the New Jersey Wastewater Treatment Trust Act (N.J.S.A. 58:11B-1 et seq.) and will not qualify a SED enterprise for State of New Jersey certification; and

4. Which, prior to July 1, 1988, has been approved by and registered with the New Jersey Department of Commerce and Economic Development pursuant to the Set-Aside Act for Small Businesses, Female Businesses and Minority Businesses (N.J.S.A. 52:32-17 et seq.) and after June 30, 1988, has been certified by the New Jersey Department of Commerce and Economic Development pursuant to the New Jersey Uniform Certification Act (N.J.S.A. 52:27H-1 et seq.), as an eligible minority business or female business.

i.-iii. (No change.)

...

7:22-9.3 SED utilization requirements for projects

(a) A goal of not less than 10 percent (or a higher percentage as may be required by Federal law) of the total amount of all contracts for building, materials and equipment, or services for a project funded by a New Jersey wastewater treatment financing program must be awarded to SEDs.

(b) (No change.)

7:22-9.7 Advertisements for SED utilization

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

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

7:22-9.13 Assessment of compliance

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

(c) The Office shall summarize in writing its evaluation of the reason given for noncompliance and the efforts made by the local government unit or contractor to comply with its plan for achieving the 10 percent SED utilization requirement. The Office shall take into consideration good faith efforts made by the local government unit or contractor to meet the goal to achieve the ten percent SED utilization requirement. These findings shall be submitted to the Department and, in the case of a Trust loan, to the Trust who, in conjunction with the Office, shall determine the nature and extent of the local government unit's or contractor's noncompliance.

SUBCHAPTER 10. ENVIRONMENTAL ASSESSMENT REQUIREMENTS FOR STATE ASSISTED WASTEWATER TREATMENT FACILITIES

7:22-10.1 Scope and construction

(a) This subchapter constitutes the rules of the New Jersey Department of Environmental Protection and Energy regarding the environmental assessment requirements for projects receiving financial assistance pursuant to N.J.A.C. 7:22-3, 4 and 6 and N.J.A.C. 7:22A-6.

(b) This subchapter shall be liberally construed to permit the Department to effectuate the purposes of the Wastewater Treatment Bond Act, the Wastewater Treatment Trust Act (N.J.S.A. 58:11B-1 et seq.), the Pinelands Infrastructure Trust Bond Act, the Sewage Infrastructure Improvement Act and the Stormwater Management and Combined Sewer Overflow Abatement Bond Act.

(c) This subchapter is promulgated for the following purposes:

1. To implement the purposes and objectives of the Wastewater Treatment Bond Act, the New Jersey Wastewater Treatment Trust Act (N.J.S.A. 58:11B-1 et seq.), the Pinelands Infrastructure Trust Bond Act, the Sewage Infrastructure Improvement Act and the Stormwater Management and Combined Sewer Overflow Abatement Bond Act;

2. To establish environmental assessment requirements which must be complied with in order to receive financial assistance provided pursuant to N.J.A.C. 7:22-3, 4 and 6 and N.J.A.C. 7:22A-6;

3.-4. (No change.)

7:22-10.2 Definitions

Unless otherwise specified, the terms used herein will have the same meanings as those terms defined in N.J.A.C. 7:22-3 and 4. Additional definitions are as follows:

...

"Wetlands" means those areas defined as wetlands under any of the following statutes and implementing rules as applicable.

1.-3. (No change.)

4. Pinelands Protection Act, N.J.S.A. 13:18-1 et seq., at N.J.S.A. 13:18A-3, (Definitions), and N.J.S.A. 13:18A-11, (Boundaries of pinelands and preservation areas; official state planning maps of Pinelands National Reserve, and pinelands protection and preservation areas); N.J.A.C. 7:50-3.1 (Purpose); N.J.A.C. 7:50-6.3 (Wetlands), N.J.A.C. 7:50-6.4 (Coastal Wetland) and N.J.A.C. 7:50-6.5 (Inland wetlands).

7:22-10.3 Establishing the level of environmental review

(a) To initiate the planning process, the local government unit may be required by the Department to attend a preplanning meeting with the Department. When a preplanning meeting is required, the local government unit shall be required to provide a preplanning summary including a brief written description of the proposed planning area, the wastewater management needs, the preliminary wastewater management alternatives to be considered, and a preliminary

appraisal of potential beneficial and adverse environmental and cultural resource impacts of the alternatives. A map of the proposed planning area shall also be included. The planning area shall be defined as the entire area expected to benefit from the proposed project as a whole (that is, at a minimum, the potential service area) without regard to the eligibility of individual project components. The length of the planning period will be 20 years, unless otherwise approved by the Department. On the basis of this information, as well as any other information that may be available to the Department, the Department shall make a preliminary decision regarding the level of environmental review, Level 1, 2, or 3, that shall be required.

(b) (No change.)

7:22-10.4 Level 1 environmental review

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

(c) Where a Level 1 review has been determined to be appropriate, a Level 1 environmental planning document shall be submitted by the local government unit to the Department for review. The Level 1 environmental planning document must be of sufficient scope to permit the Department to verify the preliminary determination to proceed with this level of review. Information to be provided in the environmental planning document includes the following:

1.-2. (No change.)

3. A narrative describing the extent of beneficial and adverse impact on environmental or cultural resource features that can be expected as a result of implementing the proposed project and basis for concluding that the proposed project qualifies for a Level 1 environmental review in accordance with (a) and (b) above. Cultural resource impacts must be determined in accordance with N.J.A.C. 7:22-10.8;

4. A summary of alternatives available, including, at a minimum, the no action alternative, and the basis for selecting the proposed action. The selected plan must be the most cost effective, environmentally sound alternative which will address the need which has been identified and which is implementable. The most cost effective alternative is determined by taking into account the cost of environmental impacts and the cost of construction. The basis discussion must include the costs, impacts and effectiveness of the proposed alternatives relative to achieving the identified need as compared with other alternatives considered; and

5. (No change.)

(d) The Department will review the environmental planning document submitted by the local government unit and will make one of the following determinations:

1. The Level 1 environmental planning document is complete, acceptable, and verifies the preliminary determination to proceed with this level of environmental review. In this case, the Department will prepare and issue a Level 1 decision statement as set forth in (e) below, which will be sent to a project mailing list developed in accordance with N.J.A.C. 7:22-10.10(c). The local government unit shall publish a notice in a newspaper of general circulation in the planning area within two weeks of the date of the Department's decision statement. The notice must describe the proposed action, indicate the decision by the Department to approve the project, and advise the public that the local government unit shall, upon written request, make available for public review both the planning documents and the Department's decision statement. Upon issuance of the decision statement, planning is approved and the Department may proceed with award of a loan, subject to the provisions of (e) below, and provided the other requirements of the program have been met as specified in N.J.A.C. 7:22-3, 4 and 6 and N.J.A.C. 7:22A-6.

2.-3. (No change.)

(e) A Level 1 environmental decision statement will include a description of the proposed project, a summary of the need for the proposed project, alternatives considered, environmental, cultural resource and social impacts of the proposed project, costs, mitigating measures, public input, and the basis for the determination that the proposed project qualifies for a Level 1 environmental decision statement.

(f) (No change in text.)

7:22-10.5 Level 2 environmental review

(a) (No change.)

(b) For a Level 2 review, environmental planning documentation shall be submitted by the local government unit consisting of an environmental information document, results of investigations and consultations conducted pursuant to N.J.A.C. 7:22-10.9, and results of public participation conducted pursuant to N.J.A.C. 7:22-10.10. At a minimum, a public hearing shall be required and proof of same shall be included as part of a complete planning document submittal to the Department. The environmental information document must include, where applicable, the following information:

1.-2. (No change.)

3. A description of and mapping, where applicable, of existing environmental conditions and features including:

i.-v. (No change.)

vi. A general description of plant and animal communities existing in the planning area and a map of habitat types in the project impact area;

vii.-ix. (No change.)

4.-5. (No change.)

6. A description and map of existing wastewater treatment facilities. Include the location of all facilities, the service areas and treatment level of treatment plants, as well as the design capacities and the actual wastewater flows for treatment plants and conveyance facilities. Include a map of areas served by individual on-site systems. Provide the actual wastewater flow according to source:

i.-iv. (No change.)

7. An environmental constraints analysis is required and shall be prepared according to the following procedure:

i. (No change.)

ii. Identify existing population and flow by source. Determine the extent of development which could occur according to permitted zoning in developable areas. This should be represented as a number of dwelling units and population for residential areas and *[area]* ***areal*** coverage for commercial and industrial areas. These figures shall be presented in a table and used in calculating the maximum wastewater flow that may be considered in planning wastewater treatment facilities. All assumptions used in calculating flow from units and coverage shall be explained.

8.-9. (No change.)

10. A description of the environmental impacts for each alternative including beneficial and adverse direct, indirect (that is, secondary impacts) and cumulative effects with other projects. Include an assessment of impacts of alternatives on the following:

i.-iii. (No change.)

iv. Air quality, especially with respect to consistency with the New Jersey State Implementation Plan prepared pursuant to the Federal Clean Air Act, 42 U.S.C. §§7401 et seq., and the New Jersey Air Pollution Control Act, N.J.S.A. 26:2C-1 et seq.;

v. Social and economic factors including, but not limited to, dust, noise, odors, nuisances, traffic or hazards; and

vi. Where significant increases in treatment capacity will be provided, effects of induced growth on *[environmental]* ***the environment*** and social infrastructure.

11. A description of the selected plan. The selected plan must be the most cost effective, environmentally sound alternative which addresses the identified need and which is implementable. Include, where applicable, the following:

i.-x. (No change.)

12.-16. (No change.)

(c) (No change.)

(d) When appropriate, in accordance with (c)1 above, the Department will prepare and issue a preliminary Level 2 decision statement and environmental appraisal to the mailing list developed for the project in accordance with N.J.A.C. 7:22-10.10(c). The Department will take no further administrative action until after the conclusion of a 30-day comment period on the decision statement. If no significant adverse comment is received at that point, the Department will approve the planning and may proceed with an offer of loan as-

sistance, provided that other requirements of the program, as set forth at N.J.A.C. 7:22-3, 4 and 6 and N.J.A.C. 7:22A-6 have been met.

(e) (No change.)

7:22-10.6 Level 3 environmental review

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

(c) If a Level 3 environmental review is required by the Department prior to completion of a Level 2 environmental information document, then an environmental information document shall be prepared in accordance with N.J.A.C. 7:22-10.5(b). In addition, an environmental impact statement shall be prepared under a Level 3 environmental review. Environmental impact statements shall be prepared by the local government unit. The Department must approve the scope, content and conclusion of both draft and final environmental impact statements prior to publication. The procedure will be as follows:

1.-9. (No change.)

10. After the conclusion of the comment period for the final environmental impact statement, the Department will prepare a Level 3 decision statement which will respond to comments received on the final environmental impact statement, set forth the decision made by the Department, and the basis for the decision. No administrative action will be taken by the Department prior to the conclusion of a 30-day comment period for the decision statement. If no further significant adverse comment is received during the comment period for the decision statement, the Department will approve the planning and the Department may proceed with an offer of assistance, provided other program requirements as set forth in N.J.A.C. 7:22-3, 4 and 6 and N.J.A.C. 7:22A-6, have been met. If adverse comment is received which was not adequately addressed in the environmental impact statement process, the Department may require a supplemental evaluation and decision statement or may determine not to participate in the proposed project.

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

7:22-10.7 Re-evaluation of environmental decision statements

(a) The local government unit shall certify in writing that the project submitted in the design phase, or for which authorization to advertise or authorization to award is requested, is the same as that which was described in the environmental decision statement and approved in the planning phase and includes all mitigating measures developed for the project in the planning or design phase. If this certification cannot be made, then the local government unit shall describe the proposed project modifications, the reason for the changes, and the costs and environmental impacts of the revised project. Project modifications that may be included from the time of planning approval through construction of the project that require notification by the local government unit to the Department include, but are not limited to, changes in facility location, size, capacity or type and changes in the depth or limits of construction disturbance. The Department may request additional information or additional public participation regarding the proposed modifications. On the basis of the information available, the Department will determine if there is a need to issue a revised environmental decision statement or elevate the project to a Level 2 or Level 3 environmental review and proceed accordingly.

(b) (No change.)

7:22-10.8 Cultural resource survey requirements

(a) Based upon the preplanning summary prepared in accordance with N.J.A.C. 7:22-10.3, or other information available, the Department will make a preliminary determination regarding the need for and scope of a cultural resource survey. Factors that will affect this preliminary evaluation include:

1.-3. (No change.)

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

(f) The following are the levels of cultural resource survey that the Department may require:

1. The first level of investigation is the Stage IA Documentation Review and Strategy Development Survey which consists of the following:

i. A broad-based literature search that provides a concise but comprehensive discussion of the prehistoric and historic development of the planning area referencing all known sites;

ii. (No change.)

iii. An environmental and geological analysis of the planning area which, taken with the archaeological and historic documentation, will predict areas of varying potential for the presence of cultural resources;

iv.-v. (No change.)

2. The next level of investigation is the Stage IB Site Recognition Survey which consists of the following:

i. Subsurface testing for the identification of previously undocumented archaeological sites. Subsurface tests, placed at frequencies approved by the Department, must be of sufficient depth to sample all soil strata that may potentially contain evidence of past human activity;

ii.-v. (No change.)

3. (No change.)

(g)-(j) (No change.)

(k) All reports of cultural resource surveys shall be submitted for review by the Department. All cartographic and document reproduction contained in the report must be clear and legible. Reports must have original photographic plates or high quality offsets. Professional procedures and reports shall meet the criteria set forth in the U.S. Department of Interior's "Archeology and Historic Preservation; Secretary of the Interior's Standards and Guidelines" (Federal Register, Vol. 48, No. 190; September 29, 1983) and the professional reporting and survey guidelines of the Office of New Jersey Heritage of the Department, once these guidelines are promulgated as rules, in accordance with the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq.), incorporated herein by reference. All reports must contain:

1.-11. (No change.)

(l) All archaeological materials and records resulting from investigations required by this rule shall be curated in accordance with 36 CFR 66.3, "Recovery of Scientific, Prehistoric, Historic and Archaeological Data: Methods, Standards and Reporting Requirements," incorporated herein by reference.

7:22-10.10 Public participation

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

(d) The Department may require supplemental measures to inform and solicit comment from the public under the following conditions:

1. (No change.)

2. Where, as a result of the re-evaluation of the environmental review conducted in accordance with N.J.A.C. 7:22-10.7, the Department determines that significant changes in the project or project impact have occurred, which warrant public input, the Department may determine that a supplemental public advertisement as in (d)1 above or a public hearing as in (b) above is required prior to award of financial assistance.

7:22-10.11 Design requirements

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

(d) Site and access clearing shall be confined to approved construction areas. Protection of existing vegetation shall be practiced wherever possible. At a minimum, the local government unit shall include provisions in the contract documents which conform to the following:

1. Easement widths shall be reduced to the minimum feasible for the proposed construction. Unless specifically approved by the Department, permanent access roads must not be more than eight feet wide and there shall be no permanent access roads in environmentally critical areas. Access roads may be paved only where absolutely necessary, as determined by the Department.

2.-5. (No change.)

(e)-(i) (No change.)

(j) If there is the possibility of encountering acid-producing deposits in the course of construction, as identified during the planning process, special requirements and conditions will apply and shall be incorporated in the specifications as follows:

1.-2. (No change.)

3. In both vegetated and paved areas, when acid-producing deposits are encountered, as determined by the soil specialist, excavated trench material shall be returned to the trench in order of removal, that is, lower material first, followed by upper material. In addition, the top one to two inches of soil on which the deeper soil was stockpiled shall be scraped and placed below a depth of two feet. For interceptor construction, the quantity of material to be displaced by bedding and pipe, as well as soil scraped from the stockpile area, shall be subtracted from the deeper, excavated material and this quantity of deeper material removed to an approved disposal site and covered as described above. After backfilling the deeper soil, one ton of limestone per 2,000 square feet shall be spread over the deeper soil in the trench. This liming requirement is applicable in areas of well drained, non-saturated soils, as determined by the soils specialist. In vegetated areas, the top two feet of soil, stockpiled for this purpose, shall then be replaced. If the top two feet of soil was also contaminated, clean backfill material similar to the native topsoil shall be used in place of the contaminated material.

4. The excavated acid-producing deposits shall not be exposed for a period longer than eight hours. When acid-producing deposits are encountered, the trench opened in any construction day shall be backfilled and the areas cleaned up by the close of the day. Where this is impracticable, such as in the construction of pumping *[station]* ***stations*** and treatment plants, exposed acid-producing deposits shall be covered with limestone screenings at a rate of 100 tons per acre and then covered with six inches of compacted *[solid]* ***soil*** within one week of exposure or before the exposed soil drops to pH 3, whichever occurs first. The pH shall be monitored daily under this procedure.

5.-6. (No change.)

7. Lime requirement tests shall be performed by the soil specialist to determine the lime application rates. This will require an incubation test in which the sample is oxidized for a period of six weeks, as follows. The sample shall be air dried and ground so that the whole sample passes a 0.5 millimeter sieve. The lime requirement to reach pH 6.5 shall be determined initially, and again at two week intervals for six weeks, using standard soil testing techniques. The total lime requirement determined by this method can be extrapolated to the area under consideration.

8.-9. (No change.)

(k) When dewatering will occur in the vicinity of structures or potable wells, the contractor shall monitor for adverse effects to structures or wells due to dewatering and shall be responsible to remedy same to the satisfaction of the Department. Discharges from dewatering activities which contain silt or hydrogen sulfide *[is]* ***are*** subject to the following controls:

1.-2. (No change.)

3. In coastal areas, it is possible that water emanating from dewatering operations may contain hydrogen sulfide concentrations that could adversely impact areas to which the water is discharged. In these areas, at no time may the water emanating from dewatering operations be discharged if concentrations of hydrogen sulfide in excess of 40 parts per billion (ppb) are present. Prior to, and periodically during, dewatering, tests shall be conducted on the groundwater and dewatering discharge to determine if the hydrogen sulfide concentration is within the prescribed limits. In the event that these limits are exceeded, the contractor shall pretreat the discharge water prior to disposal. Pretreatment must maintain the hydrogen sulfide concentrations at or below the 40 ppb level and *[shall]* must be in use during those times when dewatering is occurring and the specified concentrations are exceeded.

(l) Contract requirements with regard to the location and control of stockpile, storage and disposal areas whether provided by the local government unit or the contractor, must conform to the following:

1. Only environmentally suitable stockpile sites may be used for the purposes of staging or storing materials, equipment and suitable trench backfill material. Environmentally suitable sites must be level, and devoid of mature stands of natural vegetation. Drainage facilities and features, wetlands and stream corridors are not environmentally suitable sites.

2.-3. (No change.)

(m) (No change.)

(n) In order to limit noise impacts in the vicinity of sensitive receptors, construction operations and activities shall be limited as follows. Time limits are Monday through Friday between the hours of 7:00 A.M. and 6:00 P.M. unless variances to these times are granted in times of emergency. No driving, pulling, or other operations entailing the use of vibratory hammers or compactors shall be permitted, other than between the hours of 8:00 A.M. and 5:00 P.M. The number of machines in operation at a given time shall be limited to the minimum practicable. All engine generators or pumps must have mufflers and be enclosed within a temporary structure.

(o)-(q) (No change.)

7:22-10.12 Construction phase requirements

(a) The local government unit shall employ one, or more if warranted by the scope of the project, environmental inspector to ensure that the requirements of the specifications relating to environmental and cultural resource protection and restoration are effectively carried out. Individuals designated as environmental inspectors by the local government unit shall possess, at a minimum, the education/experience qualifications of an Environmental Specialist employed with the Department. The Department shall utilize environmental inspectors to oversee the conduct of the protection/restoration measures. Responsibilities of the environmental inspectors include the following:

1. Daily inspections of active work areas and periodic inspection of maintenance or restoration areas sufficient to ensure performance of protection measures in accordance with contract documents.

2. The maintenance of a daily job diary in which they shall record the progress of the work and of any problems encountered. The environmental inspectors shall notify the contractor in writing immediately upon noticing that environmental specifications are not being met.

3. At frequent intervals during construction, the loan recipient, the resident engineer, the environmental inspectors and the Department inspectors shall meet to review progress and to resolve difficulties that might result in unnecessary delays in the work. The Department shall notify the loan recipient if deficiencies are not immediately corrected. The loan recipient shall then direct compliance with environmental requirements.

(b) (No change.)

(c) A final inspection shall be required following completion of all construction and restoration work encompassed by each contract. The final inspection shall be conducted as follows:

1.-2. (No change.)

(d) The Department shall make periodic determinations and following the final inspection, make a final determination, regarding the adequacy of the contractor's performance of the specifications relative to environmental and cultural resource protection and restoration. If the performance is not acceptable, this finding and the procedures and schedules needed to effect acceptable performance will be conveyed in writing to the local government unit. Failure of the local government unit to comply with the Department's requirements may subject the local government unit to the non-compliance provisions of N.J.A.C. 7:22-3.40, 4.40 and 6.40 and N.J.A.C. 7:22A-1.8.

HUMAN SERVICES

(a)

OFFICE OF FINANCE AND ACCOUNTING

Role of the County Adjuster

Adopted New Rules: N.J.A.C. 10:7

Proposed: October 7, 1991 at 23 N.J.R. 2953(a).

Adopted: December 18, 1991, by Alan J. Gibbs, Commissioner, Department of Human Services.

Filed: December 19, 1991 as R.1992 d.31, 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. 30:1-12, P.L.1990, c.73.

Effective Date: January 21, 1992.

Expiration Date: January 21, 1997.

Summary of Public Comments and Agency Responses:

Written comments were received from the Atlantic County, County Counsel, Terry J. Dailey; the Bergen County, County Adjuster, Murshell Johnson; the Burlington County, County Solicitor, Michael J. Horan; the Cumberland County, Assistant County Adjuster, Anita M. Blair; and the Morris County, County Counsel, Howard F. Appelt, II. The written comments are summarized below.

COMMENT: N.J.A.C. 10:7-3.1(a) and (b)1, 2 and 3. It is respectfully suggested that N.J.A.C. 10:7-3.1(a) and (b)1, 2 and 3 should be deleted, as rules governing commitment procedures are currently under the auspices of the Superior Court of this State. The requirement that the county adjuster review court papers for sufficiency and correctness, in essence, elevates the county adjuster to the status of Superior Court Judge. Clearly, a review of a temporary commitment court order is the function of a judge.

RESPONSE: It is not the intent of these sections to elevate the county adjuster to the status of a superior court judge. Since the county adjuster is an officer of the court in these matters, it is correct to include those functions which are the responsibility of the county adjuster.

COMMENTS: N.J.A.C. 10:7-3.1(b)1 and 2, and (c). These provisions provide, among other things, that the county adjuster shall review the notification of voluntary admission documentation, the involuntary admission documents and the DDD admissions documentation, respectively, for sufficiency and correctness. The county adjuster should not be responsible for the correctness of the documentation in that he or she does not have information available to confirm the correctness of same. The county adjuster can, however, review the documentation for completeness. The term "completeness" should be substituted for the word "correctness."

RESPONSE: The Department concurs, the term "completeness" is more suitable in these sections, and has made changes upon adoption accordingly.

COMMENTS: N.J.A.C. 10:7-3.1(c). The subsection is unclear and requires more specificity regarding the county adjuster's role. More specifically, this regulation seems to imply that the county adjuster has the right to deny an individual admission to DDD services since the burden of reviewing documentation for sufficiency and correctness is placed upon them. This portion of the regulation should be further clarified or deleted.

RESPONSE: The Department concurs, the term "completeness" is substituted for the word "correctness" in this section. (Please see the response and comment immediately preceding this one for a further explanation.)

COMMENTS: N.J.A.C. 10:7-3.1(e). This subsection requires that the county adjuster be responsible for verifying that all eligible clients have been duly processed through the Medicaid system. This proposed regulation is redundant and represents duplication of services within the system. It also necessitates that the county adjusters be "experts" in the Medicaid regulations system, a burden which the State itself has difficulty maintaining. Clearly this regulation should also be deleted or clarified.

RESPONSE: It is not the intent of this section to make the county adjuster a Medicaid expert. The paragraph only requires the county adjuster to make certain that applications have been filed for potentially eligible clients. In addition, the definition for county adjuster given in Subchapter 2, Definitions, states that, "... The use of this term in these rules shall mean the county adjuster or county designee." In this case, the county designee would be the appropriate revenue office with this responsibility.

COMMENTS: N.J.A.C. 10:7-3.1(f). Under current procedures, the courts are responsible for the recruitment and retention of interpreters during the hearing process. We can see no benefit to altering the system and redefining the responsibility at this point in time.

RESPONSE: This subsection does not change the courts' responsibility for the recruitment and retention of interpreters. It only defines the county adjuster's responsibility in securing payment for the interpreters, if this is necessary.

COMMENTS: N.J.A.C. 10:7-4.1(a)2. Given the extensive investigation that is required in order to complete court orders of settlement and support, assigning a six to eight week time span is arbitrary and capricious. Historically, it has been my experience that a wider range is required in order to complete the process and exercise due diligence. Clearly, assuming a time frame at this juncture countermands a fundamental intent that the process be accurate and complete.

RESPONSE: The reason for these time frames is to satisfy the requirements of N.J.S.A. 30:4-73 and the 90 day billing procedures. The State believes the six to eight week time frame (or 60 days after receipt of notification) for completion of the investigation is reasonable.

COMMENTS: N.J.A.C. 10:7-4.1(b) and (c). These subsections should be altered to stipulate that the procedures listed in (b)1 through 9 and (c)1 through 11 should be available and employed by the county adjuster at their discretion in order to determine residency. To employ each of these items as a separate element of the investigation is at the very least redundant and certainly not cost effective.

RESPONSE: The Department concurs, the section is changed by adding the qualifying words "as necessary."

COMMENTS: N.J.A.C. 10:7-4.1(b) and (c). These sections provide that the county adjuster in conducting the formal investigations to determine legal settlement and financial ability of the client and/or LRR(s) to pay "shall" conduct the investigation as specified. In that the adjuster may not need to utilize all of the methods listed to obtain the requisite information, all should not be mandatorily required to be done by the adjuster. The word "shall" should be qualified by the words, "as necessary."

RESPONSE: The Department concurs, the section is changed by adding the qualifying words "as necessary."

COMMENTS: N.J.A.C. 10:7-4.1(b)10 and (c)12. These paragraphs requiring that the county "keep a record of a client's settlement investigation, including date, time, data obtained, method data obtained and the source of the data" as well as the county being obligated to "keep a record of the client's/LRR's financial investigation, including date, time, data obtained, method data obtained and the source of the data." The Morris County Adjuster objects to this responsibility since the adjuster's obligations are civil in nature and not criminal, and the proposed rules infer an adjuster's role to be not civil, but criminal in terms of the adjuster's investigation in these two areas.

RESPONSE: The intent of this rule is to require detailed records be maintained which give a trail to follow the investigative process. It does not alter the civil nature of the need for accurate documentation to one of a criminal nature. It has been the experience of the Department of Human Services that this information is useful.

COMMENTS: N.J.A.C. 10:7-4.1(e). The Morris County Adjuster objects to the proposed rule which clearly limits and excludes from a patient's assets or estate the benefits which are provided by law and to be considered a patient's estate. There should be no limitation to the source of income of an individual's "estate."

RESPONSE: With respect to Social Security and Supplemental Security Income, Federal law 42 U.S.C. p.407 states, "The right of any person to any future payment ... shall not be transferable or assignable, at law or in equity, and none of the moneys paid or payable or rights existing under this subchapter shall be subject to execution, levy, attachment, or other legal process." Similar statements are included in the laws pertaining to Veteran benefits, Railroad Retirement benefits, and Federal Civil Service Retirement benefits. Additionally, in the case of *Woodall v. Bartolino* (Federal District Court No. 85-1781, D. N.J. 1985), Judge Maryanne Trump Barry stated that Social Security benefits could not be court-ordered. Any Social Security utilized for the payment of care and maintenance must be made on a voluntary basis.

COMMENTS: N.J.A.C. 10:7-4.1(f)1, 2, 3, 4, 5 and 6. These items should be deleted since it is already covered by Court Rule 4:74-7(i)(1), which demonstrates a more economical and efficient way of providing notice.

RESPONSE: The court rule specifies only certain individuals will receive the documents. It also states that those charged with the client's cost of care and maintenance also be served. In order to assure proper service to the State and county, the Department has in this rule identified the individuals at the State and county levels that must be served. These individuals must have copies with sufficient time, within the 20 day notice period, to review and object to the petition and/or report, if necessary. The personnel added to the distribution listing are not all State personnel. Additionally, changes in legislation make it necessary for some of these personnel to receive the petition and report when they may not have received them in the past. To clarify N.J.A.C. 10:7-4.1(f)4, the phrase, "where the client is located" has been added.

COMMENTS: N.J.A.C. 10:7-4.1(f)3, 4 and 5. The Morris County Adjuster objects to the proposed rule requiring the county adjuster's mandatory responsibility to distribute copies of petitions and reports to the supervisor of patients' accounts of the State agency where the client is located as well as to the CEO or his or her designee of the county psychiatric facility with the additional requirement to distribute copies to the Division of Mental Health and Hospitals for State. Specifically, New Jersey Court Rules 4:74-7-(i) require that the county adjuster send a copy of the petition and report to the person(s) who may be legally responsible for the client's care. The Morris County Adjuster's policy has been to send a copy of the petition to a State representative; however, the responsibility to send out three copies of the same document to State representatives is an unneeded burden.

RESPONSE: The court rule specifies only certain individuals will receive the documents. It also states that those charged with the client's cost of care and maintenance also be served. In order to assure proper service to the State and county, the Department has in this rule identified the individuals at the State and county levels that must be served. These individuals must have copies with sufficient time, within the 20 day notice period, to review and object to the petition and/or report, if necessary. The personnel added to the distribution listing are not all State personnel. Additionally, changes in legislation make it necessary for some of these personnel to receive the petition and report when they may not have received them in the past. To clarify N.J.A.C. 10:7-4.1(f)4, the phrase, "where the client is located" has been added.

COMMENTS: N.J.A.C. 10:7-4.1(h). This subsection which dictates that the county adjuster be available to advise the court in Federal and State laws and regulations pertaining to the hearing, is onerous and inappropriate and as such should be deleted.

RESPONSE: The Department concurs with the comments and is deleting this subsection. The responsibility for knowing the law lies with the court.

COMMENTS: N.J.A.C. 10:7-4.1(i). This section which mandates that the county adjusters re-evaluate their clients' financial circumstances annually or sooner is not cost effective inasmuch as it does not take into consideration the individual circumstances of all clients. Clearly, a client who has had one psychiatric episode may not be reevaluated until he or she has had a subsequent psychiatric episode and it is clear that his or her condition is chronic and justifies ongoing scrutiny. To arbitrarily reevaluate each client annually is excessive at the least.

RESPONSE: N.J.S.A. 30:4-60, "Payment by patient; determination of amounts," states, "If the court shall determine that the patient is mentally ill and, basing its determination upon a formula of financial ability to pay as promulgated annually . . . ." This formula is changed annually based on changes in the cost of living. It is published every January in the "Methodology and Formula for Determination of Financial Ability to Pay of Clients and Legally Responsible Relatives, The Treasury Formula." Since the amount that the client's/LRR's are required to contribute changes each year with changes in their individual circumstances and the amounts required by the treasury formula, they must be re-accomplished at least annually with publication of the new treasury formula. This has been a requirement since January 7, 1970. Annual re-evaluations are only completed on clients and their LRRs when the client is continuously in the system (without discharge) for more than a year. The re-evaluations are not necessary unless the financial situation of the client or LRR has changed and the original order for settlement and payments are no longer appropriate.

COMMENTS: N.J.A.C. 10:7-4.1(j). This section should be modified due to the same concerns expressed in reference to N.J.A.C. 10:7-4.1(a)2, (b) and (c). (See above comments.)

RESPONSE: It is reasonable to expect completion of the listed documents no later than 60 days after receipt of notification of admission/commitment. The reason for these time frames is to satisfy the requirements of N.J.S.A. 30:4-73 and the 90 day billing procedures.

COMMENTS: N.J.A.C. 10:7-5. The reason for my outline is to show my point in not agreeing to the time limit imposed before sanctions can be started. Unless I am reading the rules incorrectly, the adjuster's office has 25 days to submit payment but the State has no time frame to forward documents needed to process cases for court orders, collections, etc. Division of Developmental Disabilities is a prime example.

RESPONSE: All of the time limits placed in this section are reasonable as they are from the date of receipt of required information from the State or other sources. These time limits for required actions by the county adjuster are in accordance with good accounting practices and are more than adequate. These rules outline and define the role of the county adjuster not the role of the State.

COMMENTS: N.J.A.C. 10:7-5.1(a) and (b). The delegation of duties and responsibilities with regard to billing and collection is a function of county administration. Making it the responsibility of the county adjuster violates the autonomy of the individual counties.

RESPONSE: The definition for county adjuster given in Subchapter 2, Definitions, states that, "... The use of this term in these rules shall mean the county adjuster or county designee." In this case, the county designee would be the individual assigned the responsibilities by the county administration.

COMMENTS: N.J.A.C. 10:7-5.1(b). In regard to the time frames, notwithstanding the comments already stated, they are inappropriate.

RESPONSE: All of the time limits placed in this section are reasonable as they are from the date of receipt of required information from the State or other sources. These time limits for required actions by the county adjuster are in accordance with good accounting practices.

COMMENTS: N.J.A.C. 10:7-5.1(c). This section imposes upon the county adjuster a requirement which could not reasonably be fulfilled in an appropriate time frame. Clearly this is excessive inasmuch as all vouchers issued to the State require certification by an appropriate county official as to their accuracy now. To insist that the county adjuster provide an additional certification is redundant and clearly not called for.

RESPONSE: The county adjuster does not have to provide an additional certification. Only one certification is required. The definition for county adjuster given in Subchapter 2, Definitions, states that, "... The use of this term in these rules shall mean the county adjuster or county designee." In this case, the county designee would be the person who provides the certification.

COMMENTS: N.J.A.C. 10:7-5.1(c). In regard to the time frames, notwithstanding the comments already stated, they are inappropriate.

RESPONSE: All of the time limits placed in this section are reasonable as they are from the date of receipt of required information from the State or other sources. These time limits for required actions by the county adjuster are in accordance with good accounting practices and are more than adequate.

COMMENTS: N.J.A.C. 10:7-5.1(d). Currently this county adjuster is providing monthly statements to county chargeable clients. Before mandating that each case be litigated, a financial feasibility study should be conducted to explore the economic impact. Quite frankly, would the recoveries justify the enormous cost involved?

RESPONSE: This paragraph is only meant to have monthly statements sent to contributing clients and LRRs. This has been the policy of the Department of Human Services for many years and each county should have already been doing this. This is not a change. There is no mandate that these cases be litigated.

COMMENTS: N.J.A.C. 10:7-5.1(e). While the county adjuster currently maintains individual records on individual clients, requiring them to maintain a ledger card which itemizes all county charges for services in State agencies and county psychiatric facilities as well as offsetting client contributions, is currently excessive and duplicates records that are currently being kept elsewhere in the process. Implementing such a procedure would be extremely expensive and would require substantially more lead time than these regulations allow for. If it is the State's intent that this be mandatory, perhaps a demonstration project of one individual facility should be conducted before this regulation becomes final.

RESPONSE: These records are only kept by the county and are not available elsewhere. The county adjuster or county designee is already performing these accounting functions. Therefore, no additional expenses are anticipated. The records are necessary in order to determine

the amounts that are due for proper reimbursement of the county for payments made by the county for county chargeable clients under the new legislation (P.L. 1990, c.73).

COMMENTS: N.J.A.C. 10:7-5.1(f). Compliance with this section should be predicated upon successful implementation of N.J.A.C. 10:7-5.1(e). Please see those comments.

RESPONSE: See previous response, above.

COMMENTS: N.J.A.C. 10:7-5.1(g). Remitting to the State balances related to payments from sources above and beyond the State contribution is the function of the facility rending the services not the county adjusters. Clearly, those remittances should not exceed the original balance paid by the State on the clients' behalf.

RESPONSE: This section applies only to those funds received by the county. The State has no way of knowing the county's receipts and what has been paid by specific clients in excess of the county's share, unless the amounts are reported to the State.

COMMENTS: N.J.A.C. 10:7-5.1(h). As stated in N.J.A.C. 10:7-5.1(g), the reconciliation of county charges in State agencies is most appropriately performed by those county facilities performing the services.

RESPONSE: This section is only applicable to county chargeable clients in State agencies and not clients in county facilities. There must be a final reconciliation of these charges by the county. Since the definition for county adjuster given in Subchapter 2, Definitions, states that, "... The use of this term in these rules shall mean the county adjuster or county designee.", the county may designate whom they choose to perform the reconciliation.

COMMENTS: N.J.A.C. 10:7-6. It seems inappropriate that the State should dictate the procedures for the handling of liens and compromises. Having placed the burden of collecting funds where available upon the counties, the responsibility for assigning that duty should fall with the county administrators and not be a regulated function of the county adjuster.

RESPONSE: N.J.S.A. 30:4-77, "Settlement of claims; funds for rehabilitation", states, "The commissioner, with regard to State institutions, or the board of chosen freeholders, or a proper committee thereof, with regard to county institutions, may compromise and settle any claim due a State institution or due the board of freeholders for the support of a patient."

N.J.S.A. 30:4-80.6, "Discharge of lien; compromise and settlement of lien", also covers the discharge of lien claims and the compromise process at the State and county levels respectively.

N.J.S.A. 30:4-80.2, "Form and execution of lien; maintenance not covered by lien", states, "... The lien shall be signed by the chief executive officer of the institution or his duly constituted agent ..." The chief executive officer's duly constituted agent can be the county adjuster.

The definition for county adjuster given in Subchapter 2, Definitions, states that, "... The use of this term in these rules shall mean the county adjuster or county designee." In this case, the county designee would be the person who the county wants to be the named duly constituted agent of the appropriate chief executive officer.

COMMENTS: N.J.A.C. 10:7-7.1(a). The Morris County Adjuster objects to what he considers to be an inordinately long period of time for the retention of county adjuster records. A more realistic retention schedule should be considered by the Department of Human Services.

RESPONSE: The Department concurs, this section is changed to read, "The county adjuster shall meet the appropriate records retention requirements specified by the New Jersey State Library in the county adjuster's record retention schedule, by the county governing body and/or by the Administrative Office of the Courts (AOC)."

COMMENTS: N.J.A.C. 10:7-7.1(a). Given the extensive record keeping requirements dictated by this regulation, in addition to those that are already currently in place, it seems excessive to maintain that they be mandated for the life of a patient, plus 20 years. This blanket mandate would require extensive computer capabilities and an enormous staff to maintain. As stated before, it would seem advisable that a demonstration project be performed before this regulation be put into place.

RESPONSE: The Department concurs, this section is changed to read, "The county adjuster shall meet the appropriate records retention requirements specified by the New Jersey State Library in the county adjuster's record retention schedule, by the county governing body and/or by the Administrative Office of the Courts (AOC)."

COMMENTS: N.J.A.C. 10:7-8. The Morris County Adjuster objects to this entire subchapter on sanctions and appeal procedures as being unilaterally oppressive by the State Department of Human Services.

RESPONSE: P.L. 1990, c.73, approved July 17, 1990 states, "The commissioner shall have the power to promulgate regulations to assure that county adjusters ... and the establishment of sanctions to assure compliance with State laws and regulations." The intention of the sanctions section is to allow the Commissioner the widest latitude possible in order to solve problems and resolve differences before imposing sanctions. Typically, sanctions would only be utilized as a last resort.

COMMENTS: N.J.A.C. 10:7-8.1. This section provides for sanctions, both administrative and financial, to be imposed if the county adjuster does not comply with federal and State law. The language in this section should be expanded to specify exactly what sanctions may be imposed, the amount and source, and for what specific violation. As written, there is the potential for arbitrariness, particularly problematic if the severe sanction of withholding funds is imposed. For example, if a county adjuster is derelict in his or her duties, is funding to other county programs at risk? This appears inappropriate prior to giving the county notice and an opportunity to be heard.

Procedural due process requires inclusion of the aforementioned recommendations in the text of N.J.A.C. 10:7-8.

RESPONSE: These rules were intentionally written to exclude reference to specific sanctions. This was done to allow the Commissioner the widest latitude and flexibility possible in order to solve problems and resolve differences without the imposition of sanctions. Specific sanctions would tie the hands of both the Commissioner and the county when circumstances may not warrant the specific action required. The counties are of different sizes with different needs, problems, programs and tax bases, necessitating a tailored response from the Commissioner. Typically, sanctions would only be utilized as a last resort.

COMMENTS: N.J.A.C. 10:7-8.1. Given the extensive regulations with their restrictive time frames and massive recordkeeping requirements, imposing sanctions which would restrict funds from flowing to facilities which render care to patients for non-compliance, seems excessive and unduly punitive.

RESPONSE: P.L. 1990, c.73, approved July 17, 1990 states, "The commissioner shall have the power to promulgate regulations to assure that county adjusters ... and the establishment of sanctions to assure compliance with State laws and regulations." The intention of the sanctions section is to allow the Commissioner the widest latitude possible in order to solve problems before imposing sanctions. Typically, sanctions would only be utilized as a last resort.

COMMENTS: N.J.A.C. 10:7-8.2. This section sets forth the appeal process available to the county after imposition of sanctions. It is recommended that a county be afforded basic due process, which includes notice and that a hearing prior to the imposition of any sanctions, as provided for in the Administrative Procedures Act, specifically, N.J.S.A. 52:14B-9. In the alternative, if in fact funds are to be withheld from the county, the Department, at a minimum, should provide at least written notice thirty days prior to the imposition of the sanction giving the county the opportunity to be heard. See as an example N.J.A.C. 7:22A-1.13(b).

Procedural due process requires inclusion of the aforementioned recommendations in the text of N.J.A.C. 10:7-8.

RESPONSE: This section was not intended to inhibit due process. Notice will be provided prior to the imposition of any sanctions. The following statement has been added to this section, "Notice will be provided to the county governing body and the county adjuster prior to the imposition of sanctions when the county adjuster is found to not be in compliance with these rules."

COMMENTS: N.J.A.C. 10:7-8.2. No sanctions should be imposed upon an institution until the appeal process is completed. In regard to the appeal process, the panel hearing such appeal should have a more even distribution of State and county representation and at the very least should include a member from the community which is acceptable to all parties involved. This would make for a more orderly and equitable adjudication of disputes and avoid costly litigation.

RESPONSE: The sanctions to be imposed under these rules only affect those items included in the Role of the County Adjuster. Since, under the new legislation, the State is responsible for paying up to 100 percent of the cost of care and maintenance for Division of Developmental Disabilities clients, and up to 90 percent of the cost of care and maintenance for Division of Mental Health and Hospitals clients, the State has an overriding interest in the efficient and effective provision of these services. The sanctions and appeals process is necessary to protect the State's interests financially and administratively.

Summary of Agency-Initiated Changes:

N.J.A.C. 10:7-4.1(b)7 is corrected to include the term "police records" as an example of municipal records to be reviewed to verify residency data.

N.J.A.C. 10:7-6.1, the heading of this section is corrected to read "Procedures for handling Liens."

N.J.A.C. 10:7-8.2(a)1vi is added as follows, "Notice of the decision relating to the first level of appeal will be provided to the county governing body and the county adjuster when the level 1 appeals process is completed."

N.J.A.C. 10:7-8.2(a)2ii is added as follows, "Notice of the decision relating to the second level of appeal will be provided to the county governing body and the county adjuster when the level 2 appeals process is completed."

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

CHAPTER 7
ROLE OF THE COUNTY ADJUSTER

SUBCHAPTER 1. GENERAL PROVISIONS

10:7-1 Purpose and scope

(a) In accordance with P.L. 1990, c.73, approved July 17, 1990, the Department of Human Services, Office of Finance and Accounting is codifying the administrative rules governing the role of the county adjuster. The promulgation of these rules shall assure that the role of each county adjuster is standardized and carried out in an effective and efficient manner.

(b) These rules on the role of the county adjuster apply to the county adjusters of the 21 counties of the State of New Jersey.

(c) The rules, on the role of the county adjuster, relating to the Administrative Office of the Courts (AOC), have been written utilizing the Civil Practice Rules 4:74-7, Civil Commitment, current during 1991. Should these civil commitment rules be changed in the future, the latest effective Civil Practice Rules 4:74-7, Civil Commitment, shall supercede these rules, where appropriate.

SUBCHAPTER 2. DEFINITIONS

10:7-2 Definitions

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

"Agency" means a Division, institution, facility, or organizational unit within the Department of Human Services.

"Amended order" means a superior court order changing the terms of a court order.

"Chief executive officer" means the highest ranking official in a State agency or county psychiatric facility.

"Client" means an individual receiving services from the Department of Human Services or the county psychiatric facilities.

"Compromise" means a decision made by the Office of the Commissioner, with regard to State agencies and the county governing body or a proper committee thereof, with regard to a county psychiatric facility, as authorized by N.J.S.A. 30:4-77 and 30:4-80.6, to: satisfy any debt due to a State agency or county psychiatric facility, as appropriate, by accepting less than the amount owed; or release all or part of the assets subject to a lien claim for the use or benefit of the client or his/her dependents, heirs or assignees. A compromise is not necessary for the release of a lien claim if a partial payment is made that constitutes the final distributive share to a creditor (the Department or county) from: the estate of a deceased client; or assets available from a bankruptcy proceeding of a client or former client. (N.J.S.A. 30:4-80.6)

"Compromise offer" means a written offer by or on behalf of a client or former client to: satisfy any debt due to a State agency or county psychiatric facility by offering less than the amount owed; or release all or part of the assets subject to a lien claim for the use or benefit of the client or his/her dependents, heirs, or assignees. Compromise offers can also be made by or on behalf of legally responsible relatives (LRRs) to satisfy any unpaid debts the LRR is obligated to pay, as substantiated by a court order, for the care and maintenance of a client or former client. (N.J.S.A. 30:4-80.6)

"County adjuster" means the county official charged with the responsibility for determining the client's financial ability to pay the DHS agency and/or the county psychiatric facility for the cost of care and maintenance. The individual is also responsible for determination of a client's legal settlement. The use of this term in these rules shall mean the county adjuster or county designee.

"County bills" means the monthly State charges to the counties for their share of care and maintenance costs for services provided by the various Department of Human Services agencies to county chargeable clients.

"County of admission/commitment" means the county where the temporary order of commitment was signed commiting a client to a short-term care facility, psychiatric facility or special psychiatric hospital or where a voluntary or DDD client is admitted to a facility for treatment. The county of admission/commitment issues the original and all amended support orders, unless venue has been transferred to the county of settlement. The county of admission/commitment need not be the county of settlement.

"County per diem rate" means the daily per capita rate established for each State agency. It is set annually by the State House Commission. It is used to charge counties for their share of the cost of care and maintenance for clients with county settlement in State operated facilities.

"County psychiatric facility" means a county operated psychiatric facility which participates in the State Aid Program of the New Jersey Division of Mental Health and Hospitals.

"County settlement" means continuous residence of a client or parents of a child under age 18 in a county for a period of not less than five years immediately preceding the date of application for admission/commitment. The time spent in any charitable or correctional institutions, or public hospital does not count toward an establishment of or a change in a client's settlement. (Refer to N.J.S.A. 30:4-49 et seq. for additional settlement criteria.)

"Court order" means a legal document issued by the superior court that authorizes the admission/commitment/discharge of a client and specifies financial liability and/or legal settlement of the client.

"Division of Developmental Disabilities" (DDD) means a division of the Department of Human Services which administers the State developmental centers, provides special residential facilities, and supplies social services for the developmentally disabled.

"Division of Mental Health and Hospitals" (DMH&H) means a division within the Department of Human Services which establishes State-wide policy and coordination regarding the delivery of mental health services, operates the seven State psychiatric hospitals, and contracts with community-based mental health providers for direct services.

"Involuntary commitment—adult" means a commitment of an adult who is mentally ill, whose mental illness causes the person to be dangerous to self or dangerous to others or property and who is unwilling to be admitted to a facility voluntarily for care, and who needs care at a short term care facility, psychiatric facility or special psychiatric hospital because services are not appropriate or available to meet the person's mental health care needs. (N.J.S.A. 30:4-27.2m)

"Involuntary commitment—minor" means a commitment of a minor in need of intensive psychiatric therapy which cannot practically or feasibly be rendered in the home or in the community or on an outpatient basis. (Civil Practice Rules 4:74-7(f))

"Legal settlement" means the client's legal residence defined by statute and used to determine whether the State and/or a specific county is responsible for the cost of care and maintenance of the client if he/she is unable to pay the full private rate. (Refer to N.J.S.A. 30:4-49 et seq. for additional settlement criteria.)

"Legally responsible relative (LRR)" means a spouse, mother, father, or adult child who is statutorily responsible for a client's cost of care and maintenance. (Refer to N.J.S.A. 30:4-66 for additional criteria.)

"Lien" means a legal encumbrance against the assets of a client or LRR precluding disposition until settlement with the State and/ or county for services. Settlements in this context can take many

forms, for example, payment, compromise, etc. Liens are filed by the chief executive officer (or equivalent) or a duly constituted agent, for example, county adjuster or supervisor of patient's accounts (SPA). (N.J.S.A. 30:4-80.1, 80.2 and 80.3 et seq.)

"Lien subordination" means a lien claim for the cost of care and maintenance on a client/LRR is placed in a subordinate position to another debt.

"Maintenance bill" means a billing, by year, reflecting the number of days a client was present at the agency, multiplied by the daily State Board of Human Services rate for those years. From this charge, all payments and recoveries realized from the client and/or LRR are deducted.

"No settlement" means a client who does not have State or county settlement and is charged to the State pending his or her removal to the place where he/she has legal settlement, if any. (N.J.S.A. 30:4-52)

"Notice of Commitment Hearing" means a written document giving the time and place of the commitment hearing. The form of notice served upon the client and his or her counsel or guardian *ad litem* shall include a copy of the temporary court order, a statement of the client's rights at the hearing and the screening or clinical certificates and supporting documents. (Civil Practice Rules 4:74-7(c)(4))

"Order of Commitment" means a document signed by either a municipal court judge or a superior court judge which orders a client to be detained in or transferred to a short-term care facility, a psychiatric facility, or a special psychiatric hospital and contains all the terms mandated in the Civil Practice Rules 4:74-7(c)4.

"Order of Settlement and Support" means a superior court order establishing legal settlement and financial obligations for institutional care. The order determines the extent of county, State, client and LRR liability.

"Petition for Settlement and Maintenance" means a document by which the county adjuster petitions the court for the designation of the client's legal settlement and provision for payment of the expenses of the client's care and treatment. The petitions shall be accompanied by a report stating the results of the county adjuster's investigation and his or her recommendations. (Civil Practice Rules 4:74-7(i)(1))

"Power of attorney" means a legal document authorizing an individual to represent another.

"Private rate" means the full per capita rate as set by the State Board of Human Services for State agencies and the county governing body or a proper committee thereof for the county psychiatric facilities.

"Psychiatric facility" means a State psychiatric hospital listed in N.J.S.A. 30:1-7, a county psychiatric hospital, or a psychiatric unit of a county hospital. (N.J.S.A. 30:4-27.2u)

"Recovery" means any money received on behalf of a client to offset accumulated maintenance charges for care and treatment in a State or county facility or community program. Sources of recoveries may include: regularly recurring income such as wages, pensions, interest, annuity benefits and Social Security benefits; inheritances; judgements; voluntary contributions; LRR contributions; and Medicare and other third-party insurance coverage.

"Release of property from lien" means to preserve a lien on a client/LRR while removing certain property from its effect. (N.J.S.A. 30:4-80.4)

"Representative payee" means an individual or agency receiving federal annuity benefits for another person. A representative payee is necessary whenever a client is incapable of managing funds.

"Short-term care facility" means an inpatient, community based mental health treatment facility which provides acute care and assessment services to a mentally ill person whose mental illness causes the person to be dangerous to self or dangerous to others or property. A short-term care facility is so designated by the Commissioner and is authorized by the Commissioner to serve persons from a specified geographic area. A short-term care facility may be a part of a general hospital or other appropriate health care facility and shall meet certificate of need requirements and shall be licensed and inspected by the Department of Health pursuant to P.L. 1971, c.136 (N.J.S.A. 26:2H-1 et seq.) and in accordance with standards developed jointly with the Commissioner of Human Services. (N.J.S.A. 30:4-27.2bb; N.J.A.C. 8:43E-3.3).

"Special psychiatric hospital" means a public or private hospital licensed by the Department of Health to provide voluntary and involuntary mental health services, including assessment, care, supervision, treatment and rehabilitation services to persons who are mentally ill. (N.J.S.A. 30:4-27.2cc)

"State House Commission" means commission empowered by the State Legislature to establish the yearly per capita costs to counties for client maintenance in county psychiatric facilities and in specific State funded programs in the Department of Human Services.

"State settlement" means when there is no continuous residency in any county for a period of five years or more immediately preceding the date of admission/commitment and there is continuous residence in the State for one year. There are no county charges. (N.J.S.A. 30:4-51)

"Treasury formula" means the method of determining the financial ability to pay for care and maintenance by a client and/or LRR(s). (N.J.S.A. 30:4-60)

"Voluntary admission—adult" means an admission of an adult who is mentally ill, whose mental illness causes the person to be dangerous to self or dangerous to others or property and is willing to be admitted to a facility voluntarily for care, needs care at a short-term care or psychiatric facility because other facilities or services are not appropriate or available to meet the person's mental health care needs. A person may also be voluntarily admitted to a psychiatric facility if his or her mental illness presents a substantial likelihood of rapid deterioration in functioning in the near future, there are no appropriate community alternatives available and the psychiatric facility can admit the person and remain within its rated capacity. (N.J.S.A. 30:4-27.2ee)

"Voluntary admission—minor" means any minor 14 years of age or over may request his or her admission to an institution for psychiatric treatment provided the court, on a finding that the minor's request is voluntary, enters an order approving the admission. If an order approving a voluntary admission of a minor is entered, the minor may discharge himself or herself from the institution in the same manner as an adult who has voluntarily admitted himself or herself. (Civil Practice Rules 4:74-7(k))

"Warrant to Enter Satisfaction" means the legal document by which the satisfaction of liens are authorized. They are signed by the chief executive officer or equivalent at the State agency or county psychiatric facility making the claim. (N.J.S.A. 30:4-4.80.6)

SUBCHAPTER 3. COMMITMENTS/ADMISSIONS/REVIEWS/DISCHARGES

10:7-3.1 Procedures for commitments/admissions/reviews/discharges

(a) The county adjuster shall be responsible for commitment, admission, reviews and discharges of persons receiving DDD services and DMH&H services (including county psychiatric facilities).

(b) The county adjuster's responsibilities for commitments/admissions to DMH&H services (including county psychiatric facilities) are as follows:

1. Regarding voluntary admissions, the county adjuster shall arrange for a hearing at short-term care facilities, psychiatric facilities or special psychiatric hospitals for all involuntary clients converting to voluntary status within 20 days of conversion. The county adjuster shall arrange for hearings within 20 days of admission to short-term care facilities and psychiatric facilities for voluntary admitted clients from screening centers. The county adjuster shall make certain that the client is represented by counsel at the hearing. The county adjuster shall review the notification of voluntary admission documentation for sufficiency and *[correctness]* ***completeness***. The county adjuster shall conduct an investigation to determine the client's/LRR's ability to pay for the cost of care and maintenance per N.J.A.C. 10:7-4.

2. Regarding involuntary commitments, the county adjuster shall receive commitment papers for clients committed to Federal facilities, short-term care facilities, psychiatric facilities or special

psychiatric hospitals. The county adjuster shall review the involuntary admission documents for sufficiency and *[correctness]* ***completeness*** and shall forward the involuntary admission documents to the court for its consideration and possible issuance of a temporary commitment order, except when the hospital/facility seeks a temporary commitment order on an emergent basis during non-business hours. The county adjuster shall arrange for a commitment hearing to be held in accordance with Civil Practice Rules 4:74.7, Civil Commitment. The county adjuster shall include, in the form of the notice of commitment hearing served upon the client and his or her counsel or guardian ad litem, a copy of the temporary court order, a statement of the client's rights at the hearing and the screening or clinical certificates and supporting documents. The county adjuster, as directed by the court, shall make certain that the client is represented by counsel at the hearing.

3. The county adjuster shall arrange for the conduct of review hearings, as directed by the court. The county adjuster shall make certain that the client is represented by counsel at the review hearing. The county adjuster shall prepare and submit for the court's action the appropriate order.

4. The county adjuster shall complete reports to the Administrative Office of the Courts (AOC) each month, as directed by the court. These reports include information utilized to track all involuntary and voluntary psychiatric commitments/admissions through the court system.

(c) Regarding admissions to DDD services, the county adjuster shall receive the DDD admissions documentation once eligibility and placement are determined. The county adjuster shall review the DDD admissions documentation for sufficiency and *[correctness]* ***completeness***.

(d) If the county adjuster is licensed to practice law in this State, the county adjuster shall present the case for the client's involuntary commitment to the court. The county adjuster shall be available to advise the court of the appropriate Federal and State laws and regulations pertaining to commitment and review hearings.

(e) The county adjuster, for those counties with Medicaid-certified county psychiatric facilities, shall make certain that a Medicaid application has been submitted for each potentially eligible client.

(f) The county adjuster shall process the necessary documentation for the payment of legal representation and/or interpreters utilized by clients at their hearings, where necessary.

SUBCHAPTER 4. COURT ORDERS OF SETTLEMENT AND SUPPORT

10:7-4.1 County adjuster's responsibilities for preparing court orders of settlement and support

(a) The county adjuster, at the discretion of the court, shall act as referee to conduct investigations to determine each client's legal settlement and the client's/LRR's financial ability to pay for the cost of care and maintenance. This investigation shall be a thorough and systematic attempt to learn the facts about the client's/LRR's financial circumstances and residence(s).

1. The county adjuster shall utilize his or her subpoena powers to conduct such investigation, when necessary.

2. The investigation shall be completed within six to eight weeks but no later than 60 days after receipt of notification of admission/commitment of the client.

3. The county adjuster's investigatory testimony, in the form of findings, conclusions and recommendations, are subject to the approval of the court and shall be based on factual evidence.

4. The county adjuster shall utilize the "Methodology and Formula for Determination of Financial Ability to Pay of Clients and Legally Responsible Relatives—The Treasury Formula" procedures manual. Published annually, this manual assists in identifying those areas to be addressed by these investigations.

5. The county adjuster of the county of admission shall refer all cases when an investigation indicates settlement is in another county. The county adjuster of the county to which the client's case is referred shall review the information provided by the county of admission, conduct its investigation as required and respond in writing to the referring county. If accepted, the county of admission shall obtain an order transferring venue to the county of settlement and the county of settlement will then proceed with petition.

(b) The formal investigation to determine legal settlement shall ***, as necessary,*** take into consideration each of the following listed items. However, it need not be limited to just those items. The county adjuster shall:

1. Obtain client residency data from screening, admissions and commitment documents;

2. Contact facilities from previous admissions of the client to obtain residency data and to inquire as to the county of admission and the classification of the admission (including private hospitals, county facilities, other counties and their facilities, and State agencies);

3. Interview the client for residency data, when possible;

4. Interview the client's spouse, relatives, friends and neighbors for residency data;

5. Obtain residency data from Federal, State and county agencies supplying the client with benefits or assistance (SSA, SSI, SSD, RR, VA, Pensions, Medicare, Medicaid, DYFS, DEA, General Assistance, etc);

6. Contact county, State and Federal correctional facilities for residency data (including county probation offices), if applicable;

7. Review local municipal records to verify residency data, such as property tax records, ***police records,*** occupancy permits/inspections, etc.;

8. Obtain written verification of residency data, whenever possible;

9. Obtain oral verification of residency data when written data is not obtainable; and

10. Keep a record of the client's settlement investigation, including date, time, data obtained, method data obtained and the source of the data.

(c) The formal investigation of support to determine financial ability of the client and/or LRR(s) to pay shall***, as necessary,*** take into consideration each of the following listed items. However, it need not be limited to just those items. The county adjuster shall:

1. Obtain client financial data from admissions documents;

2. Contact facilities from previous admissions of the client to obtain financial data (including private hospitals, county facilities, other counties and their facilities, and State agencies);

3. Interview the client for financial data, when possible;

4. Interview the client's spouse, relatives, friends and neighbors for financial data;

5. Obtain financial data from Federal, State and county agencies supplying the client with benefits or assistance (SSA, SSI, SSD, RR, VA, Pensions, Medicare, Medicaid, DYFS, DEA, General Assistance, etc.);

6. Obtain client's/LRR's employment financial data, when possible;

7. Review client/LRR's tax records, pay stubs, banking/savings institution's records, employment retirement records, insurance records, etc., for financial data;

8. Contact county, State and Federal correctional facilities for financial data, if applicable;

9. Review local municipal records to verify financial data, such as property tax records;

10. Obtain written verification of financial data, whenever possible;

11. Obtain oral verification of financial data when written data is not obtainable;

12. Keep a record of the client's/LRR's financial investigation, including date, time, data obtained, method data obtained and the source of the data; and

13. Complete the appropriate treasury formula worksheets.

(d) The county adjuster shall utilize the procedures found in the "Methodology and Formula for Determination of Financial Ability to Pay of Clients and Legally Responsible Relatives—The Treasury Formula" procedures manual to calculate the amount of monthly charges to clients/LRRs.

1. The county adjuster shall utilize the appropriate treasury formula worksheets. The county adjuster shall complete the appropriate worksheet to the maximum extent possible. The county adjuster shall complete the "Summary of Total Charges" form for each client/LRR.

2. The county adjuster shall only utilize the manual for the current calendar year. The "Methodology and Formula for Determination of Financial Ability to Pay of Clients and Legally Responsible Relatives—The Treasury Formula" procedures manuals are distributed in December of each year with an effective date of January 1st of the next year. Copies can be obtained from the:

Department of Human Services
Office of Finance and Accounting
222 South Warren Street, 4th Floor
CN 700
Trenton, New Jersey 08625

(e) The county adjuster shall review the settlement and support court orders prior to submission to make sure that they are in compliance with all appropriate Federal and State laws and regulations. Specifically, the county adjuster shall ensure that said orders do not contain Federal benefit funds consisting of Social Security benefits, Veterans Administration benefits, Railroad Retirement benefits and/or Federal Civil Service Pension benefits.

(f) The county adjuster shall submit a petition for the court to determine the client's legal settlement and provision for payment of expenses of the client's care and maintenance, in accordance with Civil Practice Rules 4:74.7, Civil Commitment. The county adjuster shall attach a report to the petition which includes the investigative findings and/or testimony, the treasury formula worksheet(s), the results of the investigation and the recommendations for an order of settlement and support. The county adjuster shall schedule a hearing, with proper notice, for settlement and support, only if there are objections to the proposed court order. The county adjuster shall distribute a copy of the petition and report:

1. Directly to the client or the client's guardian or guardian ad litem, if any, by certified mail, return receipt requested, or as directed by the court;

2. To the client's counsel, by regular mail, as required;

3. To the supervisor of patients accounts of the State agency where the client is located, by regular mail;

4. To the CEO or his or her designee of the county psychiatric facility ***where the client is located***, by regular mail;

5. To the Division of Mental Health and Hospitals for State and no settlement clients in county psychiatric facilities, by regular mail; and

6. To the legally responsible relative(s) (LRRs), where applicable, by certified mail, return receipt requested, or as directed by the court.

(g) The county adjuster shall file the completed Orders of Settlement and Support in the county clerk's office of the county of settlement.

[(h) The county adjuster shall be available to advise the court of any Federal and State laws and regulations pertaining to hearings on petitions for proposed Orders of Settlement and Support.]

*[(i)]***(h)*** The county adjuster shall re-evaluate the client's and/or LRR's financial circumstances annually or sooner when information is obtained that their financial circumstances have changed. The county adjuster shall take the appropriate action to initiate an amendment to the client's and/or LRR's Order of Settlement and Support.

*[(j)]***(i)*** The county adjuster shall distribute copies of the following documentation to the appropriate agency's supervisor of patients' accounts, or equivalent, no later than 90 days after receipt of notification that the client is admitted/committed:

1. An appropriate Order of Settlement and Support;

2. An amended Order of Settlement and Support, if applicable;

3. Investigative findings and/or testimony;

4. Treasury Formula worksheets;

5. Summary of Monthly Charges form(s); and

6. Outside representative payee voluntary agreement(s), if applicable.

SUBCHAPTER 5. ACCOUNTING

10:7-5.1 County adjuster accounting procedures

(a) The county adjuster is responsible for accounting activities with respect to the State billing for clients with county settlement, the county billing for clients with State or no settlement, and billing and collection of client and/or LRR maintenance contributions and recoveries for clients with county settlement.

(b) The county adjuster shall review and reconcile the State billing to the county for clients with county settlement. The county adjuster shall determine that those clients charged to the county have appropriate county settlement, and that the number of days charged are accurate to the extent possible. The county adjuster shall certify to the county administration that the State billing is correct and is authorized for payment.

1. The county adjuster shall notify the Department of Human Services, Office of Finance and Accounting, in writing within 25 days from the date of receipt of the State billing of any adjustments required.

2. The county adjuster shall review all credits issued by the State to determine if appropriate for clients charged to the county. The county adjuster shall notify the State within 25 days of receipt of the credits of any discrepancies, additional information and/or adjustments required.

(c) The county adjuster shall review the county billing to the State and certify to the State that clients billed by the county psychiatric facility have appropriate State or county settlement and that the clients were resident in the facility for the number of days charged.

1. The Department of Human Services, Division of Mental Health and Hospitals shall notify the county adjuster in writing within 25 days from the receipt of the county billing of any adjustments required.

2. The county adjuster shall review all credits issued by the county to the State to determine if the clients were properly charged to the State. The Division of Mental Health and Hospitals will review the accuracy of the credits to the State and notify the county adjuster within 25 days of receipt of any adjustments required.

(d) The county adjuster shall actively pursue court-ordered and voluntary contributions due from county chargeable clients. A monthly statement shall be issued to contributing clients and/or LRRs indicating the amount of contribution expected (court ordered or voluntary) for the month as well as any open balances from previous months.

(e) The county adjuster shall maintain a ledger account for each client with county settlement. This ledger shall reflect the amounts of county charges incurred on the clients' behalf for services in State agencies and county psychiatric facilities. The ledger shall also reflect the amounts of offsetting client/LRR contributions, State maintenance recoveries, retroactive recoveries (compromises, settlements, etc.), and credits from county and/or State facilities for Medicare and/or commercial insurance recoveries.

(f) The county adjuster shall issue a monthly report to the Department of Human Services, Office of Finance and Accounting, indicating the amounts of client/LRR court ordered and/or voluntary contributions received by client, service period, and nature of contribution. This report shall be issued no later than 25 days after the end of each month on forms developed by the State.

1. The county adjuster shall report LRR contributions for county chargeable clients in DDD Intermediate Care Facility/Mental Retardation (ICF/MR) facilities to the Division of Medical Assistance and Health Services.

2. The county adjuster shall issue an aged statement of court ordered accounts receivable to the Department of Human Services, Office of Finance and Accounting, and the county administration on forms developed by the State. This statement shall reflect the amounts outstanding at the end of each quarter resulting from the county contributor billing. The statement shall reflect the age of the amounts due from each client by segregating the amounts in the following categories: one to three months, three to six months, six to 12 months, 13 to 24 months, 25 to 36 months, and over 36 months old. The statement shall also segregate all balances for litigation, which has been initiated or is pending for collection, and write-offs.

i. For the purpose of reporting to the State, the county adjuster shall not consider voluntary contributions as receivables.

ii. For court-ordered contributions, the county adjuster shall initiate individual collection efforts for those balances outstanding for more than six months.

iii. For court ordered contributions, the county adjuster shall refer to the court for collection, those balances outstanding for more than one year.

iv. For court ordered contributions, the county adjuster shall prepare justification to support balances outstanding for more than two years. The justification shall document previous collection efforts taken in accordance with (f)2ii and iii above.

v. For court-ordered contributions, the county adjuster shall prepare a request to remove from the receivables, those balances determined to be uncollectible. The removal of the receivable, an accounting transaction, must be reported to the Department of Human Services, Office of Finance and Accounting. For court-ordered contributions, the county adjuster shall prepare an amended order for removal of those balances determined to be uncollectible.

(g) The county adjuster shall forward for payment a duly executed voucher to be issued to the State within 25 days after the end of each month. This payment shall remit to the State amounts collected by the county in excess of the county share of the cost for county clients in State agencies and programs. The amounts paid by client, service period and source, shall be made payable to the "Treasurer, State of New Jersey" and mailed with a remittance advice, on a form developed by the State, to the "New Jersey Department of Human Services, P.O. Box 15280, Newark, New Jersey 07192." Amounts reported shall also be segregated into court-ordered payments and voluntary payments.

(h) The county adjuster is responsible for reconciling with the State agencies the county charges on behalf of clients with county settlement in State agencies net of subsequent contributions and recoveries, on a monthly basis.

SUBCHAPTER 6. LIENS

10:7-6.1 Procedures for *[the]* handling *[of]* Liens *[and Compromises]*

(a) If after collecting third party insurance and other payments, there is still an outstanding debt, the county adjuster shall file a lien for the cost of care and maintenance againt the real and personal property of every State and county settlement client admitted or committed to a State agency or county psychiatric facility, whether or not a client has any known property. Such liens shall be filed by the chief executive officer or his or her designee or by the county adjuster on his or her specific request for authorization to the chief executive officer. The only exception is that liens for Medicaid clients shall be filed by the Division of Medical Assistance and Health Services. The county adjuster, when authorized, shall file the non-Medicaid liens with the county clerk, or the register of deeds and mortgages, as appropriate for that county. The county adjuster may also file liens with the clerk of the Superior Court of New Jersey, depending on the circumstances.

1. Regarding state agencies, the county adjuster, acting as an agent for a particular Department of Human Services agency, may request and be authorized in writing by the chief executive officer to file the liens required for all clients, except Medicaid clients, with their county's settlement. This authorization to file liens is in the form of a power of attorney, which shall be completed anew whenever the county adjuster and/or the person authorizing the power of attorney changes.

i. The county adjuster, if authorized to file liens by the chief executive officer of the agency, shall file liens against LRRs of clients only when the LRR fails to pay the court ordered payments which were based on his/her ability to pay. (N.J.S.A. 30:4-80.1)

ii. The county adjuster, if authorized to file liens, shall mail a copy of the lien by certified mail, return receipt requested, to the client, the LRR, or the person with power of attorney over the client's assets. Additionally, a copy shall be forwarded by regular mail to the State agency.

2. Regarding county psychiatric facilities, the county adjuster shall request authorization in writing from the chief executive officer of the county psychiatric facility to file liens against all clients, except those receiving Medicaid, in the county psychiatric facility and their LRRs, as appropriate. Liens shall be filed against LRRs only when they fail to make the court ordered payments based on their ability to pay. (N.J.S.A. 30:4-80.1)

i. The county adjuster shall mail a copy of the lien by certified mail, return receipt requested, to the client, the LRR, or the person with power of attorney over the client's assets. Additionally, a copy shall be mailed to the county psychiatric facility.

3. Liens shall not be filed against those portions of bank or investment accounts which are comprised of Social Security, Veterans Administration, Railroad Retirement or Federal Civil Service benefits. Federal law specifies that these benefits be excluded from legal attachment.

(b) A lien against a client shall only be discharged after receiving payment in full for the outstanding cost of the client's non-Medicaid care and maintenance, as documented in the client profile (see N.J.A.C. 10:7-5.1(e)), or as a result of a compromise and settlement. Only the Division of Medical Assistance and Health Services shall discharge Medicaid filed liens. A lien against an LRR shall be discharged after receiving payment of the delinquent court ordered payments from the LRR or the client or as stipulated in a compromise and settlement.

1. Regarding state agencies, the chief executive officer of the State agency shall discharge a lien by filing a "Warrant to Enter Satisfaction" in the county or with the clerk of the Superior Court of New Jersey, depending on where the original lien(s) were filed.

i. The chief executive officer shall mail a copy of the "Warrant to Enter Satisfaction" by certified mail, return receipt requested, to the client, the LRR, or the person with power of attorney over the client's assets. Additionally, a copy shall be mailed, by regular mail, to the county adjuster if the involved client has county settlement.

2. Regarding county psychiatric facilities, the chief executive officer of a county psychiatric facility or his or her designee shall discharge a lien by filing a "Warrant to Enter Satisfaction" with the county or with the clerk of the Superior Court of New Jersey, depending on where the original lien(s) were filed.

i. The chief executive officer of a county psychiatric facility or his/her designee shall mail a copy of the "Warrant to Enter Satisfaction" by certified mail, return receipt requested, to the client, the LRR, or the person with power of attorney over the client's assets. Additionally, a copy shall be mailed, by regular mail, to the county adjuster to be placed in the client's file.

10:7-6.2 Procedures for compromises, settlements, releases of property from liens and lien subordinations.

(a) The following apply only to actions on non-Medicaid liens or debt. Liens filed by Division of Medical Assistance and Health Services shall only be compromised, settled, subordinated or released by Division of Medical Assistance and Health Services.

(b) Regarding state agencies, the county adjuster shall forward all requests for compromises, settlements, releases of property from liens and lien subordinations to the State agency involved. The county adjuster shall be notified of a compromise by the State or by an original request. The county adjuster shall include his or her written opinion and any additional information on the request in the package sent to the appropriate State agency. The agency will process the request and the Department of Human Services, Office of Finance and Accounting, will notify the county adjuster of the decision and action taken.

(c) Regarding county psychiatric facilities, the county adjuster shall investigate, gather testimony in the form of findings and conclusions and make recommendations to the county governing body concerning the compromise of lien claims for current and former clients and/or LRRs of clients in county psychiatric facilities.

1. The county adjuster shall request an opinion from the Department of Human Services, Office of Finance and Accounting, on all compromises where the State is a creditor party to the lien.

2. The county adjuster shall notify the Department of Human Services, Office of Finance and Accounting, within 30 calendar days,

of all compromises of liens and provide the appropriate amount of funds owed to the State of New Jersey by the client/LRR in accordance with the laws for the time periods covered by the lien and the compromise settlement.

3. The county adjuster shall mail a copy of the letter of approval/disapproval of a compromise offer to the client, the LRR, or the person with power of attorney over the client's assets. A copy of this letter shall also be forwarded to the Department of Human Services, Office of Finance and Accounting.

(d) Regarding county psychiatric facilities, on occasion, requests may be received from clients, former clients or LRRs to permit the release of specified property from a lien or to subordinate a lien. Generally these requests are as a result of a desire to secure a home equity loan, second mortgage, car loan or to avoid a foreclosure proceeding. Each request shall be reviewed on a case-by-case basis and the approval/disapproval of the request should be documented to the requestor and in the client's file. By subordinating the lien or releasing only specified property from the lien, the county and State are able to maintain their claims for potential collection in the future.

1. If a lien has encumbered a savings or investment account which is exclusively Social Security, Veterans Administration, Railroad Retirement or Federal Civil Service benefits, the chief executive officer of the county psychiatric facility or his or her designee (the county adjuster if so designated) shall immediately release the account from the lien by filing a "Release of Property from Lien" form. Federal law specifies that these benefit funds are immune from legal attachment.

2. The chief executive officer of the county psychiatric facility or his or her designee (the county adjuster if so designated) shall file the "Release of Property from Lien" and "Lien Subordination Form" with the county or with the clerk of the Superior Court of New Jersey, depending on where the original lien(s) were filed.

SUBCHAPTER 7. ADMINISTRATION

10:7-7.1 Procedures for administering the county adjuster's office

(a) *[In addition to the county government's record keeping requirements, the county adjuster shall maintain client legal and financial records for the life of the client plus, 20 years. The county adjuster shall ensure that county records retention schedules reflect this record keeping requirement.]* ***The county adjuster shall meet the appropriate records retention requirements specified by the State in the county adjuster's record retention schedule, by the county governing body and/or by the Administrative Office of the Courts (AOC).***

1. The county adjuster shall ensure that these records are secured in accordance with the appropriate Federal and State confidentiality and/or access laws and regulations.

2. The county adjuster shall ensure that records to be microfilmed/fiched are not destroyed until the microfilm/fiche has been returned from processing and reviewed. Such film shall be scanned for light spots, piggy-backed items and illegibility. If a problem has developed, the original documents shall be reprocessed.

(b) The county adjuster shall serve as a member of the county Board of Social Services, as required by law (N.J.S.A. 44:7-7). The county adjuster shall also serve as a member of other boards or committees as directed by their county government.

(c) The county adjuster shall conduct mental health searches of individuals seeking gun permits for any history of psychiatric admissions within the county, as required by law (N.J.S.A. 2C:58-3c).

(d) The county adjuster shall participate, where appropriate, in guardianship proceedings.

(e) The county adjuster shall accomplish those office administrative duties which include, but are not limited to, the areas of personnel, payroll and budgeting as determined by the county.

(f) The county adjuster shall act as liaison between county government, the clients/LRRs, and the Department of Human Services agencies.

1. The county adjuster shall forward to the Department of Human Services, Office of Finance and Accounting, each January, a current organizational chart of the adjuster's office with names of employees, their titles and their office phone numbers.

2. The county adjuster shall report all communication/cooperation problems with State agencies to the Department of Human Services, Office of Finance and Accounting, to permit appropriate corrective actions.

3. The county adjuster may act as liaison with the Administrative Office of the Courts (AOC) pertaining to involuntary commitments.

(g) The county adjusters shall also complete any number of additional responsibilities that their particular county government or AOC may assign.

SUBCHAPTER 8. SANCTIONS/APPEAL PROCEDURES

10:7-8.1 Sanctions for Non-Compliance with Federal and State Laws and Regulations

The county adjuster shall assure compliance with Federal and State law and these regulations or appropriate sanctions may be applied. A county's failure to submit required legal documents, financial reports and payments within the time periods specified may result in the imposition or initiation of sanctions by the Commissioner of the Department of Human Services. ***Notice will be provided to the county governing body and the county adjuster prior to the imposition of sanctions when the county adjuster is found to not be in compliance with these rules.*** Sanctions shall be initiated at the Commissioner's discretion on a case-by-case basis. Sanctions may be administrative and/or financial. Administrative sanctions may be, but are not limited to, letters of warning and/or notice to the county for non-compliance and/or referral to the Attorney General for advice and/or action. Financial sanctions may be, but are not limited to, the withholding of funds from the county.

10:7-8.2 Procedures for appeals from sanctions

(a) The governing body of each county shall be afforded an opportunity to appeal any sanction imposed. Appeals will not be expected to resolve issues which have policy implications or broader applicability. There are two levels of appeal available:

1. Level 1: A request for a Level 1 appeal will be considered timely filed if it is submitted in writing to the Department of Human Services, Director of Finance and Accounting within 30 days of receipt of the State applied sanctions.

i. The first level of appeal represents an informal administrative process. The appeal will be heard by the Director and appropriate staff of the Office of Finance and Accounting of the Department of Human Services within 60 days of receipt.

ii. The county should be prepared to present such substantiating materials as may be required for an informal discussion of the subject matter.

iii. This level of appeal will attempt to reach equitable resolutions of the matters under dispute.

iv. Notice of the decision relating to the first level of appeal will be provided to the county governing body and the county adjuster when the level 1 appeals process is completed.

2. Level 2: If the county is not satisfied with the results of the first level of appeal, a second level may be requested. A request for a Level 2 appeal will be considered timely filed if it is submitted in writing to the Commissioner, Department of Human Services, within 60 days of receipt of notification of results of the Level 1 appeal.

i. The second level appeal will be heard by a panel of representatives from the Department of Human Services consisting of the Commissioner or designee, the Asssitant Commissioner of Budget, Finance and Administration or designee, and the Director(s) of the Division(s) appropriate to the subject under dispute. The Department will schedule an appropriate time and place for the panel to hear the appeal within 60 days of receipt.

ii. Notice of the decision relating to the second level of appeal will be provided to the county governing body and the county adjuster when the level 2 appeals process is completed.

(b) Any financial adjustments resulting from an appeal will be determined during the appeals process and depend on the specific situation.

(c) The date of submission is defined as the date received by the Department.

(a)

OFFICE OF EDUCATION

Referral of Handicapped Students for Adult Education Services

Readoption: N.J.A.C. 10:12

Proposed: October 7, 1991 at 23 N.J.R. 2959(a).
Adopted: December 23, 1991 by Alan J. Gibbs, Commissioner, Department of Human Services.
Filed: December 23, 1991 as R.1992 d.37, **without change.**
Authority: N.J.S.A. 30:1-2 and 18A:46-18.2 et seq. (P.L. 1986, c.32).
Effective Date: December 23, 1991.
Expiration Date: December 23, 1996.

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

Full text of the readoption may be found in the New Jersey Administrative Code at N.J.A.C. 10:12.

(b)

DIVISION OF ECONOMIC ASSISTANCE

Public Assistance Manual
Other Governmental Programs: Medicaid

Adopted Amendments: N.J.A.C. 10:81-3.19, 8.22, 14.8 and 14.20

Proposed: October 7, 1991 at 23 N.J.R. 2988(a).
Adopted: December 18, 1991 by Alan J. Gibbs, Commissioner, Department of Human Services.
Filed: December 23, 1991 as R.1992 d.36, **without change.**
Authority: N.J.S.A. 44:7-3 and 44:10-3; The Family Support Act (FSA) of 1988; Social Security Act, Title XIX, Section 1925.
Effective Date: January 21, 1992.
Expiration Date: August 24, 1994.

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

Full text of the adoption follows.

10:81-3.19 Employment and training requirements

(a) REACH/JOBS requirement: Each individual who does not satisfy exemption criteria set forth at N.J.A.C. 10:81-14.3A shall participate in the Realizing Economic Achievement (REACH) Program, the AFDC work and training program. Participation in REACH/JOBS is required as a condition of eligibility for AFDC-C, -F, and -N. If, because of Federal AFDC requirements which prohibit payment of a cash assistance benefit of $10.00 or less, the individual is eligible for only Medicaid, that individual shall participate in REACH/JOBS unless exempt for the reasons set forth at N.J.A.C. 10:81-14.3A. If an individual applies for only Medicaid with no request for AFDC cash assistance (that is, the Medicaid eligibility is determined based on AFDC financial eligibility criteria), then the individual is not required to participate in REACH/JOBS.

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

10:81-8.22 Persons eligible for medical assistance

(a) (No change.)

(b) Extension of Medicaid benefits: Extended Medicaid benefits shall be provided former AFDC families in accordance with the provisions of this subsection.

1.-2. (No change.)

Recodify existing 4. and 5. as 3. and 4. (No change in text.)

(c)-(g) (No change.)

10:81-14.8 Noncompliance; good cause; conciliaton; sanctions

(a)-(h) (No change.)

(i) Sanctions: The following sanctions shall apply for failure or refusal to comply with REACH/JOBS requirements (see (k) below for duration of sanction periods):

1.-7. (No change.)

8. Eligibility of sanctioned individuals for Medicaid: Any adult individual, or child 16 to 18 years old (or up to 19 years if attending school), sanctioned for noncompliance with REACH/JOBS work or training requirements, remains eligible for Medicaid so long as other Medicaid eligibility criteria are met (all segments).

(j)-(o) (No change.)

10:81-14.20 REACH/JOBS support services: medical assistance

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

INSURANCE

(c)

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 Amendment: N.J.A.C. 11:17A-1.3

Proposed: June 17, 1991 at 23 N.J.R. 1912(a).
Adopted: December 27, 1991 by Samuel F. Fortunato, Commissioner, Department of Insurance.
Filed: December 27, 1991 as R.1992 d.44, **without change.**
Authority: N.J.S.A. 17:22A-1 et seq., 17:22A-3, 17:22A-17c, 17:22A-23(e), 17:22A-24, 17:1C-6(e).
Effective Date: January 21, 1992.
Expiration Date: January 2, 1995.

Summary of Public Comments and Agency Responses:

American Council of Life Insurance
Alliance of American Insurers
CHUBB LifeAmerica
Colonial Penn Group, Inc.
Crum & Forster Commercial Insurance
Guarantee Reserve Life Insurance Company
The Home Insurance Companies
Independent Insurance Agents of New Jersey
National Home Life
New Jersey Association of Mutual Insurance Companies
New Jersey Manufacturers Insurance Company
Professional Insurance Agents of New Jersey
The Prudential Insurance Company of America
Royal Insurance
Selective Insurance Company of America
State Farm Insurance Companies

COMMENT: The Department received comments from a broad representation of the insurance industry including various types of insurers, insurance trade associations and agent associations. The comments covered a wide range from favoring without reservation to adamant opposition. Those in favor were "encouraged" by the proposal which was described as a "constructive improvement" and a "much needed clarification." One commenter described the proposal as improved but "still unnecessarily broad." Those in opposition urged the Department to revert to its initial proposal which would exempt insurer officers and employees from the licensing requirements or delete N.J.A.C. 11:17A-1.3(e) altogether. Other insurers questioned the need for the requirement and several stated that the provision exceeds the legislative intent and authority of N.J.S.A. 17:22A.

RESPONSE: The Department has not waivered from its expressed intent to apply the licensing requirements to insurer officers or employees whose job responsibilities include solicitation, negotiation and effectuation of insurance contracts on behalf of their employer. Conversely, the Department believes it is unnecessary to apply these requirements to officers or employees whose job responsibilities do not include such activity or where such activity is incidental to their job responsibilities. The Department maintains that the proposed language of N.J.A.C. 11:17A-1.3(e) is consistent with both the legislative intent and authority of N.J.S.A. 17:22A.

COMMENT: We believe that the Department has been unable to find a suitable way to separate those individuals who legitimately should be licensed while engaging in insurance solicitation activities from those who need not be licensed. The proposed language is not specific enough to enable insurers to make this distinction.

RESPONSE: It is incumbent upon each insurer to identify and have licensed those officers and employees who engage in the solicitation, negotiation or effectuation of insurance contracts as part of their regular job responsibilities. If such activity is incidental to their job responsibilities or occurs in a context that does not require contact with the public, then it would be reasonable to conclude that licensing is not required.

COMMENT: The interpretation of employees effectuating insurance contracts on behalf of their employer, and whose job descriptions include the physical completion of information on the contract, raises the question of whether those employees who function as clerk-typists, would have to be licensed. If this interpretation precipitates the licensure requirement, nearly every employee of an authorized insurer would have to be licensed.

RESPONSE: It is not the Department's intent to require licensing of "nearly every employee" and it would appear that job duties which include the physical completion of information on an application would not require licensure if reviewed and signed by a licensed producer. The licensing requirements relative to clerk-typists and any other insurer employee, in the final analysis will be based on the nature of the job activities they perform.

COMMENT: The definition of "effectuate" should be amended to be more specific or deleted altogether. "The act of insuring or making operable and effective an insurance contract, including all binders and endorsements" does not delineate whether or not the adjustment and processing of claims by a salaried employee of an insurer in order to fulfill the operation and effectiveness of an insurance contract would require that person's licensure. Further, by performing their functions, do loss control engineers, marketing representatives acting as information sources to independent agents, customer service representatives, or inspection bureau personnel become exposed to required licensure? The term "effectuate" is too broad and includes almost any duty essential or necessary to the completion of the insurance contract. The definition of "effectuation" is broad enough to include the activities of an underwriter in reviewing and assessing a risk. The term is also broad enough to include a policy issue clerk who takes the appropriate policy pages and assembles them into a policy. The tasks of underwriting or assembling policy pages are not "incidental" to the employment duties of these employees; they **are** the employment duties. However, we do not believe that these types of company activities should be subject to licensure.

RESPONSE: The definition of "effectuation" is not unduly broad or restrictve when considered in light of reasonable guidelines for determining licensing requirements in specific instances. The Department is not interested in licensing underwriters or actuaries, for example, who participate only incidentally in the solicitation, negotiation or effectuation of insurance contracts. If the protection of the insured is not reasonably at issue, licensing will not be required. This may very well be the case with respect to policy issue clerks; whereas persons functioning as customer service representatives, for example, may have to be licensed.

COMMENT: The proposed amendment seems to require further licensing of individuals functioning in policyholder services and claims capacities since they may be called upon to carry out some of the activities defined in N.J.A.C. 11:17A-1.4 and because they are compensated for these duties which are neither clerical or incidental in nature.

RESPONSE: The Department does not disagree. The more exposure an employee has with the general public in dealing with insurance matters, the more likely it is that licensing will be required. Licensing is most likely to be required of employees functioning as so-called policyholder or consumer service representatives who interact with insureds on a daily basis regarding the marketing of the insurer's products.

COMMENT: The newly proposed language may be too ambiguous to be meaningful. For instance, when is the employee's participation "... **incidental** to their employment duties" (emphasis added)? Unless specific standards are established, the social and economic impact envisioned by the proposal (clarification as to who need be licensed and reduced insurer costs) will not be realized.

RESPONSE: The standards set forth at N.J.A.C. 11:17A-1.4 and 1.5 are very specific in identifying activities which would constitute solicitation, negotiation or effectuation of insurance contracts, and clerical duties that would not. In promulgating this language, the Department was very much aware of statutory constraints imposed upon it—particularly N.J.S.A. 17:22A-3 and the reference therein to "a single act or transaction of the business of an insurance producer." Even so, the Department believes that it would be virtually impossible to promulgate a regulation that would clearly address every job description within the insurance industry. Along with existing standards and guidelines, there must be a degree of reasonableness to be exercised by each insurer in determining who among its officers and employees must be licensed.

COMMENT: The Department's proposed change in the rule does not effectively exempt officers and employees from required licensing by adding, "whose participation in the solicitation, negotiation and effectuation of insurance contracts is incidental to their employment duties" because the requirement still includes "those whose duties include (such actions) on behalf of their employer." More specific clarification, such as the phrase, "does not receive any compensation contingent upon the sale of a policy, contract or certificate of insurance" would serve to reduce the ambiguity in the proposal. By including this language it would eliminate the vagueness of the proposed regulation and allow insurance companies to clearly identify those employees who would require licensing.

RESPONSE: The Department agrees that basing licensure on such objective criteria as whether compensation is based upon the sale of insurance would provide clearer guidelines for when licensure is required. However, N.J.S.A. 17:22A-1 et seq. does not provide the statutory authority for doing so. The basis for requiring licensure includes the functions being performed. Any person who transacts the business of an insurance producer is required to be licensed.

COMMENT: The costs to license an insurance producer includes the actual license and the cost of required prelicensing educational requirements as well as ongoing continuing education requirements and license renewal fees. If an authorized insurer complies with the licensing requirements (and the costs thereof), that insurer would have to incur $743.00 prelicensing education and intial licensure costs per officer or employee required to be licensed. If an insurer is to comply with the licensure of 30 officers and employees who are functioning in a branch office in the State of New Jersey, the preliminary costs alone would amount to $22,290 for that branch office. Such onerous requirements could negatively affect the economic climate for the State by fueling an insurer's reluctance to establish such offices in New Jersey. Further continuing education and license renewal expenses would add to the cost of transacting insurance, and to what ultimate regulatory benefit?

RESPONSE: The Department is well aware of the costs that must be incurred by insurers required 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: The Department should adopt language stating that licensure is not required of insurers, officers or employees who generally conduct business through a licensed producer in this State.

RESPONSE: The Department believes that such language would, as a practical matter, lead to abuses in the insurance marketplace. This would be especially so if the word "generally" were used in the context suggested by the commenter. Additionally, the "single act or transaction" provision in N.J.S.A. 17:22A-3 would preclude inclusion of such language in the regulation.

COMMENT: To require employees to prepare for and objectively demonstrate their knowledge of a line of insurance not even vaguely associated with the business of their employer serves no legitimate purpose. Licensure examination requirements should be made more relevant to their day-to-day work-related activity.

RESPONSE: The Department, while sympathetic with the concern expressed, is nevertheless bound by the statutory designation of

authorities for insurance producer licensing set forth at N.J.S.A. 17:22A-10. Licensure examinations must be consistent with this designation which includes life, health, property/casualty, surplus lines and title insurance.

Full text of the adoption follows.

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 who solicit, negotiate or effectuate insurance in the name of and on behalf of the insurer, for compensation of any type, shall have secured licensure as an insurance producer, or registration as a limited insurance representative, as appropriate, on or before October 1, 1992. This requirement shall apply to insurer officers or employees whose employment duties include the solicitation, negotiation and effectuation of insurance contracts on behalf of their employer. This requirement shall not apply to insurer officers or employees whose participation in the solicitation, negotiation and effectuation of insurance contracts is incidental to their employment duties.

TRANSPORTATION

(a)

DIVISION OF TRAFFIC ENGINEERING AND LOCAL AID
BUREAU OF TRAFFIC ENGINEERING AND SAFETY PROGRAMS

Restricted Stopping and Parking
Routes U.S. 9 in Atlantic County and N.J. 29 in Mercer County

Adopted Amendments: N.J.A.C. 16:28A-1.7 and 1.20

Proposed: November 4, 1991 at 23 N.J.R. 3269(a).
Adopted: December 9, 1991, by Richard C. Dube, Director, Division of Traffic Engineering and Local Aid.
Filed: December 20, 1991 as R.1992 d.34, **without change.**
Authority: N.J.S.A. 27:1A-5, 27:1A-6 and 39:4-138.1.
Effective Date: January 21, 1992.
Expiration Date: June 1, 1993.

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

Full text of the adoption follows.

16:28A-1.7 Route U.S. 9
(a) The certain parts of State Highway Route U.S. 9 described in this subsection shall be designated and established as "no stopping or standing" zones where stopping or standing is prohibited at all times.
1.-21. (No change.)
22. No stopping or standing along both sides in Atlantic County:
i. City of Port Republic:
(1) For the entire length within the corporate limits, including all ramps and connections thereto, which are under the jurisdiction of the Commissioner of Transportation, except in approved designated bus stops and time limit parking areas.
(b)-(c) (No change.)

16:28A-1.20 Route N.J. 29
(a) The certain parts of State highway Route N.J. 29 described in this subsection shall be designated and established as "no stopping or standing" zones where stopping or standing is prohibited at all times.
1. No stopping or standing in Hopewell Township, Mercer 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 approved designated bus stops and time limit parking areas.
2.-4. (No change.)
(b)-(d) (No change.)

OTHER AGENCIES

(b)

ELECTION LAW ENFORCEMENT COMMISSION

Lobbyists and Legislative Agents

Adopted Amendments: N.J.A.C. 19:25-20
Adopted New Rules: N.J.A.C. 19:25-20.4, 20.5, 20.6, 20.7, 20.8, and 20.19
Adopted Repeals: N.J.A.C. 13:1A and N.J.A.C. 19:25-20.5 and 20.15

Proposed: October 21, 1991 at 23 N.J.R. 3077(a).
Adopted: December 18, 1991 by the Election Law Enforcement Commission, Frederick M. Herrmann, Ph.D., Chairman
Filed: December 20, 1991 as R.1992 d.32, **with substantive and technical changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).
Authority: P.L. 1991, c.244, §12, and N.J.S.A. 52:13C-22.3.
Effective Date: January 21, 1992.
Expiration Date: October 1, 1995.

Summary of Public Comments and Agency Responses:
The Election Law Enforcement Commission (hereafter, "ELEC" or "the Commission") received written comments or oral testimony, or both, from the following 14 companies or organizations:
- Altantic Electric;
- Center for Non-Profit Corporations;
- Common Cause of New Jersey;
- Elizabethtown Gas Company;
- Jersey Central Power & Light Company and General Public Utilities System Companies;
- The Marcus Group;
- The Money Store;
- Motor Club of America Insurance Company;
- New Jersey Association of Health Care Facilities;
- New Jersey Business & Industry Association;
- New Jersey Pharmaceutical Association;
- New Jersey Utilities Association;
- Norris, McLaughlin & Marcus; and
- State Farm Insurance Companies.

Oral testimony was heard at a public hearing conducted before the full Commission on November 20, 1991, and a transcript is available for public inspection at ELEC's offices at 28 West State Street, Trenton, New Jersey, during business hours. The following is a summary of both the written comments and oral testimony received, and the Commission's responses:

COMMENT: Almost all of the commenters (11 out of 14 commenters) objected to the "20-hour/one percent" exemption standard contained in the definition at N.J.A.C. 19:25-20.2 of "legislative agent" because they regarded it as too low and therefore overly restrictive. Several argued that there should be a substantially higher exemption for lobbying on regulations of State agencies, and they predicted an adverse impact on companies engaged in highly technical, complex and regulated businesses if the standard were not raised. Some commenters specifically suggested that time spent preparing or making communications in response to a request of an Executive Branch agency be entirely excluded in applying the threshold. Many commenters argued that the Commission's prior "180-hour/10 percent" standard for financial disclosure of lobbying activity should be also applied to registration requirements.

RESPONSE: The statutory definition of the term "legislative agent" excludes from its scope a person who undertakes only "isolated, exceptional or infrequent" lobbying activity; see P.L. 1991, chapter 243, section, 3, amending N.J.S.A. 52:13-C-20(g). Prior to the above cited 1991 statutory amendments to the Legislative Activities Disclosure Act, the Office of the Attorney General had jurisdiction over the registration of

legislative agents, and promulgated a rule establishing 20 hours of lobbying activity in a calendar year as an element of its threshold for determining whether a person must register as a legislative agent, or may avoid registration and be deemed to be conducting only "isolated" lobbying activity; see N.J.A.C. 13:1A-3.1, which rule is being superceded and repealed by these rules. The Commission believes, as apparently the Office of the Attorney General did, that 20 hours or more of activity to influence legislation in a calendar year is too much to be characterized as merely "infrequent" activity that is therefore exempt from the requirement that the person conducting such activity register as a legislative agent.

The Commission has carefully considered the many commenters who have suggested that this threshold should be raised. In the context of influencing legislation, the Commission is satisfied that it is appropriately continuing an existing standard established in rules promulgated by the Office of the Attorney General in 1971. The Commission recognizes that the 1991 amendments to the Legislative Activities Disclosure Act added lobbying of regulatory activity, and many commenters have suggested that the process of influencing regulations is sufficiently different from the process of influencing legislation to justify a much higher threshold. However, the Commission believes that the "less than 20 hours" threshold is appropriate for regulatory as well as lobbying communications. In a calendar year, the "less than 20-hour" threshold permits almost five separate, four-hour audiences with a regulator without triggering the registration requirement.

The Commission suggests that much of the commenters' concern may be based on what the Commission believes may be an overly-inclusive perception of which employees come under the definitions of "legislative agent" and "influence regulation." For example, a large public utility observed that many of its technical employees have frequent, informal communications with regulators even though the primary purpose of these communications is not necessarily to influence regulations. The commenter speculated that an all-day tour of a nuclear facility by a regulator might have the unintended consequence of compelling the registration of over 100 of the utilities' technical employees as legislative agents. The Commission does not believe that all communications, for whatever reason, between a regulator and an employee of such a company are intended to count toward the 20-hour threshold contained in the definition. For example, if the communications concern a safety inspection, under normal circumstances such discussions would be too far removed from activity that could come under the definitions of "legislative agent" or "influencing regulation." Also, the Commission agrees with an alternative suggestion made by this commenter to the effect that a broader application of the concept of "support personnel" as used in N.J.A.C. 19:25-20.11(a)6 will probably remove such employees from consideration as possible legislative agents.

As defined in ELEC's regulation, a "legislative agent" is a person who is receiving compensation to influence regulation. Under normal circumstances, a technician-employee is principally receiving compensation for the purposes of providing his or her technical services to a public utility, not because of any perceived ability or responsibility to influence regulation. Such an employee is not required to register, but if in a calendar year more than 450 hours of that employee's time is ultimately expended to support the lobbying communication of a legislative agent, a portion of the employee's salary becomes subject to financial disclosure subject to N.J.A.C. 19:25-20.11(a)6.

The Commission recognizes that the distinction between an employee who is receiving compensation to influence lobbying, and one who is receiving compensation for providing some other services (including support of a legislative agent), may not always be clear and may to a degree be subjective. However, the test of reasonableness can be applied, and the Commission encourages commenters or other interested persons to pursue the factual parameters of this distinction by use of the advisory opinion process.

The Commission also considered the possibility of excluding agency-initiated communications from the "legislative agent" definition and threshold calculation. However, often the evolving, give-and-take nature of exchanging ideas in a regulatory dialogue are incompatible with any meaningful determination of whether the agency or the regulated entity began the dialogue. Moreover, the expenditure of resources by such an entity should be public if for no other reason than the fact that such an expenditure would probably be beyond the resources of an average citizen. The Commission therefore is not satisfied that such an exemption would be workable or effective, and does not find any support for it in the 1991 amendments to the Legislative Activities Disclosure Act.

Several commenters recommended to the Commission that the definition of "legislative agent" incorporate the "180-hour/10 percent" threshold the Commission had promulgated as part of its annual financial reporting regulations for use as the legislative agent registration standard; see N.J.A.C. 19:25-20.2, defining "legislative agent," which definition is being amended by this adoption. The Commission believes that the "180-hour" standard is far too high for registration purposes and creates an exemption much larger than the statute can tolerate. The Commission has not even chosen to continue the "180-hour/10 percent" threshold for financial reporting on annual reports because it believes that a single lower threshold should be established for both registration and financial disclosure requirements.

For these reasons, the Commission is adopting the definition of "legislative agent" without change, except for a change undertaken at the Commission's initiative to delete the "one percent of employee time" test for reasons expressed in the Summary of Agency-Initiated Changes below.

COMMENT: Several commenters advocated narrowing the definition of "regulation" in N.J.A.C. 19:25-20.2 to exclude administrative agency actions such as rate-making determinations, administrative penalty hearings and adjudications, licensing and audit proceedings, pre-proposal and post-proposal regulations communications, or regulation communications that are part of the public record of the promulgation process. One commenter advocated broadening the definition of "regulations" to include administrative rate-making.

RESPONSE: The proposed definition of "regulation" is identical to the statutory definition added as part of the 1991 amendments to the Legislative Activities Disclosure Act; see P.L. 1991, chapter 243, section 3(o). That language specifically excludes from the definition an administrative action on a "license, order, permit or waiver," an administrative action to impose a penalty, or an administrative reorganization.

The Commission notes that rate-making proceedings do not entail the formal proposal and public comment process that is mandated in the Administrative Procedures Act for the promulgation of a "regulation;" see N.J.S.A. 52:14B-1 et seq. The Administrative Procedures Act defines the term "administrative rule" to mean "... each agency statement of general applicability and continuing effect that implements or interprets law or policy, or describes the organization, procedure or practice requirements of any agency;" N.J.S.A. 52:14B-2. Rate-making applications or orders are not generally subject to publication in the New Jersey Register or inclusion in the New Jersey Administrative Code. An application or petition for rate-making results in an administrative "order" affecting the applicant, not in a "regulation" of general applicability to all regulated industries or parties. Therefore, the Commission concludes that the 1991 amendments to the Legislative Activities Disclosure Act did not intend to include administrative rate-making actions that determine the legal rights or duties of specific applicants or persons, but generally excludes rate-making as administrative "orders." Therefore, the Commission amended its proposed definition of the term "regulation" to exclude rate-making activity that has particular applicability to named or specified petitioners or parties.

The Commission was not persuaded to narrow the definition by limiting it to communications made only in the timeframe of a formal pending proposal, thereby excluding communications prior to publication in the New Jersey Register of a proposal, or pre-proposal, and also excluding communications made after adoption. The Commission believes it would be acting prematurely and without sufficient experience if at this early point in the existence of the new statutory amendments it so narrowed the scope of "regulation."

There may well be communications by employees, particularly in highly technical fields, that are not initially intended to result in regulation action but eventually motivate an administrative agency to undertake a regulation change. Under such fact circumstances, it may well be that a regulated enterprise could not be reasonably expected to monitor and report such communications. However, where a regulated enterprise undertakes a deliberate effort to make a communication it can reasonably foresee may influence a regulatory body to change or review a regulation, the provisions of the Legislative Activities Disclosure Act and these regulations become applicable.

The converse proposition of the above comment is that only a communication made before or after (but not during) the formal proposal process is subject to lobbying disclosure requirements. The Commission respectfully disagrees. A communication made in the form of a written statement or oral testimony in response to a regulation formally proposed and published in the New Jersey Register is precisely the lobbying activity

that the 1991 amendments seek to disclose. The argument of the commenters appears to be that since public access to the content of these communications is assured by the public comment provisions of the Administrative Procedures Act, the salutary disclosure purposes of the lobbying disclosure statute become redundant. However, this argument ignores that the cost of preparation and circulation of such comments are subject to disclosure solely under the Legislative Activities Disclosure Act. Whatever reservations the commenters may entertain about the public interest in disclosure of such costs, the Commission is persuaded that the Act compels their disclosure and that disclosure meets a significant public interest that is not otherwise addressed in the law.

COMMENT: A few commenters suggested that the definition in N.J.A.C. 19:25-20.2 of "influence regulation" should specifically exclude the preparation of written comments or testimony on regulations that have been formally proposed. One commenter contended that requiring an attorney engaged in the preparation of formal comments to register and file reports could be potentially intrusive on the attorney-client privilege, and also suggested that litigation expenses related to regulations be excluded.

RESPONSE: As the Commission noted in its response to the comments concerning the definition of the term "regulation," the Commission believes that the mere fact that a communication on a pending regulation proposal is subject to the formalities of the Administrative Procedures Act and public disclosure does not justify excluding the cost of preparing and circulating these communications from the scope of the 1991 amendments to the Legislative Activities Disclosure Act. The Commission appreciates that, as one commenter particularly testified, placing a quantifiable cost in the preparation of the communication can be an elusive and difficult task. However, the Commission believes it is achievable and does serve the salutary purpose of disclosing to the regulatory community at large, and to the public, the costs to industry of the preparation and dissemination of their views on proposed regulations.

The Commission appreciates that there may be a degree of friction between the interests of disclosure in the setting of regulatory lobbying, and the duty of an attorney to keep communications of a client confidential. However, as the commenter has observed, the attorney-client privilege is not absolute, and where public policy as embodied in statutory law requires it, the privilege can be abridged or even breached. The Commission is not persuaded that the Legislative Activities Disclosure Act, or the 1991 amendments to it, create any undue burdens on the privilege. No case law has been brought to the Commission's attention that specifically addresses potential conflict between the Act and the attorney-client privilege. In the absence of contrary precedent, the Commission is not persuaded that the Act, or its 1991 amendments, are so burdensome as to justify an attempt by the Commission to weaken its impact by regulatory action.

The Commission agrees that litigation undertaken in the Judicial Branch to overturn a rule, or in some other way affect its application, is not activity covered under the Legislative Activities Disclosure Act, or these regulations. However, it does not perceive any need to articulate that point in its regulations because the Act and the regulations are directed only towards the Legislative or Executive Branch lobbying, not Judicial Branch activity.

For these reasons, the Commission is adopting the definition of "influence regulation" without change.

COMMENT: Two commenters suggested that the definition of "expenditures providing a benefit" in N.J.A.C. 19:25-20.2 should be narrowed to exclude activities undertaken by corporate entities for salutary public purposes. For example, a large company sponsors and pays the cost of a luncheon to which cabinet members are invited not for the purpose of attempting to influence regulations, but to give them an opportunity to meet with representatives of out-of-State companies in an attempt to interest them in investing in New Jersey.

RESPONSE: Regardless of salutary motive, a lobbyist entity, or its legislative agents, must disclose and report the value of any benefit passed to an "officer or staff member of the Executive Branch" as defined in the Act, and these regulations. The Commission is unable to find any legislative intent for differentiating between a benefit passed with a specific intent to influence regulations, and a benefit passed in a social setting for some salutary purpose. The Commission notes that the Conflicts of Interest Act, N.J.S.A. 52:13D-12 et seq., which is applicable to all Executive Branch officers and employees, has been construed by the Executive Commission on Ethical Standards to impose strict restrictions on the acceptance of any benefit from any regulated company. Therefore, the Commission perceives that the new disclosure requirements created by the 1991 amendments for reporting of passing benefits to an officer or employee of the Executive Branch enhance the public's ability to monitor compliance with the Conflicts of Interest Laws. The Commission also notes the Legislative Activities Disclosure Act, and these regulations, remove any requirement to disclose individual recipients of *de minimis* expenditures of $25.00 or less per day, or $200.00 or less per calendar year; see N.J.A.C. 19:25-20.11(b).

COMMENT: One commenter suggested that the exemption for activities for publishing or disseminating news items as set forth in N.J.A.C. 19:25-20.3(a)2 be expanded to encompass any educational activity undertaken by a law firm, or a similar entity, to educate its clients in regard to proposed legislation or a proposed regulation.

RESPONSE: The language of this regulation is essentially similar to that contained in the Legislative Activities Disclosure Act; see N.J.S.A. 52:13C-27(a), and is principally intended to insure that news and editorial commentary by mass media be excluded from the scope of lobbying registration and reporting. The Commission is not persuaded that the expansion of this exclusion urged by this commenter is warranted because it would extend the exclusion beyond its intent. Furthermore, the Commission is not prepared to agree that all educational seminars should necessarily escape lobbying disclosure. As a general proposition, educational activity not directed at lobbying would not be reportable activity. However, a definition of activity that can be characterized as "educational" should be determined on a case-by-case factual basis.

COMMENT: One commenter suggested that the use of the personal funds of a legislative agent to provide benefits to a regulator in a social setting should be regarded as "prima facie evidence" of a "personal expression" intent and the absence of a lobbying motive. The commenter further suggested that the "personal expression" exemption contained in N.J.A.C. 19:25-20.3(a)6, and the "family" exemption contained at N.J.A.C. 19:25-20.11(d), conflicted with each other. Another commenter suggested that the exclusion for a "personal expression" of views as contained in N.J.A.C. 19:25-20.3(a)6 be eliminated, or that the Commission require proof that an individual personally paid the fair market price for whatever benefit was passed.

RESPONSE: The Commission notes that the "personal exemption" exclusion set forth in its regulations is essentially identical to that provided in the Act; see N.J.S.A. 52:13C-27(f), as amended by the 1991 amendments. The Commission recognizes that there may be social settings at which a legislator, or regulator, is entertained by a legislative agent without any intent to assert a lobbying influence, or if such an intent is present, to attempt such influence only as a "personal expression" and not in the capacity of his or her employment. The Commission agrees that the Act specifically excludes expenses incurred in communicating, or benefits passed, as a "personal expression" of the legislative agent. However, the Commission believes that the intent of the exclusion is to restrict its application to cases in which the agent is incurring the expense of the event, or the benefit, at his or her personal cost, and is not receiving any reimbursement or other compensation of any kind. The critical factor of a "personal expression" is the absence of compensation or reimbursement by the agent's employer, or client. Therefore, the Commission has revised the proposed text to add this requirement.

The Commission agrees that with the amendment requiring use of personal funds there is some overlap between the "personal expression" exclusion language, and the exclusion the Commission fashioned to permit personal gifts to pass without disclosure between family members at N.J.A.C. 19:25-20.11(d). In view of the amendment to the "personal expression" exclusion, the Commission is persuaded that the "family member" exclusion that it proposed is unnecessary.

Since the "personal expression" exclusion is statutory, the Commission cannot eliminate it, as one commenter suggested. Further, the Commission is not persuaded that its regulations must specifically mandate production of proofs or evidence regarding the source of payment. Such proofs would be sought in the course of any investigation that was conducted, but need not be specifically mandated by the regulation.

COMMENT: Two commenters suggested that the requirement contained in N.J.A.C. 19:25-20.4(b) to file a Notice of Representation prior to making any lobbying communication was unworkable because a prospective legislative agent is permitted to make communications without registering until the "20-hour" threshold is achieved.

RESPONSE: The existing text of N.J.A.C. 19:25-20.4(b) is applicable only to a person who has already achieved the status of "legislative agent;" see N.J.A.C. 19:25-20.4(a). Thus understood, a prospective

"legislative agent" may make communications without filing a notice of registration until either a "20-hour" threshold is reached, or until it becomes evident to the prospective "legislative agent" that the threshold will be exceeded in a calendar year.

COMMENT: One commenter expressed the view that a requirement in N.J.A.C. 19:25-20.4(d) that a legislative agent identify on a Notice of Representation information concerning the nature of the client being represented when the name or occupation of that client does not clearly reveal its primary interest was an infringement on the attorney-client privilege.

RESPONSE: The text of N.J.A.C. 19:25-20.4(d) is substantially similar to the statutory text; see P.L. 1991, chapter 243, section 4a(3). In the absence of any case law precedent to the contrary, the Commission is not persuaded that this regulation should be amended.

COMMENT: One commenter objected to N.J.A.C. 19:25-20.5 on the grounds that inclusion of rulemaking lobbying activity in the quarterly report requirements of legislative agents is not specifically required by N.J.S.A. 52:13C-22.

RESPONSE: The Commission remains persuaded, as it did at the time of the proposal of N.J.A.C. 19:25-20.5, that the omission of rulemaking lobbying from N.J.S.A. 52:13C-22 was a result of legislative oversight. The statutory structure of the Legislative Activities Disclosure Act as an entity contemplates that quarterly reports contain such information. In the view of the Commission, a quarterly report is intended to be a periodic update of information filed in the original Notice of Representation of a legislative agent. Since the 1991 amendments specifically changed the Notice of Registration requirements to include lobbying on rulemaking, the Commission can only assume that the Legislature must have also intended to include this information in the quarterly reports that periodically update those notices. Therefore, the Commission is adopting this regulation as proposed.

COMMENT: One commenter suggested that N.J.A.C. 19:25-20.5(d) be changed so that the final quarterly report for the calendar year quarter at the close of a two-year legislative term include part of the following January through the actual close of the term. Therefore, instead of ending on December 31st, such a last quarterly report would extend through the close of the legislative session in mid-January.

RESPONSE: The Commission agrees that quarterly reporting would be simplified if the period of time that the last quarterly report of a two-year legislative term was extended as suggested. However, N.J.S.A. 52:13C-22(b) mandates that a quarterly report shall be filed for a "calendar quarter" and shall be filed "between the first and tenth days of each calendar quarter for such activity during the preceding calendar quarter." For example, the quarterly report for legislative agent activity during October, November, and December, 1991, must close on December 31, 1991, and must be filed no later than January 10, 1992. The Commission lacks regulatory authority to relax that statutory filing date so that activity conducted in early January, 1992 until the close of the 204th Legislature in mid-January could be included.

COMMENT: One commenter suggested that all "face-to-face" meetings between an employee of a regulated industry and an Executive Branch officer of a regulatory agency (down to the level of an Assistant Commissioner), must be reported on quarterly reports. Another commenter, on behalf of a firm of legislative agents, suggested that quarterly reporting of such contacts should be consolidated so that it would not be necessary to report which specific legislative agent made the contact.

RESPONSE: The Commission is not aware of any requirement in the Legislative Activities Disclosure Act, or its 1991 amendments, that specifically compels disclosure of each such "contact." Legislative agents are required under the quarterly reporting provisions to disclose fully the identity of their clients, and to provide particular and specific information about the legislative and regulatory objectives of those clients. They are not required by the statute, or these regulations, to list each "contact" with a legislator, or regulator, during the course of a year by time, date or duration. Moreover, quarterly report requirements do not compel reporting of which specific legislative agent made contact on a bill or regulation. The Commission acknowledges that the Quarterly Report form employed by the Office of the Attorney General does seek out "contract" information. Nevertheless, in the absence of some legislative mandate, the Commission is not persuaded that such reporting is necessary to the disclosure purposes of the statute.

COMMENT: One commenter suggested that the Notice of Termination regulation at N.J.A.C. 19:25-20.7 be changed so that a law firm need not file such a Notice at the termination of each lobbying project, but only upon the termination of the attorney-client relationship.

RESPONSE: The Commission agrees that a legislative agent need not file a Notice of Termination at the conclusion of each particular episode of lobbying representation of a client. The term "cease" as used in N.J.S.A. 52:13C-25, and in this regulation, implies a termination of a contractual relationship that may incorporate more than one specific lobbying objective. A law firm would file such a Notice after its client-attorney relationship concluded. However, the Commission does not believe that the text of its proposed regulation should be amended because it is satisfied that this result can be reached from the current text.

COMMENT: One commenter observed that it was unclear under what circumstances a legislative agent would be filing a voluntary statement pursuant to N.J.A.C. 19:25-20.8.

RESPONSE: The text of this regulation is essentially the same as the text that appears in the Legislative Activities Disclosure Act at N.J.S.A. 52:13C-35. Therefore, the Commission is satisfied that the regulation properly carries out the legislative direction that there be a voluntary filing status, presumably for lobbyists or persons not required to file because of activity levels under those prescribed by various thresholds for registration or reporting.

COMMENT: One commenter objected to the reporting of the trade association dues as required by N.J.A.C. 19:25-20.11(a)3 as beyond the statutory mandate. Further, the commenter complained of an inability to obtain accurate percentages of lobbying expenditures from such associations, and suggested that the trade association should be required to file contribution lists instead of ascertaining percentages.

RESPONSE: This regulation provides, in general, that a lobbyist organization paying dues to a trade association may have to report as a lobbying expenditure a portion of those dues. The lobbyist organization must report such dues only if the trade association spends more than 50 percent of its expenditures for lobbying purposes in New Jersey. The Commission appreciates that under some circumstances it may be difficult for lobbyist organizations to obtain from a trade association to which it contributes accurate information about that trade association's lobbying expenditures. However, the purpose of the regulation is to provide some minimal disclosure in the event that a lobbyist organization is making expenditures to an entity that is essentially a lobbying enterprise. In the absence of this regulation, a lobbyist organization could make a dues contribution to an entity that is devoting most, or all, of its resources for lobbying expenditures, and the lobbyist organization could escape any reporting of those dues. Presumably, a lobbyist organization that is contributing dues or other funds to an enterprise will have some knowledge of how that enterprise spends its revenues. Requiring the lobbyist organization to determine whether one half of all such revenues are being expended by the enterprise for lobbying activities in New Jersey is therefore not unreasonable.

COMMENT: Several commenters expressed concern that communication expenditure reporting pursuant to N.J.A.C. 19:25-20.11(a), and in particular reporting of preparation and distribution of lobbying materials (paragraph (a)4), was overly broad. Two commenters suggested communications not initially intended for lobbying purposes should be excluded. Another commenter suggested that the $25.00 per day and $200.00 per year thresholds applicable to benefit passing expenditures pursuant to subsection (b) be applied as well as to communication expenditures under subsection (a).

RESPONSE: N.J.S.A. 52:13C-22.1, as amended by P.L. 1991, c.243, section 5, requires lobbyist organizations and legislative agents to report expenditures made to communicate with lawmakers and regulators. The text of N.J.A.C. 19:25-20.11(a), which is substantially similar to the statutory text, is directed at communication expenditure reporting, and the text of subsection (b) is directed primarily at benefit passing expenditures (that is, entertainment, food and beverages, travel and lodging). The Commission believes the $25.00 per day and $200.00 per calendar year thresholds are applicable exclusively to benefit passing expenditures, but not to communications. This is because the impact of a communication usually reaches more than one individual, and cannot readily be isolated for purposes of determining a value on a per-legislator, or per-regulator, basis. That is not the case for benefit passing activity, which lends itself to being measured on the basis of individual impact. Therefore, the $25.00 per day and $200.00 per calendar year threshold is not contained in subsection (a).

The statute requires reporting of a communication cost made to a lawmaker or regulator through the medium of a legislative agent. As the Commission observed in the proposal notice for these regulations, the 1991 amendments removed the "expressly" qualification on com-

munication reporting, and therefore any communication by a legislative agent is subject to cost reporting irrespective of whether or not legislation is "expressly" discussed; see 23 N.J.R. 3077(a), Summary, paragraph 3.

More elusive for purposes of reporting are those communications made by a lobbyist organization outside of the medium of a legislative agent. Some of the examples elicited from the public comments were:

- An annual report of an organization sent to legislators and regulators;
- An eduational/informational newsletter sent to organizational members and legislators;
- A memorandum initially proposed for management only by a company attorney concerning proposed regulations or legislation which is subsequently communicated by the legislative agent to regulators, or legislators;
- Any communication not intended to influence legislation, or regulation (that is, a routine utility bill sent to a legislator).

The Commission is persuaded that some written communications made by a lobbyist organization fall outside the ambit of lobbying reporting. Therefore, the Commission has qualified the phrase "(c)osts of preparation and distribution of material" with the phrase "related to influencing legislation, or influencing regulation" in paragraph 4 of subsection (a). A routine utility invoice sent to a legislator, or regulator, for example, is not related to lobbying. Its sole purpose is to communicate a personal bill to the recipient.

The Commission is not persuaded that the "initial intent" or "initial preparation purpose" test suggested by some commenters is appropriate. During the course of creating and delivering a communication, the intent of the communicator can change. While a memorandum may not initially be intended as a lobbying communication, the subsequent decision of the lobbyist organization to incorporate that memorandum into a communication from its legislative agent would trigger reporting regardless of "initial intent."

One commenter suggested that wide distribution of a communication, such as an annual report of a company or organization, should insulate that communication from lobbying reporting. Under most circumstances, the Commission would agree that an annual report circulated to a wide audience of stockholders and members, and not specifically targeted for legislators, or regulators, would not generate lobbying reporting. However, the Commission can envision some factual settings under which reporting might be necessary, and therefore believes it would be premature to attempt to narrow this regulation solely on the criterion of wide circulation.

COMMENT: One commenter suggested raising the $25.00 per day and $200.00 per calendar year thresholds contained in N.J.A.C. 19:25-20.11(b) to adjust them for inflation.

RESPONSE: The thresholds for identifying on reports a legislator or regulator who received more than $25.00 per day in benefits from a legislative agent, or more than $200.00 in a calendar year, are established by statute, and therefore the Commission does not believe it has the authority to change them; N.J.S.A. 52:13C-22.1, as amended by P.L. 1991, c.243, section 4.

COMMENT: One commenter suggested that the annual fee prescribed in N.J.A.C. 19:25-20.19 should be due at the time of the filing of the annual report in mid-February.

RESPONSE: The annual fee is a fee solely for a legislative agent, who must register, must wear an identification badge issued by the Commission, and must file a Notice of Representation and quarterly reports. Lobbyist organizations filing annual financial reports in February are not required by these regulations to pay any fee. Further, a legislative agent receiving or expending less than $2,500 in a calendar year is not required to file an annual report. Therefore, the Commission is not persuaded that the annual report filing date and the due date for the legislative agent fee should be linked. The Commission, which as a State agency is funded on a fiscal year basis, selected August 1 for reasons of administrative and budgetary efficiency.

Summary of Agency-Initiated Changes:

The Commission deleted the percentage test for determining when a person has conducted more than "isolated, exceptional or infrequent" lobbying activity, and therefore must register; see N.J.A.C. 19:25-20.2, defining "legislative agent." The phrase "or less than one percent" (of the time an employee spends working at his or her employment during a calendar year), was deleted thereby leaving only "less than 20 hours" (of such time) as the threshold. The Commission believes that attempting to use a percentage of total work time as a threshold is too malleable a standard to serve effectively as a threshold. A similar deletion was made to the Example provided at N.J.A.C. 19:25-20.11(a)2. Also, the Commission deleted the "25 percent of their time" threshold from the standard for determining reporting of costs for lobbying support personnel at N.J.A.C. 19:25-20.11(a)6 for the same reason. The Commission also deleted the word "occasionally" from the example provided in N.J.A.C. 19:25-20.11(a)6 because up to 450 hours cannot be characterized as "occasional."

The Commission changed its recordkeeping requirement by lowering the record retention threshold in N.J.A.C. 19:25-20.14(b) from $25.00 to $5.00. The Commission believes that reporting entities should not be required to retain a record of each *de minimis* lobbying transaction, but that permitting a record pertinent to a transaction as high as $25.00 to be undocumented would contravene the public purpose of comprehensive recordkeeping.

The Commission also made an editorial correction to N.J.A.C. 19:25-20.1, and corrected a printing error in N.J.A.C. 19:25-20.10(a)1.

Summary of Changes Upon Adoption:

The Commission added the phrase "to establish or make rates that have particular applicability on named or specified petitioners parties" to the list of administrative adjudicative actions in paragraph 1 of the definition of "regulation" in N.J.A.C. 19:25-20.2 which are specifically excluded from lobbying reporting. The Commission believes that rate-making activity that has particular applicability on named or specified petitioners or parties results in administrative "orders" that are not intended to be included in the statutory definition of "regulations" contained in the 1991 amendments to the Legislative Activities Disclosure Act.

The Commission added the phrase "by exclusive use of his or her personal funds" to the "personal expression" exclusion set forth at N.J.A.C. 19:25-20.3(a)6 to restrict the application of the exclusion to expenditures made from personal funds of legislative agents not being reimbursed or compensated by a lobbyist employer.

The Commission added the phrase "related to influencing legislation, or regulation, and paid for" to clarify under what circumstances costs of material prepared and distributed by a lobbyist or legislative agent must be reported; see N.J.A.C. 19:25-20.11(a)4. A similar change was made to costs of travel and lodging for a legislative agent; see N.J.A.C. 19:25-20.11(a)5. Both changes are intended to narrow and more clearly define the expenditures that must be reported.

The Commission deleted the "family" exclusion for benefit passing reporting it had proposed at N.J.A.C. 19:25-20.11(d) because it was persuaded that it was unnecessary in light of the change made to the "personal expression" exclusion at N.J.A.C. 19:25-20.3(a)6.

In the opinion of the Commission, these substantive and technical changes do not require additional public notice and comment because they do not increase lobbying registration or reporting obligations. For the most part, they constitute clarification of broad statutory and regulatory language. The Commission notes that there is an imperative public need to implement these regulations as soon after January 1, 1992, the effective date of P.L. 1991, chapters 244 and 245 (the 1991 amendments to the Legislative Activities Disclosure Act), and therefore these regulations must be promulgated as expeditiously as possible. However, as the lobbying community and the public alike acquire experience with these new requirements, the Commission looks forward to receiving suggestions for regulatory refinements.

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 20. LOBBYISTS AND LEGISLATIVE AGENTS

19:25-20.1 Authority

The provisions of this subchapter*[,]* are promulgated pursuant to the Legislative Activities Disclosure Act (P.L. 1971, c.183), as amended, N.J.S.A. 52:13C-20, and following ("the Act").

19:25-20.2 Definitions

The following words and terms, when used in this subchapter, shall have the following meanings unless a different meaning clearly appears from the context.

"Act" shall mean the Legislative Activities Disclosure Act, as amended, N.J.S.A. 52:13C-20 et seq.

"Commission" shall mean the New Jersey Election Law Enforcement Commission.

"Communication with a member of the Legislature", "with legislative staff", "with the Governor", "with the Governor's staff", or "with an officer or staff member of the Executive Branch" shall mean any communication, oral or in writing or any other medium, addressed, delivered, distributed or disseminated, respectively, to a member of the Legislature, to legislative staff, to the Governor, to the Governor's staff, or to an officer or staff member of the Executive Branch, as distinguished from communication to the general public, including, but not limited to, a member of the Legislature, legislative staff, the Governor, the Governor's staff, or an officer or staff member of the Executive Branch. If any person shall obtain, reproduce or excerpt any communication or part thereof which in its original form was not a communication under this definition and shall cause such excerpt or reproduction to be addressed, delivered, distributed or disseminated to a member of the Legislature, to legislative staff, to the Governor, to the Governor's staff, or to an officer or staff member of the Executive Branch, such communication, reproduction or excerpt shall be deemed a communication with the member of the Legislature, with legislative staff, with the Governor, with the Governor's staff, or with an officer or staff member of the Executive Branch by such person.

...

"Expenditures providing a benefit" or "expenditures providing benefits" means any expenditures for entertainment, food and beverage, travel and lodging, honoraria, loans, gifts or any other thing of value, except for:

1. Any money or thing of value paid for past, present, or future services in regular employment, whether in the form of a fee, expense, allowance, forbearance, forgiveness, interest, dividend, royalty, rent, capital gain, or any other form of recompense, or any combination thereof; or

2. Any dividends or other income paid on investments, trusts, and estates.

"Governor" includes the Governor or the Acting Governor.

"Governor's staff" includes the members of the Governor's Cabinet, the Secretary to the Governor, the Counsel to the Governor and all professional employees in the office of the Counsel to the Governor, and all other employees of the Office of the Governor.

"Influence legislation" shall mean to make any attempt, whether successful or not, to secure or prevent the initiation of any legislation or to secure or prevent the passage, defeat, amendment or modification thereof by the Legislature, including efforts to influence the preparation, drafting, content, introduction and consideration of any bill, resolution, amendment, report or nomination or the approval, amendment or disapproval thereof by the Governor in accordance with his constitutional authority.

"Influence regulation" means to make any attempt, whether successful or not, to secure or prevent the proposal of any regulation or to secure or prevent the consideration, amendment, issuance, promulgation, adoption or rejection thereof by an officer or any authority, board, commission or other agency or instrumentality in or of a principal department of the Executive Branch of State Government empowered by law to issue, promulgate or adopt administrative rules and regulations.

...

"Legislative agent" shall mean any person who receives or agrees to receive, directly or indirectly, compensation, in money or anything of value (including reimbursement of his or her expenses where such reimbursement exceeds $100.00 in any three-month period), to influence legislation or to influence regulation, or both, by direct or indirect communication with or by making or authorizing, or causing to be made or authorized, any expenditures providing a benefit to, a member of the Legislature, legislative staff, the Governor, the Governor's staff, or any officer or staff member of the Executive Branch, or who holds himself or herself out as engaging in the business of influencing legislation or regulation by such means, or who incident to his or her regular employment engages in infuencing legislation or regulation by such means. However, a person shall not be deemed a legislative agent who, in relation to the duties or interests of his or her employment or at the request or suggestion of his or her employer, communicates with a member of the Legislature, with legislative staff, with the Governor, with the Governor's staff, or with an officer or staff member of the Executive Branch concerning any legislation or regulation, if such communication is an isolated, exceptional or infrequent activity in relation to the usual duties of his or her employment. For the purposes of this definition, activities to influence legislation, or influence regulation, shall be deemed "isolated, exceptional or infrequent" if they constitute less than 20 hours*[, or less than one percent]* of the time an employee spends working at his or her employment*[, whichever is less,]* during a calendar year.

"Legislative staff" includes all staff, assistants and employees of the Legislature or any of its members in the member's official capacity, whether or not they receive compensation from the State of New Jersey.

"Legislature" includes the Senate and General Assembly of the State of New Jersey and all committees and commissions established by the Legislature or by either House thereof.

"Lobbyist" shall mean any person, partnership, committee, association, corporation, labor union, or any other organization that employs, retains, designates, engages or otherwise uses the services of any legislative agent to influence legislation or regulation.

"Member of the Legislature" includes any member or member-elect of, or any person who shall have been selected to fill a vacancy in, the Senate or General Assembly, and any other person who is a member or member-designate of any committee or commission established by the Legislature or by either House thereof.

"Officer or staff member of the Executive Branch" means any assistant or deputy head of a principal department in the Executive Branch of State Government, including all assistant and deputy commissioners; the members and chief executive officer of any authority, board, commission or other agency or instrumentality in or of such a principal department; and any officer of the Executive Branch of State Government other than the Governor who is not included among the foregoing or among the Governor's staff, but who is empowered by law to issue, promulgate or adopt administrative rules and regulations, and any person employed in the office of such an officer who is involved with the development, issuance, promulgation or adoption of such rules and regulations in the regular course of employment.

"Person" includes an individual, partnership, committee, association, corporation, and any other organization or group of persons.

...

"Regulation" includes any administrative rule or regulation affecting the rights, privileges, benefits, duties, obligations, or liabilities of any one or more persons subject by law to regulation as a class, but does not include an administrative action:

1. To issue, renew or deny, or, in an adjudicative action, ***to establish or make rates that have particular applicability on named or specified petitioners or parties, or*** to suspend or revoke, a license, order, permit or waiver under any law or administrative rule or regulation;

2. To impose a penalty; or

3. To effectuate an administrative reorganization within a single principal department of the Executive Branch of State Government.

19:25-20.3 Exemptions from the Act

(a) The provisions of the Act regarding attempts to influence legislation or attempts to influence regulation shall not apply to the following activities:

1. The acts of the government of the United States or of the State of New Jersey or of any other state or of any of the political subdivisions or authorities or commission of any of the foregoing, or any interstate authority or commission, or any official, employee, counsel or agent of any of the above when acting in his or her official capacity.

2. The publication or dissemination, in the ordinary course of business, of news items, advertising, editorials or other comments by a newspaper, book publisher, regularly published periodical, **or** radio or television station or similar media, including an owner, editor or employee thereof, nor the acts of a recognized school or

instution of higher education, public or private, in conducting, sponsoring or subsidizing any classes, seminars, forums, discussions or other events, in the normal course of is business in which political information or discussion thereof or comment thereon is an integral part.

3. The acts of bona fide religious groups acting solely for the purpose of protecting the public right to practice the doctrine of such religious group.

4. The acts of a duly operated national, state or local committee of a political party.

5. The acts of a person in testifying before a legislative committee or commission, at a public hearing duly called by the Governor on legislative proposals or on legislation passed and pending his or her approval, or before any officer or body empowered by law to issue, promulgate or adopt administrative rules and regulations in behalf of a nonprofit organization incorporated as such in this State, who receives no compensation therefor beyond the reimbursement of necessary and actual expenses, and who makes no other communication with a member of the Legislature, legislative staff, the Governor, the Governor's staff, or an officer or staff member of the Executive Branch in connection with the subject of his or her testimony.

6. The acts of a person in communicating with or providing benefits to a member of the Legislature, legislative staff, the Governor, the Governor's staff, or an officer or staff member of the Executive Branch if such communication or provision of benefits is undertaken by him or her ***by exclusive use of his or her personal funds*** as a personal expression and not incident to his or her employment, even if it is upon a matter relevant to the interests of a person by whom or which he or she is employed, and if he or she receives no additional compensation or reward, in money or otherwise, for or as a result of such communication or provision of benefits.

19:25-20.4 Legislative agent notice of representation

(a) Each legislative agent shall file with the Commission a signed notice of representation on a form prescribed by the Commission, and containing the information required by N.J.S.A. 52:13C-21.

(b) The notice of representation shall be filed prior to making any communication with, or the making of any expenditures providing a benefit to, a member of the Legislature, with legislative staff, with the Governor, with the Governor's staff, or with an officer or staff member of the Executive Branch, or shall be filed within 30 days of employment, retainer or engagement as a legislative agent, whichever occurs earlier.

(c) Each legislative agent must notify the Commission in writing of any material change in the information supplied in the notice of representation within 15 days of the effective date of such change, or not later than the filing date of the subsequent quarterly report, whichever occurs earlier.

(d) If a legislative agent identifies a membership organization or corporation as the lobbyist or person from whom he or she receives compensation for acting as a legislative agent, and the name or occupation so identified does not, either explicitly or by virtue of the nature of the principal business in which the organization or its members, or the corporation or its shareholders, is commonly known to be engaged, clearly reveal the primary specific economic, social, political, or other interest which the organization or corporation may reasonably be understood to seek to advance or protect through its employment, retainer, or engagement of the legislative agent, a description of that primary economic, social, political, or other interest and a list of the persons having organizational or financial control of the organization or corporation, including the names, mailing addresses and occupations of those persons, shall be included in the notice of representation of the legislative agent.

19:25-20.5 Legislative agent quarterly report

(a) Each legislative agent shall file with the Commission a quarterly report containing the information required by N.J.S.A. 52:13C-22 and signed by the legislative agent.

(b) If there has been no activity in the calendar year quarter to influence legislation or influence regulation, the report shall so state.

(c) Such report shall be filed on a form prescribed by the Commission no later than the tenth day following the end of the calendar year quarter during which activities influencing legislation or influencing regulation occurred.

(d) Calendar year quarters end on March 31, June 30, September 30 and December 31.

19:25-20.6 Name tags

(a) Each legislative agent who is an individual shall wear visibly a name tag bearing the full name of the individual at all times when such individual is in the State House, the State House Annex, or any other State building or other location when and where an authorized meeting of a legislative committee is being held for the purpose of influencing legislation or influencing regulation.

(b) Effective August 1, 1992, and each August 1 thereafter, the Commission shall issue a name tag to a legislative agent who is an individual, which name tag shall be effective for a 12-month period commencing on August 1 and ending on July 31.

(c) Name tags will be issued by the Commission only to a legislative agent who has paid the annual fee provided for in N.J.A.C. 19:25-20.19, and has filed all required notices of representation and quarterly reports for the prior 12-month period.

(d) The Commission may terminate the active status of a legislative agent who fails to renew his or her name tag on or prior to the expiration date provided in (b) above.

19:25-20.7 Notice of termination

(a) Each legislative agent shall file with the Commission a notice of termination within 30 days after his or her activities influencing legislation or influencing regulation cease.

(b) Any person who has engaged a legislative agent shall file a notice of termination after that agent ceases to represent such person.

(c) The notice of termination shall be filed on a form prescribed by the Commission. The completed form shall include:

1. The effective date of termination;
2. The name of the person from whom service was terminated.
3. The name and signature of the legislative agent; and
4. The date of the notice.

19:25-20.8 Voluntary statements

(a) Legislative agents filing pursuant to N.J.S.A. 52:13C-35 a voluntary notice of representation, a voluntary quarterly report, or a voluntary notice of termination shall utilize the forms prescribed by the Commission.

(b) Such statements shall be marked by the legislative agent as "voluntary filing."

(c) Voluntary filings pursuant to this section are subject to the fees provided in N.J.A.C. 19:25-20.19.

19:25-20.9 Annual report

(a) Any lobbyist or legislative agent who or which receives receipts of more than $2,500 or makes expenditures of more than $2,500 in any calendar year for the purpose of communication with or providing benefits to any member of the Legislature, legislative staff, the Governor, the Governor's staff, or an officer or staff member of the Executive Branch shall file with the Commission, not later than February 15th of each year, an annual report of receipts and expenditures for the previous calendar year pursuant to N.J.A.C. 19:25-20.13 on forms supplied by the Commission.

(b) A legislative agent retained by or representing more than one lobbyist shall, for purposes of determining aggregate threshold expenditure figures pursuant to this section, include receipts and expenditures made on behalf of all of the lobbyists by whom the legislative agent is employed.

19:25-20.10 Receipts

(a) The following receipts of a lobbyist or legislative agent which relate to communication with, or providing benefits to, any member of the Legislature, legislative staff, the Governor, the Governor's staff, or an officer or staff member of the Executive Branch shall be included in the annual report:

1. Fees, salary, allowance or other compensation paid to a legislative agent. Receipts required to be reported pursuant to this

paragraph shall be detailed as to amount, from whom received and for what purpose. A law firm, advertising agency, from whom received and for what purpose. A law firm, advertising agency, public relations firm, accounting firm or similar organization which spends only a portion of its time in legislative or regulatory activity on behalf of a lobbyist shall be required to report only that portion of its fees as are related to influencing legislation or influencing regulation.

2. Contributions, loans (except for loans made in the ordinary course of business on substantially the same terms as those prevailing for comparable transactions with other persons) or membership fees or dues received by a lobbyist. Such contributions, loans, fees or dues received by a lobbyist are reportable if they are made to a lobbyist whose major purpose is to influence legislation, or influence regulation. For purposes of this paragraph, a lobbyist shall be deemed to be engaged in influencing legislation, or influencing regulation, as its major purpose for any calendar year in which expenditures related to such activity constitute more than 50 percent of its total expenditures for all purposes. If, under the above test, it is not the major purpose of the lobbyist to influence legislation, or influence regulation, the contributions, loans, fees and dues received by the lobbyist are not reportable by such organization, unless made to the lobbyist with the specific intent that the contributions, loans, fees or dues be employed to influence legislation, or influence regulation, (in which case they are reportable as outlined below). If the major purpose of the lobbyist is to engage in influencing legislation, or influencing regulation, the contributions, loans, membership fees or dues received by the lobbyist shall be reported hereunder in the aggregate in the same proportion as the activities of the lobbyist are related to influencing legislation, or influencing regulation, along with the name and address of the contributor(s) whose contribution(s), allocated as outlined above, aggregate more than $100.00 during the calendar year.

Example: Trade Association XYZ engages in a wide range of activities including trade shows, public relations, newsletters to its members, etc., and influencing legislation. This activity is done through a paid contract legislative agent in Trenton as well as by communications by employees of the Trade Association. XYZ expends over $2,500 during the course of the calendar year on this lobbying activity, although this expense constitutes less than 50 percent of its total expenditures for all purposes for that year. Trade Association XYZ is a lobbyist required to file an annual report. However, it need not report its contributions.

Trade Association EFG has the same fact situation as above, except that Trade Association EFG's lobbying expenses constitute more than 50 percent (e.g., 80 percent) of its expenditures for all purposes for the year. EFG must file an annual report as a lobbyist, including therein an aggregate allocated figure for lobbying contributions made to it (80 percent of each contribution must be allocated to lobbying for reporting purposes; the aggregate is then reported). EFG must also report the name and address of all those contributors whose contributions, after being allocated to lobbying, exceed $100.00.

19:25-20.11 Expenditures

(a) The following expenditures of a lobbyist or legislative agent which relate to communication with, or providing benefits to, any member of the Legislature, legislative staff, the Governor, the Governor's staff, or an officer or staff member of the Executive Branch shall be reported in the annual report, and shall be listed in the aggregate by category:

1. Fees, allowances, retainers, salary or other compensation paid by a lobbyist to a legislative agent. Compensation required to be reported pursuant to this subparagraph shall be detailed as to amount, to whom paid and for what purpose and shall include consulting, legal or other fees, for services performed or to be performed, as well as expenses incurred in rendering such services. In the case of a volunteer, the above calculation shall not include any calculation of the value of the time for such volunteer, but shall include only that amount reimbursed to the volunteer for expenditures related to activities to influence legislation, or influence regulation, on behalf of the lobbyist.

2. Pro rata share of salary or other compensation paid to an employee of any organization whose activities on behalf of that organization qualify him or her as a legislative agent.

Example: Jones engages in lobbying activity in New Jersey and Pennsylvania for ABC Corporation. He spends one-half of his time in lobbying activity in New Jersey. Jones' total salary, as reported in his W-2 form, is $30,000 per year. Since more than *[one percent]* ***20 hours*** of his time is spent on lobbying in New Jersey, Jones is a legislative agent for ABC Corporation and one-half of his salary, $15,000, is allocable to lobbying. ABC Corporation is a reporting lobbyist and must include this amount as an expense.

Smith, another ABC Corporation employee, has spent less than *[one percent]* ***20 hours*** of his time on direct lobbying on behalf of his employer and therefore none of his salary is reportable by ABC Corporation.

3. Contributions or membership fees or dues paid by the lobbyist, except that such contributions or fees shall not be deemed to be related to influencing legislation, or influencing regulation, for the purpose of reporting under the Act and this subchapter unless made to a legislative agent with the specific intent to influence legislation or influence regulation, or unless made to a lobbyist whose major purpose is to engage in influencing legislation, or influencing regulation. For the purpose of this paragraph, a lobbyist shall be deemed to be engaged in influencing legislation, or influencing regulation, as its major purpose for any calendar year in which expenditures related to such activity constitute more than 50 percent of its total expenditures for all purposes. Such contributions, fees and dues (other than those made with the specific intent to influence legislation, or influence regulation) made by a lobbyist to an organization, association or union, shall be reportable hereunder in the same proportion as the activities of the organization, association or union are related to influencing legislation, or influencing regulation. Contributions, fees or dues made with the specific intent of influence legislation, influence regulation, or both, shall be reported in full. Contributions, fees or dues required to be reported pursuant to this paragraph shall be reported in the aggregate, along with the name of any organization, association or union to whom the lobbyist made a contribution in excess of $100.00 for the calendar year (when allocated as set forth above) as well as the date of each contribution, fee or dues.

4. Costs of preparation and distribution of material ***related to influencing legislation, or influencing regulation, and paid for*** by a lobbyist or legislative agent, including all disbursements for preparation and distribution of printed materials, correspondence, flyers, publications, films, slides, audio and video recordings and video tapes.

5. Travel and lodging ***related to influencing legislation, or influencing regulation*** for the legislative agent.

6. Allocated cost of support personnel for the lobbyist or legislative agent. The allocated cost of any support personnel for the lobbyist or legislative agent shall be included hereunder if, in relation to the usual duties of their employment, such personnel, individually, spend, over the course of the reporting year*[, a total of 25 percent of their time or]* 450 hours*[, whichever is less,]* in activity supporting the activity of the lobbyist or legislative agent in influencing legislation, or influencing regulation.

Example: Smith is in the government affairs department of ABC Corporation, a reporting lobbyist, and spends all of her time engaged in activity related to lobbying. Brown, her secretary, spends his time doing work supporting Smith's activities. Jones, an analyst in the financial department at ABC Corporation, spends 50 percent of his time analyzing legislation for Smith and preparing memoranda to be used in Smith's lobbying activity. King, an attorney in ABC's legal department, *[occasionally]* does some drafting of proposed legislation for Smith. Over the course of the year, however, this accounts for less than *[one percent]* ***450 hours*** of his time at work. ABC Corporation, in its annual report, must include Smith's full salary (under (a)2 above), as well as Brown's full salary and one-half of Jones' salary, as the cost of support personnel. None of King's salary will have to be included on ABC's report.

(b) The following expenditures of a lobbyist or legislative agent which relate to communication with, or providing benefits to, any member of the Legislature, legislative staff, the Governor, the Governor's staff, or an officer or staff member of the Executive Branch shall be reported in the Annual Report and shall be listed in the aggregate by category, except that if the aggregate expenditures on behalf of any member of the Legislature, legislative staff, the Governor, the Governor's staff, or an officer or staff member of the Executive Branch exceed $25.00 per day, or exceed $200.00 per calendar year, the expenditures, together with the name of the intended recipient of the benefit, shall be stated in detail and shall include the date and type of each expenditure, amount of each expenditure and the name of the person to whom it was paid.

1. Entertainment, including, but not limited to, disbursements for sporting, theatrical and musical events provided to any member of the Legislature, legislative staff, the Governor, the Governor's staff, or an officer or staff member of the Executive Branch, and paid for by a lobbyist or legislative agent, as well as the cost of entertainment for a legislative agent when in the company of any member of the Legislature, legislative staff, the Governor, the Governor's staff, or an officer or staff member of the Executive Branch.

2. Food and beverages provided to any member of the Legislature, legislative staff, the Governor, the Governor's staff, or an officer or staff member of the Executive Branch, paid for by a lobbyist or legislative agent. This shall include food and beverages for the legislative agent when in the company of any member of the Legislature, legislative staff, the Governor, the Governor's staff, or an officer or staff member of the Executive Branch. Also included are payments by lobbyists or legislative agents for food or beverages for any member of the Legislature, legislative staff, the Governor, the Governor's staff, or an officer or staff member of the Executive Branch at conferences, conventions, banquets or other similar functions.

3. Travel and lodging expenses paid for by a lobbyist or legislative agent on behalf of any member of the Legislature, legislative staff, the Governor, the Governor's staff, or an officer or staff member of the Executive Branch.

4. Honoraria paid to any member of the Legislature, legislative staff, the Governor, the Governor's staff, or an officer or staff member of the Executive Branch by a lobbyist or legislative agent.

5. Loans to any member of the Legislature, legislative staff, the Governor, the Governor's staff, or an officer or staff member of the Executive Branch from a lobbyist or legislative agent except for loans from financial institutions made in the ordinary course of business on substantially the same terms as those prevailing for comparable transactions with other persons.

6. Gifts to any member of the Legislature, legislative staff, the Governor, the Governor's staff, or an officer or staff member of the Executive Branch including, but not limited to, material goods or other things of value.

(c) For purposes of reporting under the Act or this subchapter, when an expenditure included in (b) above is made to a member of the immediate family of any member of the Legislature, legislative staff, the Governor, the Governor's staff, or an officer or staff member of the Executive Branch, such expenditure shall be deemed to be made on behalf of the member of the Legislature, legislative staff, the Governor, the Governor's staff, or the officer or staff member of the Executive Branch whose family member received it.

[(d) For purposes of reporting under the Act or this subchapter, when an expenditure included in (b) above is made by a legislative agent from personal funds and is not reimbursed or refunded by a lobbyist, and the recipient of the benefit is a member of the household or a relative of the legislative agent, the expenditure shall not be construed as providing a benefit subject to reporting. For the purposes of this subsection, the term "member of household" shall mean a spouse residing in the same domicile as the legislative agent and any dependent children. The term "relative" shall mean a son, daughter, grandson, granddaughter, father, mother, grandfather, grandmother, greatgrandfather, greatgrandmother, brother, sister, nephew, niece, uncle or aunt. Relatives by adoption, half-blood, marriage or remarriage shall be treated as relatives of the whole kinship.]

19:25-20.12 Valuation of contributions and expenditures

Where a contribution of goods or services is made to a lobbyist or legislative agent to influence legislation, or to influence regulation, the value of such receipt shall be its reasonable commercial value to the lobbyist or legislative agent receiving it. Where an expenditure of goods or services, including travel, is made by a lobbyist or legislative agent to any member of the Legislature, legislative staff, the Governor, the Governor's staff, or an officer or staff member of the Executive Branch, the value of the expenditure shall be its reasonable commercial value to the member of the Legislature, legislative staff, the Governor, the Governor's staff, or officer or staff member of the Executive Branch receiving it.

19:25-20.13 Contents of annual report

(a) The annual report shall contain the following:

1. Name, business address, telephone number of the reporting lobbyist or legislative agent;

2. Name, address and occupation or business of legislative agent(s) engaged by reporting lobbyist, or name, address and occupation or business of lobbyist(s) engaging the reporting legislative agent, whichever is applicable;

3. The particular items of legislation or regulation and any general category or type of legislation or regulation regarding which the legislative agent or lobbyist influenced legislation or influenced regulation during the calendar year, except that a legislative agent who has provided this information in his or her notice of representation and quarterly reports may satisfy this requirement by so indicating on the annual report;

4. Receipts received by the legislative agent or lobbyist as set forth in N.J.A.C. 19:25-20.10;

5. Expenditures made by the lobbyist or legislative agent, as set forth in N.J.A.C. 19:25-20.11.

(b) With respect to any specific event, such as a reception, where expenditures required to be reported pursuant to N.J.A.C. 19:25-20.11(b) in the aggregate exceed $100.00, the report shall include the date, type of expenditure, amount of expenditure and to whom paid. The costs of any specific event need not be allocated among the members of the Legislature, legislative staff, the Governor, members of the Governor's staff, or officers or staff members of the Executive Branch present at the event for inclusion in the daily or annual calculations under N.J.A.C. 19:25-20.11(b).

(c) A legislative agent retained by or representing more than one lobbyist shall include in his or her annual report receipts received from and expenditures made on behalf of all lobbyists by whom it is employed.

(d) An individual who is a legislative agent and who serves as a member of any independent State authority, county improvement authority, or municipal utilities authority, or as a member from New Jersey on an interstate or bi-state authority, or as a member of any board or commission established by statute or resolution or by executive order of the Governor or by the Legislature or by any agency, department or other instrumentality of the State shall disclose such service, including the name of the authority, board or commission, and the date upon which his or her term as a member thereof expires, in the legislative agent's annual report.

19:25-20.14 Audit by Commission; recordkeeping

(a) All annual reports of lobbyists or legislative agents required to be filed pursuant to the Act and this subchapter shall be subject to review and audit by the Commission.

(b) Each lobbyist and legislative agent subject to reporting under the Act shall make or obtain and maintain for a period of three years all records and documents relating to its activity in influencing legislation, or influencing regulation, including, but not limited to, checks, bank statements, contracts and receipts, so as to provide evidence to support statements in reports filed with the Commission and to permit an adequate basis for auditing by the Commission, except that a record or document of any single expenditure in an amount of *[$25.00]* ***$5.00*** or less may be excluded from this requirement.

19:25-20.15 Responsibilities for filing annual reports; certification

(a) The lobbyist and the legislative agent shall have the responsibility of filing annual reports.

(b) Each organization which itself has a filing obligation as a lobbyist pursuant to this subchapter is not relieved of that obligation by virtue of the fact that a legislative agent engaged, designated or employed by it has a filing obligation; except that a lobbyist required to file an annual report pursuant to the Act may designate a legislative agent in its employ or otherwise engaged or used by it to file the annual report on its behalf, provided such designation is made in writing by the lobbyist on a form prescribed by the Commission, is acknowledged in writing by the designated legislative agent and is filed with the Commission on or before the date on which the annual report of the lobbyist is due for filing, and further provided that any violation of the Act shall subject both the lobbyist and the designated legislative agent to the penalties provided by the Act and this subchapter.

(c) Each legislative agent which has a filing obligation pursuant to this subchapter is not relieved of that obligation by virtue of the fact that the organization engaging, retaining or employing it has or may have a filing obligation as a lobbyist or that the legislative agent has been designated by which organization to file an annual report for it; except that any lobbyist organization required to file a report pursuant to the Act which employs or otherwise engages or uses a legislative agent or agents whose only reportable lobbying activity is on behalf of such organization, may file a single annual report required under N.J.A.C. 19:25-20.13 on behalf of its own lobbying activity and the activities of such legislative agent or agents, provided that any violation of the Act shall subject the lobbyist alone to the penalties provided by the Act and this subchapter.

(d) Each report filed with the Commission by a lobbyist or legislative agent shall be certified as to the correctness of the report by the legislative agent or, in the case of a lobbyist, by a legislative agent employed by the lobbyist or a responsible financial or government affairs officer of the lobbyist.

19:25-20.16 Advisory opinions

The Commission may render advisory opinions as to the applicability of the Act and this subchapter to a given specific set of facts and circumstances.

19:25-20.17 Complaint proceedings; investigations; penalties

(a) The term "violation" shall mean the failure to report timely or in the manner prescribed by the Act and this subchapter, or the failure to make and maintain a record as prescribed by the Act and this subchapter, any event or transaction required to be reported or recorded by the Act or this subchapter.

(b) Upon receiving evidence of any violation of the Act or this subchapter, the Commission shall have the power to make investigations and bring complaint proceedings, to issue subpoenas for the production of witnesses and documents and to hold or cause to be held, by the Office of Administrative Law, hearings upon such complaint.

(c) In addition to any other penalty provided by law, any person who is found to have committed a violation of the Act or this subchapter shall be liable for civil penalty of up to $1,000 for that violation, which penalty may be collected in a summary proceeding pursuant to N.J.S.A. 2A:58-1 et seq.

19:25-20.18 Nonresident legislative agents or lobbyists

Any legislative agent or lobbyist not a resident of this State, or not a corporation of this State or authorized to do business in this State, shall file with the Commission, before attempting to influence legislation, or influence regulation, its consent to service of process at an address within this State, or by regular mail at an address outside this State.

19:25-20.19 Annual fee

(a) Effective August 1, 1992, and each August 1 thereafter, each legislative agent who is an individual and whose activities during any part of a 12-month period commencing on August 1 and ending on the following July 31 are subject to the Act shall pay an annual fee of $100.00.

(b) In the event that the legislative agent is a partnership, committee, association, corporation, or other organization or group of persons, the annual fee shall be $100.00 for each individual from the partnership, committee, association, corporation, or other organization or group of persons, who is required to wear a name tag pursuant to N.J.A.C. 19:25-20.6.

(c) Payment of the annual fee set forth in (a) and (b) above shall be by check or money order payable to "State of New Jersey, Election Law Enforcement Commission," and shall be due on August 1, 1992, and each August 1 thereafter.

(d) In the case of a legislative agent who files an initial notice of representation, the annual fee shall be due upon the filing of such initial notice of representation, and subsequent annual fees shall be due pursuant to (c) above.

(e) No annual fee shall be required if the legislative agent is an organization that is exempt from sales and use taxes under section 9(b) of chapter 30 of the laws of 1966, as amended (N.J.S.A. 54:32-9(b)).

(a)

CASINO CONTROL COMMISSION

Applications; Payment of Fees Hearings; Administrative Review

Adopted Amendment: N.J.A.C. 19:41-9.3 Adopted New Rules: N.J.A.C. 19:42-10

Proposed: November 4, 1991 at 23 N.J.R. 3249(a).

Adopted: December 18, 1991 by the Casino Control Commission, Steven P. Perskie, Chairman.

Filed: December 23, 1991, as R.1992 d.35, **without change.**

Authority: N.J.S.A. 5:12-63(c), (d) and (e), 69, 70(e), 94, 95, 107, 142, and N.J.S.A. 52:14B-12.

Effective Date: January 21, 1992.

Expiration Date: May 12, 1993.

Summary of Public Comments and Agency Responses:

Comments were received from the Division of Gaming Enforcement (Division).

COMMENT: The Division stated its support of the proposed new rule and amendments, but suggested that it be given written notice of the outcome of an administrative review conference, as well as copies of final Commission orders entered in such matters.

RESPONSE: The Commission agrees that the adoption herein is appropriate and that the Division should receive written notice of formal action taken at the various stages of the administrative review process. However, no change was required in the published proposal because the Casino Control Act already implicitly establishes that the Division will receive the requested information.

Full text of the adoption follows.

19:41-9.3 Payment of fees and civil penalties

(a) No application shall be accepted for filing by the Commission or processed by the Commission or the Division except upon proper and timely payment of all required fees and civil penalties in accordance with the Act and the regulations of the Commission. Any portion of a fee which is incurred or determined after the filing of the application or which is estimated in accordance with this subchapter, and any civil penalty imposed by the Commission, shall be payable upon demand made by the Commission through its Division of Financial Evaluation. Failure to promptly remit any amount so demanded shall be deemed a failure to timely pay the required fee or civil penalty unless the Commission finds cause to permit an extension of time in which to remit the demanded amount.

(b) Any fee or civil penalty required to be paid in accordance with this subchapter or pursuant to an order of the Commission shall be paid before the Commission shall consider the application for issuance or renewal of licensure, unless the Commission finds cause to permit an extension of time in which to pay such fee or civil penalty.

(c) All fees and civil penalties shall be paid by check or money order made payable, in the case of fees, to the "Casino Control Fund" and, in the case of civil penalties, to the "Casino Revenue Fund," and presented to the Commission at its offices. No check so presented shall be deemed payment until the Commission shall be satisfied that sufficient funds are contained in the account against which it is drawn.

(d) Unless otherwise directed by the Commission, all payments of fees or civil penalties received from licensees, registrants or applicants shall be credited against, in chronological order (the oldest shall be paid first), any outstanding debts for fees or civil penalties that the person owes pursuant to the Act and the regulations of the Commission.

(e) A required fee or civil penalty shall be considered paid only if the Commission is satisfied that the person obligated to pay the fee or civil penalty owes no other debts for fees or civil penalties.

(f) Any required fee or civil penalty that a person fails to pay despite demand therefor shall constitute cause for the Commission to dismiss administratively any application submitted by such person, or to suspend administratively any license or registration held by such person, including a license or registration that has been issued, or an application that has been submitted, before the debt arose.

SUBCHAPTER 10. ADMINISTRATIVE REVIEW OF UNPAID FEES AND CIVIL PENALTIES

19:42-10.1 Commencement

(a) The Commission may, on its motion, administratively review the issuance or renewal of any license, the registration of any person, the acceptance of any application or the failure to pay any civil penalty where cause exists to question whether all required fees or civil penalties have been paid.

(b) The Commission shall initiate the administrative review by notifying any person who apparently has failed to pay a required fee or civil penalty that all applications, licenses or registrations held or submitted by such person will be dismissed or suspended, as applicable, unless the person attends an administrative review conference conducted by the Commission.

(c) The notice scheduling an administrative review conference shall be served either by regular and certified mail, return receipt requested, or, in the case of an individual employed at a casino hotel, by personal service through a Commission inspector. The notice shall specify a date for the conference that is not earlier than 15 days after the date the notice is served and shall schedule a date subsequent to the date of the conference on which the Commission shall consider dismissing the application or suspending the license or registration unless the matter has been resolved to the satisfaction of the Commission prior thereto.

(d) The Division shall be given notice of the administrative review conference; however, the Division's attendance is not required nor necessary unless it objects to the proposed Commission action.

19:42-10.2 Repayment plans

If, at any time after the administrative review is initiated, the person admits the debt but reasonably demonstrates that it cannot immediately pay in full, then the Commission may structure a repayment schedule consistent with the ability to pay. If the person agrees to the terms of the repayment schedule, further action in the administrative review shall be postponed in order to afford the person the opportunity to satisfy the terms of the repayment agreement. If a default occurs under a repayment agreement, the administrative review shall be reinstituted; provided, however, that no further repayment plan shall be allowed unless the debtor demonstrates that extraordinary circumstances exist. The administrative review shall cease and the matter shall be closed once the Commission is satisfied that the person has fully complied with the terms of the repayment agreement.

19:42-10.3 Administrative review conference

(a) The administrative review conference is an informal proceeding designed to facilitate a fair, expeditious and orderly disposition of the Commission's administrative review of unpaid fees and civil penalties. Any person that is notified to attend such a conference is required to appear and may be represented by counsel. If the person so notified is a corporation, it may appear without counsel provided it does so through one of its principals.

(b) Attendance at a scheduled administrative review conference is mandatory, and the failure to attend such a conference shall constitute cause to dismiss immediately all applications, or suspend all licenses or registrations, held or submitted by the person served with notice pursuant to N.J.A.C. 19:42-10.1.

(c) During the administrative review conference, the person required to attend the conference may present any information that would demonstrate that all required payments have been made.

19:42-10.4 Disposition of fee matters and civil penalties

(a) If, after the administrative review is initiated, the Commission determines that no debt is owed, or the applicant, licensee or registrant pays the debt in full, the matter shall be closed.

(b) If the matter remains open after an administrative review conference, the Commission shall so advise the person attending the conference, and the matter shall proceed to a hearing before the Commission on the date specified in the notice served pursuant to N.J.A.C. 19:42-10.1(c), unless, prior to the Commission hearing the matter, the person served with such notice pays the debt in full or agrees to a repayment plan that is acceptable to the Commission.

(c) At the hearing, the Commission may dismiss all applications, and may suspend all licenses or registrations, or any person who has failed to pay all required fees or civil penalties owed by that person.

19:42-10.5 Restoration upon payment

(a) Any license or registration that has been administratively suspended shall be reinstated upon payment of all outstanding amounts. Any application that has been administratively dismissed shall be reactivated if, within 45 days of the dismissal, all outstanding amounts are paid.

(b) An administrative suspension of any license in accordance with this subchapter shall not affect the term of such license, which shall expire on its stated expiration date.

(c) The Commission shall notify each casino licensee of any action that it has taken to administratively dismiss or reactivate any application, or to administratively suspend or reinstate any registration or any license other than a casino license, and each casino licesee, upon receiving such notice, shall comply with any Commission directions concerning any such application, license or registration.

EMERGENCY ADOPTIONS

HUMAN SERVICES

(a)

DIVISION OF ECONOMIC ASSISTANCE

Service Programs for Aged, Blind, or Disabled Supplemental Security Income Payment Levels

Adopted Emergency Amendment and Concurrent Proposed Amendment: N.J A.C. 10:83-1.11

Emergency Amendment Adopted and Concurrent Proposed Amendment Authorized: December 11, 1991 by Alan J. Gibbs, Commissioner, Department of Human Services.

Gubernatorial Approval (N.J.S.A. 52:14B-4(c)): December 23, 1991.

Emergency Adoption Filed: December 26, 1991 as R.1992 d.39.

Authority: N.J.S.A. 44:7-87 and Section 1618(a) of the Social Security Act.

Concurrent Proposal Number: PRN 1992-59.

Emergency Amendment Effective Date: December 26, 1991.

Emergency Amendment Operative Date: January 1, 1992.

Emergency Amendment Expiration Date: February 24, 1992.

Submit comments by February 20, 1992 to:
Marion E. Reitz, Director
Division of Economic Assistance
CN 716
Trenton, New Jersey 08625

This amendment was adopted on an emergency basis and became effective upon acceptance for filing by the Office of Administrative Law (see N.J.S.A. 52:14B-4(c) as implemented by N.J.A.C. 1:30-4.4). Concurrently, the provisions of this emergency amendment are being proposed for readoption in compliance with the normal rulemaking requirements of the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. The readopted rule becomes effective upon acceptance for filing by the Office of Administrative Law (see N.J.A.C. 1:30-4.4(d)), if filed on or before the expiration date for the emergency adoption.

The agency emergency adoption and concurrent proposal follows:

Summary

Section 1618(a) of the Social Security Act requires that any State providing a Supplemental Security Income (SSI) supplement to "pass through" to SSI recipients the full amount of any Federal cost-of-living adjustment (COLA) or, if it chooses to pass along the increase to certain classifications of recipients selectively, it must maintain the level of State expenditures during the current year, at a minimum, to the level experienced during the preceding year. New Jersey has chosen to "pass-through" to eligible SSI recipients the full amount of the 3.7 percent Federal cost-of-living increase effective January 1, 1992.

Social Impact

The amendment provides for an increase in payment levels to eligible low-income aged, blind, and disabled individuals. The increase will enable such persons to maintain a measure of parity with the increased cost of living.

Economic Impact

The increase in State expenditures over existing levels is estimated to be $472,953 through the end of calendar year 1992. This amendment will not impact administratively on the Department as the SSI program is administered by the Social Security Administration.

Regulatory Flexibility Statement

This proposed amendment has been reviewed with regard to the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The amendment imposes no reporting, recordkeeping or other compliance requirements on small businesses; therefore, a regulatory flexibility analysis is not required. The rules govern a public assistance program designed to certify eligibility for the Supplemental Security Income program to a low-income population by a governmental agency rather than a private business establishment.

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

10:83-1.11 New Jersey Supplemental Security Income payment levels

(a) New Jersey Supplemental Security Income payment levels are as follows:

Living Arrangement Categories	Payment Level [1/1/91]	**1/1/92**
Eligible Couple		
Licensed Medical Facility (Hospital, skilled Nursing Facility or Intermediate Care Facility) Publicly operated community residence of 16 or less	[$80/610.00†]	**$80/633.00†**
Residential Health Care Facilities and certain residential facilities for children and adults	[$1095.36]	**$1125.36**
Living Alone or with Others	[$635.36]	**$658.36**
Living in Household of Another, Receiving Support and Maintenance	[$499.76]	**$515.09**
Eligible Individual		
Licensed Medical Facility (Hospital, skilled Nursing Facility or Intermediate Care Facility) Publicly operated community residence of 16 or less	[$40/407.00†]	**$40/422.00†**
Residential Health Care Facilities and certain residential facilities for children and adults	[$557.05]	**$572.05**
Living Alone or with Others	[$438.25]	**$453.25**
Living with Ineligible Spouse (No other individuals in household)	[$635.36]	**$658.36**
Living in Household of Another, Receiving Support and Maintenance	[$315.65]	**$325.65**

†The lower figure applies when Medicaid payments with respect to an individual equal an amount over 50 percent of the cost of services provided in a month.

(b)

DIVISION OF ECONOMIC ASSISTANCE

Home Energy Assistance Handbook Eligibility Requirements; Income Eligibility Guidelines

Adopted Emergency Amendments and Concurrent Proposed Amendments: N.J.A.C. 10:89-2.3, 3.3, 3.5, and 4.1

Adopted Emergency Repeal and New Rule and Concurrent Proposed Repeal and New Rule: N.J.A.C. 10:89-3.6

Emergency Amendments, Repeal and New Rule Adopted and Concurrent Proposed Amendments, Authorized Repeal and New Rule December 12, 1991 by Alan J. Gibbs, Commissioner, Department of Human Services.

Gubernatorial Approval (N.J.S.A. 52:14B-4(c)): December 23, 1991.

Emergency Adoption Filed: December 26, 1991 as R.1992 d.38.

Authority: N.J.S.A. 30:4B-2.

Concurrent Proposal Number: PRN 1992-58.

Emergency Amendments Effective Date: December 26, 1991.

Emergency Amendments Expiration Date: February 24, 1992.

Submit comments by February 20, 1992 to:
Marion E. Reitz, Director
Division of Economic Assistance
CN 716
Trenton, New Jersey 08625

These amendments, repeal and new rule were adopted on an emergency basis and became effective upon acceptance for filing by the Office of Administrative Law (see N.J.S.A. 52:14B-4(c) as implemented by N.J.A.C. 1:30-4.4). Concurrently, the provisions of these emergency amendments, repeal and new rule are being proposed for readoption in compliance with the normal rulemaking requirements of the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. The readopted amendments, repeal and new rule become effective upon acceptance for filing by the Office of Administrative Law (see N.J.A.C. 1:30-4.4(d)), if filed on or before the expiration date for the emergency adoption.

The agency emergency adoption and concurrent proposal follow:

Summary

The Home Energy Assistance (HEA) Program is a Federal block grant program authorized by the Low Income Home Energy Assistance Act of 1981, Title XXVI of P.L. 97-35. The purpose of the program is to assist low income households meet the costs of home heating and medically necessary cooling.

A major issue of concern for the upcoming HEA Program is program funding. New Jersey has been experiencing decreases in Federal funding over the past few years, and the Department of Human Services is assuming that there will be a reduction from the Fiscal Year (FY) 91 overall Federal allocation of $66.8 million in FY 92 and that potentially $20 million will be the only amount available in oil overcharge funds.

The Department of Human Services is proposing to reduce benefit levels for all households by 13 percent and reduce the cooling assistance benefit from $125.00 to $100.00. Also, a limit of $750.00 is being proposed as a maximum benefit amount per household (FY 91 limit was $900.00).

Due to delays experienced in the receipt of Federal funding over the last several years, the Department will again be issuing the first HEA benefit payments (automatic and special energy assistance) in early December instead of November. This schedule change was first implemented in FY 91. Applications for special assistance have been accepted since November 1, and emergency energy assistance (EEA) will be made available beginning two weeks after the first heating assistance benefits are issued in December 1991.

The Department is proposing to continue utilizing the allowable 150 percent of the current Federal Poverty level as the income eligibility guideline, and, thus, continue to make assistance available to the maximum number of households throughout the entire winter heating season.

Since the Federal Poverty level was updated in February, 1991, to account for last year's increase in prices as measured by the Consumer Price Index, the Department is proposing to adjust the income eligibility guidelines for New Jersey's HEA Program to coincide with the updated Federal Poverty Level.

The proposed amendments include the following:

N.J.A.C. 10:89-2.3(e) supplements the definition of a loan to include loans from financial institutions.

N.J.A.C. 10:89-2.3(g) adjusts the monthly allowable gross income limits to continue to be based on 150 percent of the current Federal Poverty Level.

N.J.A.C. 10:89-3.3(a) adjusts the cooling assistance benefit to $100.00 from $125.00.

N.J.A.C. 10:89-3.5(a) adjusts the maximum amount a household may receive from $900.00 to $750.00.

N.J.A.C. 10:89-3.6(a), (b), and (c) reduce the HEA payment schedules for all households by approximately 13 percent.

N.J.A.C. 10:89-4.1(d)1i(7) adds unearned income to the existing citation for clarification purposes. Also, the definition of documentation was expanded to include all applicable documentation, not limiting the definition to wage stubs.

N.J.A.C. 10:89-4.1(d)1i(8) adds UIB, disability and support payments to broaden the definition of other income.

Social Impact

The proposed amendments, repeal and new rule are in keeping with an ongoing effort on the part of the Department's Division of Economic Assistance to provide expeditious and appropriate disbursement of HEA benefits to New Jersey's low income population. The proposed amendments, repeal and new rule are in response to Federal compliance requirements and will serve to maintain uniformity with regulations. Additionally, the upward adjustment in the monthly allowable gross income limit for HEA program eligibility is expected to increase the number of households served.

Economic Impact

There will be no direct impact upon New Jersey taxpayers since the entire cost of the assistance and administration of the HEA program is federally funded. There will be an indirect benefit to the public as a whole since there will be an influx of Federal dollars into the State's economy. The direct beneficiaries of the program will be those households eligible to receive Home Energy Assistance benefits in FFY 1992.

Regulatory Flexibility Statement

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

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

10:89-2.3 Income eligibility

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

(e) Income exclusions: The following income is not considered in the determination of gross income for this program:

1. Loans which are not used to meet current living costs and which are held and used in accordance with the conditions of the loan. Personal loans are excluded when such loans are evidenced by a document, signed by the borrower and the lender, which states the amount of the loan and terms of repayment **(this includes loans from financial institutions)**;

2.-7. (No change.)

(f) (No change.)

(g) Gross Income Eligibility Limits for Home Energy Assistance:

Household Size	Monthly Allowable Gross Income Limit
1	$ [785] **828**
2	[1053] **1111**
3	[1321] **1394**
4	[1589] **1677**
5	[1857] **1960**
6	[2125] **2243**
7	[2393] **2526**
8	[2661] **2809**
9	[2929] **3092**
10	[3197] **3375**
Each Additional Member	[+268] **+283**

10:89-3.3 Cooling assistance

(a) Income eligible households for which there is medical evidence that the health of at least one household member will be seriously endangered unless the household's living quarters are cooled shall receive a one-time benefit in the amount of [$125.00] **$100.00** subject to the following provisions. This benefit is available in addition to any other benefits made under this program and will be paid directly to the household.

1.-3. (No change.)

10:89-3.5 Maximum program benefit

(a) An eligible household may receive maximum of [$900.00] **$750.00** in program benefits to include automatic or special payments plus any emergency assistance payments exclusive of emergency rehousing payments and emergency furnace repair payments. A household which receives more than the maximum program benefit

is subject to recoupment procedures in accordance with N.J.A.C. 10:89-5.3.
(b) (No change.)

10:89-3.6 Payment schedule
[(a) Schedule A: Electricity, Natural Gas:

Household Size	1 or 2		3 to 5		6 or more	
Region Designation	Blue	Red	Blue	Red	Blue	Red
Monthly Income						
$0-$667.00	522	454	698	606	834	726
$668.00-$1084.00	434	380	580	504	698	606
$1085.00-$1501.00	350	302	464	404	558	486
$1502.00-$1918.00			348	302	418	362
$1919.00-$2335.00			232	202	278	242
Over $2335.00					140	120

"Blue" means Sussex and Warren counties.
"Red" means all other counties.

(b) Schedule B: Fuel Oil, Kerosene:

Household Size	1 or 2		3 to 5		6 or more	
Region Designation	Blue	Red	Blue	Red	Blue	Red
Monthly Income						
$0-$667.00	492	428	658	572	788	686
$668.00-$1084.00	410	358	548	476	658	572
$1085.00-$1501.00	330	286	438	382	526	458
$1502.00-$1918.00			328	286	394	342
$1919.00-$2335.00			220	190	262	228
Over $2335.00					132	114

"Blue" means Sussex and Warren counties.
"Red" means all other counties.

(c) Schedule C: All other fuel and renters:

Household Size	1 or 2		3 to 5		6 or more	
Region Designation	Blue	Red	Blue	Red	Blue	Red
Monthly Income						
$0-$667.00	322	280	430	372	516	448
$668.00-$1084.00	268	234	358	312	430	374
$1085.00-$1501.00	216	188	286	250	344	298
$1502.00-$1918.00			214	186	258	224
$1919.00-$2335.00			144	124	172	150
Over $2335.00					86	74

"Blue" means Sussex and Warren counties.
"Red" means all other counties.]

(a) Schedule A: Electricity, Natural Gas:

Household Size	**1 or 2**		**3 to 5**		**6 or more**	
Region Designation	**Blue**	**Red**	**Blue**	**Red**	**Blue**	**Red**
Monthly Income						
$0-$667.00	**454**	**394**	**606**	**526**	**726**	**632**
$668.00-$1084.00	**378**	**330**	**504**	**438**	**606**	**526**
$1085.00-$1501.00	**304**	**262**	**404**	**350**	**484**	**422**
$1502.00-$1918.00			**302**	**262**	**364**	**314**
$1919.00-$2335.00					**242**	**210**
Over $2335.00					**122**	**104**

"Blue" means Sussex and Warren counties.
"Red" means all other counties.

(b) Schedule B: Fuel Oil, Kerosene:

Household Size	**1 or 2**		**3 to 5**		**6 or more**	
Region Designation	**Blue**	**Red**	**Blue**	**Red**	**Blue**	**Red**
Monthly Income						
$0-$667.00	**428**	**372**	**572**	**498**	**686**	**596**
$668.00-$1084.00	**356**	**310**	**476**	**414**	**572**	**498**
$1085.00-$1501.00	**286**	**248**	**380**	**332**	**458**	**398**
$1502.00-$1918.00			**284**	**248**	**342**	**298**
$1919.00-$2335.00			**190**	**164**	**228**	**198**
Over $2335.00					**114**	**98**

"Blue" means Sussex and Warren counties.
"Red" means all other counties.

(c) Schedule C: All other fuel and renters:

Household Size	**1 or 2**		**3 to 5**		**6 or more**	
Region Designation	**Blue**	**Red**	**Blue**	**Red**	**Blue**	**Red**
Monthly Income						
$0-$667.00	**280**	**244**	**374**	**324**	**448**	**390**
$668.00-$1084.00	**232**	**204**	**310**	**270**	**374**	**324**
$1085.00-$1501.00	**188**	**164**	**248**	**216**	**298**	**258**
$1502.00-$1918.00			**186**	**162**	**224**	**194**
$1919.00-$2335.00			**124**	**108**	**150**	**130**
Over $2335.00					**74**	**64**

"Blue" means Sussex and Warren counties.
"Red" means all other counties.

10:89-4.1 Opportunity and decision to apply
(a)-(c) (No change.)
(d) At the time of application, the CWA shall advise the household of all program eligibility requirements and the method by which assistance will be provided. Additionally, the CWA shall assist the household in completing the application and explain what elements of eligibility must be verified. The CWA must advise the household what verification is required and explain that the case will be denied if verification is not provided.
1. Verification requirements: The CWA shall assist the household in obtaining the required verification.
i. Required documentation: The following must be verified, documented and retained in the case record by the CWA prior to transmitting the application to DEA:
(1)-(6) (No change.)
(7) Earned **and unearned** income shall be verified by wage stubs **or any applicable documentation** relative to any consecutive four week period within the five weeks before the date the client signs the Form EP-1 or reports a change in earnings.
(8) Other income including pensions, outside contributions, interest, [and] dividends, **UIB, disability, and support payments**;
(9)-(10) (No change.)
ii. (No change.)
(e)-(j) (No change.)

PUBLIC NOTICES

EDUCATION

(a)

STATE BOARD OF EDUCATION

Notice of Public Testimony Session February 19, 1992

Take notice that the following agenda items are scheduled for Notice of Proposal in the February 18, 1992 New Jersey Register and are, therefore, subject to public comment. Pursuant to the policy of the New Jersey State Board of Education, a public testimony session will be held for the purpose of receiving public comment on Wednesday, February 19, 1992 from 4:00 P.M. to 6:00 P.M. in the State Board Conference Room, Department of Education, 225 West State Street, Trenton, New Jersey.

To reserve time to speak, call the State Board Office at (609) 292-0739 by 12:00 noon Friday, February 14, 1992.

Rule Proposals: N.J.A.C. 6:46, Private Vocational Schools. N.J.A.C. 6:53, Vocational Education Safety Standards. N.J.A.C. 6:31, Bilingual Education.

Please note: Publication of the above items are subject to change depending upon the actions taken by the State Board of Education at the January 8, 1992 monthly public meeting.

(b)

STATE BOARD OF EDUCATION

Notice of Public Testimony Session February 19, 1992

Take notice that the following agenda items are scheduled for Notice of Proposal in the February 3, 1992 New Jersey Register and are, therefore, subject to public comment. Pursuant to the policy of the New Jersey State Board of Education, a public testimony session will be held for the purpose of receiving public comment on Wednesday, February 19, 1992 from 4:00 P.M. to 6:00 P.M. in the State Board Conference Room, Department of Education, 225 West State Street, Trenton, New Jersey.

To reserve time to speak, call the State Board Office at (609) 292-0739 by 12:00 noon Friday, February 17, 1992.

Rule Proposal: N.J.A.C. 6:79, Bureau of Child Nutrition Programs, Code amendments and recodification.

ENVIRONMENTAL PROTECTION AND ENERGY

(c)

POLICY AND PLANNING

Notice of Action on Petition for Rulemaking N.J.A.C. 7:13-7.1 Amendment to Delineated Floodway, Pohatcong Township, Warren County

Petitioner: Jack Kocsis, Jr.

Authority: N.J.S.A. 58:16A-50 et seq., particularly 58:16A-52; N.J.S.A. 58:10A-1 et seq., and 13:1D-1 et seq.

Take notice that on November 21, 1991, the Department of Environmental Protection and Energy (Department) received a petition for rulemaking by Jack Kocsis, Jr., requesting that the Department amend the delineated floodway depicted in the map entitled "Delineation of Floodway and Flood Hazard Area, Delaware River, Mile 178.59 to Mile 180.24" prepared by Michael Baker Jr., Inc., dated 1978, as referenced in N.J.A.C. 7:13-7.1. A notice of receipt of the petition was published in the New Jersey Register on January 6, 1992 at 24 N.J.R. 147(b).

The petitioner is the owner of a dwelling located in the delineated floodway, and has been denied a Stream Encroachment Permit for the construction of an addition to the dwelling. The petitioner asserts that the delineation of the floodway is inaccurate. The petitioner further asserts that in the course of applying for the Stream Encroachment Permit, the petitioner produced information indicating that the existing delineation is inaccurate. However, the Department is not aware of any such information, and the petition does not describe or include the information.

After due consideration of the petition pursuant to law, the Department has deferred the petition for further deliberation to conclude by March 1, 1992. The further deliberation will include the following:

1. The Department will contact the petitioner directly, to request that the petitioner provide information indicating that the existing delineation is inaccurate, or that the petitioner direct the Department's attention to previously submitted documents containing such information.
2. The Department will review and analyze all such information, and conclude whether the existing delineation is inaccurate.

(d)

SITE REMEDIATION ENVIRONMENTAL REGULATION

New Jersey Pollutant Discharge Elimination System Notice of Public Hearing—1991-92 Annual Fee Report and Fee Schedule

Take notice that the Department of Environmental Protection and Energy (Department) will hold a public hearing to present the 1991-92 Annual Fee Report and Fee Schedule for the New Jersey Pollutant Discharge Elimination System (NJPDES) Permit Program. The Department mailed copies of the Annual Fee Report and Fee Schedule to all permittees on or before January 21, 1992.

A **public hearing** on the Annual Fee Report and Fee Schedule will be held on February 24, 1992, at 10:00 A.M., at:

Labor Education Center
Cook College Campus
Ryders Lane
New Brunswick, New Jersey

Submit written comments by March 1, 1992 to:

Samuel A. Wolfe, Esq.
Office of Legal Affairs
Department of Environmental Protection and Energy
CN 402
Trenton, New Jersey 08625-0402

Additional documentation concerning the proposed NJPDES budget for 1991-92 and expenditures for 1990-91 are available for review at the Department of Environmental Protection and Energy, Wastewater Facilities Regulation Program, 401 East State Street, Trenton, New Jersey. Interested persons may contact the NJPDES Fee Management Section at (609) 984-4428 to schedule an appointment to review the additional documentation, or to obtain further information.

(e)

OFFICE OF REGULATORY POLICY

Amendment to the Monmouth County Water Quality Management Plan Public Notice

Take notice that on December 3, 1991, pursuant to the provisions of the Water Quality Planning Act, N.J.S.A. 58:11A-1 et seq., and the Statewide Water Quality Management Planning rules (N.J.A.C. 7:15-3.4), an amendment to the Monmouth County Water Quality Management Plan was adopted by the Department. This amendment designates the site of Due Process Golf Course, Block 51, Lots 1.01/1, 20.01/20, 2 and 3, Colts Neck Township as the service area for an on-site domestic treatment works (DTW) with a ground water discharge.

An 18-hole golf course clubhouse will be served by the DTW. A flow of 19,250 gallons per day is projected based on a maximum number of 550 persons per day at any peak period at a flow of 35 gallons per person.

A total of 40 single family homes on the site will be served by individual subsurface sewage disposal systems.

Comments were received during the public comment period, and are summarized below with the Department's response.

COMMENT: Comments were received on the potential impacts to the ground water from the proposed Due Process sewage treatment plant.

RESPONSE: The applicant for this project is required to obtain a New Jersey Pollutant Discharge Elimination System permit from the Department for this discharge. Issues regarding impact to the ground water from this proposed discharge will be addressed during the permitting process.

(a)

OFFICE OF REGULATORY POLICY

Amendment to the Sussex County Water Quality Management Plan

Public Notice

Take notice that on December 3, 1991, pursuant to the provisions of the Water Quality Planning Act (N.J.S.A. 58:11A-1 et seq.), and the Statewide Water Quality Management Planning rules (N.J.A.C. 7:15-3.4), an amendment to the Sussex County Water Quality Management Plan was adopted by the Department. This amendment, submitted by the Wallkill Valley Regional High School Board of Education, amends the Hardyston Township Wastewater Management Plan (WMP). The amended Hardyston Township WMP allows for an increase in the sewer service area of the Sussex County Municipal Utilities Authority Upper Wallkill Valley Water Pollution Control Plant (UWVWPCP) to include the Wallkill Valley Regional High School in Hardyston Township, Sussex County. A wastewater flow allocation of 25,000 gallons per day will be transferred from Franklin Borough to the Wallkill Valley Regional High School to provide for this. The school's existing on-site groundwater disposal system will be abandoned once the school is tied in to the UWVWPCP.

(b)

POLICY AND PLANNING

Notice of Action on Petition for Rulemaking

N.J.A.C. 7:29-1.4(a)5

Petitioner: Township of Waterford, Camden County, New Jersey
Authority: N.J.S.A. 13:1D-1 et seq. and 13:1G-1 et seq.

Take notice that on September 17, 1991, the Department of Environmental Protection and Energy (Department) received a petition for rulemaking by the Township of Waterford, Camden County, New Jersey, requesting that the Department promulgate reasonable rules and regulations respecting the noise levels and noise control pertaining to motor vehicle race tracks in the State. A notice of receipt of the petition was published in the New Jersey Register on November 18, 1991 at 23 N.J.R. 3535(a).

Petitioner has stated that there is a facility in Waterford Township, commonly known as Atco Raceway, which generates noise heard in the surrounding residential neighborhoods. The Department is investigating this condition, as follows:

1. The conduct of a survey, via written questionnaire, of approximately 100 residents of Waterford Township living in the immediate area of Atco Raceway, to identify the impacts of the facility operations;

2. The conduct of investigations to quantify the noise levels at various locations near Atco Raceway; and

3. The review of activities conducted at Atco Raceway, and the correlation of these activities with noise levels;

In addition, the Department has requested legal advice from the Attorney General's office concerning the following legal issues arising from the petition:

1. The determination whether the Department has the statutory authority to regulate noise from motor vehicle race tracks; and

2. The determination whether a municipality has the authority to adopt an ordinance which would regulate noise from a motor vehicle race track.

After due consideration of the petition pursuant to law, the Department has deferred the petition for further deliberation, as described above, to conclude by April 1, 1992.

HUMAN SERVICES

(c)

DIVISION OF YOUTH AND FAMILY SERVICES

Availability of Grant Funds

Intermediate Treatment Care Facility, Essex County

Take notice that, in compliance with N.J.S.A. 52:14-34.4, 34.5 and 34.6, the Department of Human Services announces the following availability of funds:

A. Name of grant program: Intermediate Treatment Care Facility, Essex County.

B. Purpose for which the grant program funds shall be used: This program is intended to establish an intermediate treatment care facility in Essex County for 12 DYFS supervised male youth, ages 13 through 18.

C. Amount of money in the grant program: Funding in the amount of $403,509 in State Grant-in-Aid funds is available for this program. This funding will be continuous. There are no matching funds required.

D. Organizations which may apply for funding under this program: Public and private not-for-profit or for-profit social service agencies serving Essex County who have experience in successfully running similar programs and who meet the requirements of the Manual of Requirements for Children's Group Homes, N.J.A.C. 10:128.

E. Qualifications needed by an applicant to be considered for funding: Professional experience in psychology, education and special education planning, professional child care and behavior modification, in community-based settings.

F. Procedure for eligible organizations to apply: Agencies interested in applying for these funds may obtain a copy of the Request for Proposal from Brenda Dunston, Contract Administrator, New Jersey Division of Youth and Family Services, P.O. Box 47010, Newark, New Jersey 07101, telephone number (201) 648-7770. Agencies interested in applying for these funds may also obtain a copy of the Request for Proposal by attending a bidders conference scheduled for January 30, 1992 at 153 Halsey Street, 3rd floor, Newark, New Jersey, from 10 A.M. to 12:00 noon.

G. Address to which applications must be submitted: Agencies interested in applying for these funds should submit five copies of the completed Request for Proposal and all required supporting materials and copies to Brenda Dunston, Contract Administrator, New Jersey Division of Youth and Family Services, P.O. Box 47010, Newark, New Jersey 07101.

H. Deadline by which applications must be submitted: The completed application and all required supporting materials and copies must be postmarked by February 28, 1992, or, if hand-delivered, must be received by 5:00 P.M. on February 28, 1992, at the offices of the New Jersey Division of Youth and Family Services, 153 Halsey Street, 2nd floor, Newark, New Jersey.

I. Date by which applicants shall be notified of acceptance or rejection: April 15, 1992.

(d)

DIVISION OF YOUTH AND FAMILY SERVICES

Availability of Grant Funds

Wrap Around/Family Support Services—FY '92 State Aid Support and/or Respite for Foster Care Providers

Take notice that, in compliance with N.J.S.A. 52:14-34.4, 34.5 and 34.6, the Department of Human Services announces the following availability of funds:

A. Name of grant program: Support and/or Respite for Foster Care Providers.

B. Purpose for which the grant program funds shall be used: This program will provide support and/or respite services for 30 foster homes located in the DYFS Northern Region in an effort to strengthen the

current foster care system by maintaining the number of foster homes, reducing multiple placements, retaining foster parent resources and caring for children in a family/community setting, whenever possible.

C. Amount of money in the grant program: Funding in the amount of $240,000 in State Grant-in-Aid funds is available for this program (maximum funding for services in one home is $8,000). This funding will be continuous. There are no matching funds required.

D. Organizations which may apply for funding under this program: Public or private not-for-profit social service agencies serving the Northern Region (Bergen, Hudson, Morris, Passaic, Sussex and Warren Counties).

E. Qualifications needed by an applicant to be considered for funding: Applicants shall have experience providing support and/or respite services for children in dysfunctional families.

F. Procedure for eligible organizations to apply: Agencies interested in applying for these funds should submit seven copies of the completed Request for Proposal to the address given below.

G. Address to which applications must be submitted: The completed Request for Proposal is to be returned to the New Jersey Division of Youth and Family Services, Northern Regional Office, 100 Hamilton Plaza—Room 710, Paterson, New Jersey 07505.

H. Deadline by which applications must be submitted: The completed application and all required supporting materials and copies must be received by the New Jersey Division of Youth and Family Services, Northern Regional Office, by 4:00 P.M. on February 25, 1992.

I. Date by which applicants shall be notified of acceptance or rejection: March 6, 1992.

INSURANCE

(a)

DIVISION OF ACTUARIAL SERVICES/PROPERTY AND CASUALTY

Notice Of Receipt Of Petition For Rulemaking Reductions in Premium Charges for Private Passenger Automobiles Equipped with Anti-Theft, Vehicle Recovery and Safety Devices

N.J.A.C. 11:3-39.4 and 39.5

Petitioner: Auto Watch International, Inc. and SecurEtch, Inc.
Authority: N.J.S.A. 17:1-8, 17:1c-6(c) and 17:33B-44.

Take notice that on December 6, 1991 the Department of Insurance (Department) received two petitions for rulemaking from Auto Watch International, Inc. and SecurEtch, Inc. (two affiliated companies) through Donald P. Sweeney, an officer of the Auto Watch Group.

The first petition requests the Department to promulgate a rule which amends the provisions of N.J.A.C. 11:3-39.5(c)11, to define "a specific identifiable set of numbers" as the VIN (Vehicle Identification Number) as established by the manufacturer of the vehicle. The purpose of the proposed amendment is to provide local police officers with the ability to determine if a specific vehicle has been stolen through immediate computer interfacing with the National Crime Information Center.

The second petition requests the Department to promulgate a rule which amends the provisions of N.J.A.C. 11:3-39.4 and N.J.A.C. 11:3-39.5(c)11, to reflect separate applicable automobile insurance base rate discounts for vehicles etched by a chemical process than for vehicles etched by an abrasive (sandblast) process. Specifically, the petitioner proposes that the automobile insurance base rate discount applicable to the abrasive window etching process exceed the automobile insurance base rate discount applicable to the chemical window etching process. The purpose of the proposed amendment, according to petitioner, is to recognize, via an automobile insurance base rate reduction, the fact that the abrasive window etching process is more difficult to alter, obscure or eliminate, through polishing processes or other means, than the chemical window etching process.

The Department will take appropriate action on the petitions pursuant to N.J.A.C. 11:1-15.

(b)

DIVISION OF CONSUMER AFFAIRS

Notice of Receipt Of Petition For Rulemaking Producer Licensing: General Provisions

N.J.A.C. 11:17-1.2

Petitioner: Standard Guaranty Insurance Company.
Authority: N.J.S.A. 17:1c-6, 17:1-8.1, P.L. 1987, c.293 (N.J.S.A. 17:22A-1 et seq.).

Take notice that on December 16, 1991 the Department of Insurance (Department) received a petition for rulemaking from the Standard Guaranty Insurance Company, a New Jersey-licensed underwriter, through its General Counsel and Senior Vice President, Jerome Atkinson, Esq.

The petition requests that the Department act upon a proposed amendment to N.J.A.C. 11:17-1.2 which would permit credit involuntary unemployment insurance to be solicited by a limited credit property and casualty insurance representative. N.J.S.A. 17:22A-16 provides the statutory authorization for limited insurance representatives and states that the Commissioner of the Department of Insurance "shall establish, by rule or regulation, the kind or kinds of insurance that may be marketed through limited insurance representatives."

Petitioner states that the New Jersey Legislature favorably reviewed the sale of credit involuntary unemployment insurance in conjunction with some forms of consumer debt by passing P.L. 1991, c.118, effective April 24, 1991, authorizing the sale of credit involuntary unemployment insurance in connection with second mortgages, consumer loans and installment loans. As a result of this statutory change, finance companies in New Jersey are now interested in offering group credit involuntary unemployment coverage, which has been approved by the Department.

Petitioner alleges that, unless limited insurance representative status is granted to agents offering credit involuntary unemployment coverage, agents who wish to solicit for credit involuntary unemployment insurance would have to obtain an insurance producer license with property/casualty authority, which requires a 150-hour study course and a written examination and that such a requirement would hamper or frustrate the intent of the Legislature.

N.J.A.C. 11:17A-1.2 defines a limited insurance representative as "a person who is authorized to solicit, negotiate or effect contracts for a particular line of insurance as an agent for an insurance company authorized to write that line in this State which by nature of the line of business and the manner by which it is marketed to the public does not require the professional competency demanded for an insurance producer license." The petitioner states that the Department has determined that credit life, credit health and credit property and casualty insurance may be solicited by a limited insurance representative pursuant to N.J.A.C. 11:17-2.10.

Petitioner argues that since credit involuntary unemployment is a type of credit insurance which is similar to credit life and credit health insurance, the Department should permit the sale of credit involuntary unemployment insurance by limited insurance representative.

Petitioner further states that adoption of this amendment would enable financial institutions to offer credit involuntary unemployment insurance to debtors in furtherance of the legislative intent evinced by the recent passage of P.L. 1991, c.118. Specifically, petitioner requests that the Department promulgate a rule which expands the definition of credit property/casualty insurance in N.J.A.C. 11:17-1.2(b) to include credit involuntary unemployment insurance by adding the following provisions:

"Credit property/casualty insurance" means property insurance coverage solely for the lender's interest against loss of or damage to personal property serving as security on a specific loan or credit transaction, and credit involuntary unemployment insurance, **which means casualty insurance on a debtor to provide indemnity for payments becoming due on a specific loan or credit transaction while the debtor is involuntarily unemployed.** NOTE: Proposed amendment is in **boldface.**

The Department will take appropriate action on the petition pursuant to N.J.A.C. 11:1-15.

LABOR

(a)

DIVISION OF WORKPLACE STANDARDS
Notice of Action on Petition for Rulemaking
Prevailing Wages for Public Works
N.J.A.C. 12:60-3

Petitioners: American Telephone & Telegraph Company by Mudge, Rose, Guthrie, Alexander & Ferdon (Joseph A. Hoffman); New Jersey Bell Telephone Company by Schiller, Vyzas, Squeo & Hartnett (Bernard Hartnett).

Take notice that on September 12, 1991, the Department of Labor (the Department) received a petition for rulemaking concerning N.J.A.C. 12:60-3, the Department's rules on the New Jersey Prevailing Wage Law. Specifically, petitioners requested that the Department amend N.J.A.C. 12:60-3.2 to include "telephone workers" within those crafts, trades or classes of workers which shall be paid prevailing wages on public works construction contracts governed by the New Jersey Prevailing Wage Law. Public notice of this petition was published in the October 21, 1991 New Jersey Register at 23 N.J.R. 3181(b). A notice of action on the petition advising of the need for further staff study and examination of the issues raised, to conclude by December 31, 1991, was published in the December 2, 1991 New Jersey Register at 23 N.J.R. 3659(b).

Take further notice that, in accordance with N.J.A.C. 1:30-3.6, the Department has determined that additional time is needed to study and examine the issues raised. This further review shall be concluded by February 29, 1992.

Upon the conclusion of the Department's deliberations, the decision will be mailed to the petitioners and published in a future New Jersey Register.

A copy of this notice has been mailed to petitioners, as required by N.J.A.C. 1:30-3.6.

TRANSPORTATION

(b)

THE COMMISSIONER
DIVISION OF POLICY, CAPITAL PROGRAMMING, AND AUTHORITIES
BUREAU OF POLICY AND LEGISLATIVE ANALYSIS
Notice of Action on Petition for Rulemaking
Speed Limits
Routes 679 North Maple Avenue and U.S. Highway No. 9, New Gretna Village
N.J.A.C. 16:28-1.41

Petitioners: Mrs. Joan A. Zaryck, RD #1, Box 299B, New Gretna, New Jersey 08087; including Petition with 138 signatures of citizens.

Authority: N.J.S.A. 52:14B-4(f).

Take notice on October 16, 1991 the Department of Transportation (Department) received a petition for rulemaking concerning N.J.A.C. 16:28-1.41, the Department rules governing the speed limits along Routes U.S. 9 in the Village of New Gretna, New Jersey in Bass River Township (see 23 N.J.R. 3660(b)).

In accordance with the provisions of N.J.A.C. 1:30-3.6 and after thorough review of the petition and traffic investigation, the Department has determined that the reduction in speed limit was warranted.

The Department will be amending the rule as it presently appears in the New Jersey Administrative Code at N.J.A.C. 16:28-1.41 as reads: "40 miles per hour to Green Bush Road (Co. Rd. 654) in Bass River Township (mileposts 56.00 to 57.28); thence" to "**35** miles per hour to Green Bush Road (Co. Rd. 654) in Bass River Township (mileposts 56.00 to 57.28; thence."

A copy of this notice has been mailed to the petitioner as required by N.J.A.C. 1:30-3.6.

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 December 2, 1991 issue.

If you need to retain a copy of all currently proposed rules, you must save the last 12 months of Registers. A proposal may be adopted up to one year after its initial publication in the Register. Failure to adopt a proposed rule on a timely basis requires the proposing agency to resubmit the proposal and to comply with the notice and opportunity-to-be-heard requirements of the Administrative Procedure Act (N.J.S.A. 52:14B-1 et seq.), as implemented by the Rules for Agency Rulemaking (N.J.A.C. 1:30) of the Office of Administrative Law. If an agency allows a proposed rule to lapse, "Expired" will be inserted to the right of the Proposal Notice N.J.R. Citation in the next Register following expiration. Subsequently, the entire proposal entry will be deleted from the Index. See: N.J.A.C. 1:30-4.2(c).

Terms and abbreviations used in this Index:

N.J.A.C. Citation. The New Jersey Administrative Code numerical designation for each proposed or adopted rule entry.

Proposal Notice (N.J.R. Citation). The New Jersey Register page number and item identification for the publication notice and text of a proposed amendment or new rule.

Document Number. The Registry number for each adopted amendment or new rule on file at the Office of Administrative Law, designating the year of adoption of the rule and its chronological ranking in the Registry. As an example, R.1992 d.1 means the first rule adopted in 1992.

Adoption Notice (N.J.R. Citation). The New Jersey Register page number and item identification for the publication notice and text of an adopted amendment or new rule.

Transmittal. A series number and supplement date certifying the currency of rules found in each Title of the New Jersey Administrative Code: Rule adoptions published in the Register after the Transmittal date indicated do not yet appear in the loose-leaf volumes of the Code.

N.J.R. Citation Locator. An issue-by-issue listing of first and last pages of the previous 12 months of Registers. Use the locator to find the issue of publication of a rule proposal or adoption.

MOST RECENT UPDATE TO THE ADMINISTRATIVE CODE: SUPPLEMENT NOVEMBER 18, 1991

NEXT UPDATE: SUPPLEMENT DECEMBER 16, 1991

Note: If no changes have occurred in a Title during the previous month, no update will be issued for that Title.

N.J.R. CITATION LOCATOR

If the N.J.R. citation is between:	Then the rule proposal or adoption appears in this issue of the Register	If the N.J.R. citation is between:	Then the rule proposal or adoption appears in this issue of the Register
23 N.J.R. 145 and 248	January 22, 1991	23 N.J.R. 2205 and 2446	August 5, 1991
23 N.J.R. 249 and 332	February 4, 1991	23 N.J.R. 2447 and 2560	August 19, 1991
23 N.J.R. 333 and 636	February 19, 1991	23 N.J.R. 2561 and 2806	September 3, 1991
23 N.J.R. 637 and 798	March 4, 1991	23 N.J.R. 2807 and 2898	September 16, 1991
23 N.J.R. 799 and 924	March 18, 1991	23 N.J.R. 2899 and 3060	October 7, 1991
23 N.J.R. 925 and 1048	April 1, 1991	23 N.J.R. 3061 and 3192	October 21, 1991
23 N.J.R. 1049 and 1226	April 15, 1991	23 N.J.R. 3193 and 3402	November 4, 1991
23 N.J.R. 1227 and 1482	May 6, 1991	23 N.J.R. 3403 and 3548	November 18, 1991
23 N.J.R. 1483 and 1722	May 20, 1991	23 N.J.R. 3549 and 3678	December 2, 1991
23 N.J.R. 1723 and 1854	June 3, 1991	23 N.J.R. 3679 and 3840	December 16, 1991
23 N.J.R. 1855 and 1980	June 17, 1991	24 N.J.R. 1 and 164	January 6, 1992
23 N.J.R. 1981 and 2071	July 1, 1991	24 N.J.R. 165 and 318	January 21, 1992
23 N.J.R. 2079 and 2204	July 15, 1991		

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
ADMINISTRATIVE LAW—TITLE 1				
1:1-18.1	Initial decision in contested cases	23 N.J.R. 3406(a)		
1:13A-18.2	Lemon Law hearings: exception to initial decision	23 N.J.R. 3682(a)		
1:14	Board of Public Utility hearings: administrative change	———	———	23 N.J.R. 3647(a)
1:31-3	Discipline of administrative law judges	23 N.J.R. 2901(a)	R.1992 d.17	24 N.J.R. 87(a)
1:31-3	Discipline of administrative law judges: extension of comment period	23 N.J.R. 3179(a)		

Most recent update to Title 1: TRANSMITTAL 1991-5 (supplement October 21, 1991)

AGRICULTURE—TITLE 2

Most recent update to Title 2: TRANSMITTAL 1991-6 (supplement August 19, 1991)

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
BANKING—TITLE 3				
3:1-16	Mortgage processing rules	23 N.J.R. 2613(b)		
3:1-16	Mortgage processing rules: extension of comment period	24 N.J.R. 3(a)		
3:1-19	Consumer checking accounts	23 N.J.R. 3682(b)		
3:6-4.5, 4.6	Banks and savings banks: reporting of crimes	23 N.J.R. 2903(a)		
3:6-4.5, 4.6	Banks and savings banks: extension of comment period regarding reporting of crimes	24 N.J.R. 3(a)		
3:13	Bank holding companies and interstate acquisitions	23 N.J.R. 2904(a)	R.1992 d.40	24 N.J.R. 229(a)
3:13	Bank holding companies and interstate acquisitions: extension of comment period	23 N.J.R. 3686(a)		
3:21	Credit unions	23 N.J.R. 3686(b)		
3:21-1	Low-income credit unions	23 N.J.R. 2905(a)		
3:21-1	Low-income credit unions: correction to comment period deadline	23 N.J.R. 3196(a)		
3:21-1	Low-income credit unions: extension of comment period	24 N.J.R. 3(a)		
3:26-3.1, 3.2	Savings and loan associations: reporting of crimes	23 N.J.R. 2903(a)		
3:26-3.1, 3.2	Savings and loan associations: extension of comment period regarding reporting of crimes	24 N.J.R. 3(a)		
3:38-1.1, 1.9, 4.1, 5	Mortgage financing activities and real estate licensees	23 N.J.R. 3406(b)		
3:38-1.1, 1.9, 4.1, 5	Mortgage financing activities and real estate licensees: extension of comment period	23 N.J.R. 3686(c)		
3:38-1.2, 1.4, 1.9, 2.1	Mortgage banker and broker net worth standards	23 N.J.R. 2450(a)	R.1991 d.588	23 N.J.R. 3743(a)

Most recent update to Title 3: TRANSMITTAL 1991-8 (supplement October 21, 1991)

CIVIL SERVICE—TITLE 4

Most recent update to Title 4: TRANSMITTAL 1990-3 (supplement July 16, 1990)

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
PERSONNEL—TITLE 4A				
4A:2-2.13	Expungement from personnel files of references to disciplinary action	23 N.J.R. 2906(a)		
4A:4-2.16	Inspection of examination scoring keys	23 N.J.R. 2906(b)	R.1992 d.41	24 N.J.R. 229(b)
4A:4-7.10, 7.12	Reinstatement following disability retirement	23 N.J.R. 2907(a)		
4A:4-7.11	Retention of rights by transferred employees	23 N.J.R. 1984(b)		

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
4A:6-1.6	Sick Leave Injury (SLI): State service	23 N.J.R. 2907(b)		
4A:6-1.6	Sick Leave Injury (SLI): withdrawal of proposal	23 N.J.R. 3093(a)		

Most recent update to Title 4A: TRANSMITTAL 1991-3 (supplement October 21, 1991)

COMMUNITY AFFAIRS—TITLE 5

5:12-2.1	Homelessness Prevention Program: eligibility	23 N.J.R. 3439(a)		
5:14-1.1–1.6, 2.1, 2.2, 2.3, 3.1–3.12, 3A, 4.10, App. A–D	Neighborhood Preservation Balanced Housing Program	23 N.J.R. 1075(a)		
5:18-1.1, 1.5, 2.4A, 2.6, 2.9, 4.1, 4.7, 4.11, 4.17	Uniform Fire Code: compliance and enforcement	23 N.J.R. 3552(a)		
5:18-2.4A, 2.4B, 2.7	Uniform Fire Code: life hazard uses; permits	23 N.J.R. 2999(a)		
5:18-2.8, 2.20, 3.2, 4.3, 4.19	Uniform Fire Code: smoke detector compliance in one and two-family dwellings	23 N.J.R. 3064(a)	R.1992 d.11	24 N.J.R. 88(a)
5:18-2.19	Uniform Fire Code: identifying emblems for structures with truss construction	23 N.J.R. 2618(a)	R.1992 d.5	24 N.J.R. 89(a)
5:18-3	State Fire Prevention Code	23 N.J.R. 3554(a)		
5:18A-2.6	Fire Code Enforcement: collection of fees	23 N.J.R. 3552(a)		
5:18C-4.2	Firefighter I certification	23 N.J.R. 2084(a)		
5:19-2.12, 9.3	Continuing care retirement communities: civil penalties for violations of Financial Disclosure Act	24 N.J.R. 3(b)		
5:23-2.1, 2.15	Uniform Construction Code: licensing disputes	24 N.J.R. 4(a)		
5:23-3.8A, 3.15	Uniform Construction Code: sale of nonconforming toilets	23 N.J.R. 3602(a)		
5:23-3.21	UCC: one and two family dwelling subcode	23 N.J.R. 3444(b)		
5:23-4.5, 4.19	Uniform Construction Code: electronic reporting by municipal enforcing agencies	23 N.J.R. 3440(a)		
5:23-4.14, 4A.17, 8.18	Uniform Construction Code: pre-proposal regarding private enforcing agencies	23 N.J.R. 1985(a)		
5:23-4.14, 4A.17, 8.18	Uniform Construction Code: preproposal regarding private enforcing agencies	23 N.J.R. 2908(a)		
5:23-5.25	Uniform Construction Code: revocation of licenses and alternative sanctions; review committees	23 N.J.R. 3441(a)		
5:23-10, App. 10-A	Radon Hazard Subcode: tier I municipalities	________	________	23 N.J.R. 3745(a)
5:23-11	Uniform Construction Code: Indoor Air Quality Subcode	23 N.J.R. 1730(b)	R.1992 d.33	24 N.J.R. 229(c)
5:23-12.2	Elevator Safety Subcode: referenced standards	23 N.J.R. 2046(a)		
5:25-1.3	New home warranties: "major structural defect"	23 N.J.R. 3603(a)		
5:25A	Fire retardant treated (FRT) plywood roof sheathing failures: alternative claim procedures	23 N.J.R. 3603(a)		
5:33-4	Property tax and mortgage escrow account transactions	23 N.J.R. 1903(a)		
5:80-29	Housing and Mortgage Finance Agency: investment of surplus funds	23 N.J.R. 2621(a)		
5:80-30	Housing and Mortgage Finance Agency: residual receipts	23 N.J.R. 3733(a)		
5:80-31	Housing and Mortgage Finance Agency: attorney services	23 N.J.R. 2622(a)		
5:91-15	Council on Affordable Housing: municipal development fees	23 N.J.R. 2813(b)	R.1992 d.45	24 N.J.R. 235(a)
5:91-15	Council on Affordable Housing: public hearing and extension of comment period regarding municipal development fees	23 N.J.R. 3132(a)		
5:92	Council on Affordable Housing: preproposal regarding mandatory developers' fees	23 N.J.R. 646(b)		
5:92-1.3, 1.4, 8.4, 18	Council on Affordable Housing: municipal development fees	23 N.J.R. 2813(b)	R.1992 d.45	24 N.J.R. 235(a)
5:92-1.3, 1.4, 8.4, 18	Council on Affordable Housing: public hearing and extension of comment period regarding municipal development fees	23 N.J.R. 3132(a)		
5:92-1.6	Council on Affordable Housing: interim substantive certification	23 N.J.R. 3253(a)		

Most recent update to Title 5: TRANSMITTAL 1991-11 (supplement November 18, 1991)

MILITARY AND VETERANS' AFFAIRS (formerly DEFENSE)—TITLE 5A

5A:3	Military service medals	23 N.J.R. 1490(a)		
5A:3-1, 2	Military service medals: reopening of comment period	23 N.J.R. 3409(a)		
5A:4	Brigadier General William C. Doyle Veterans' Memorial Cemetery	23 N.J.R. 1491(a)		
5A:4	Brigadier General William C. Doyle Veterans' Memorial Cemetery: reopening of comment period	23 N.J.R. 3254(a)		

Most recent update to Title 5A: TRANSMITTAL 1990-2 (supplement June 18, 1990)

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
EDUCATION—TITLE 6				
6:5-2	Organization of Department	Exempt	R.1992 d.21	24 N.J.R. 90(a)
6:8	Thorough and efficient system of schools	23 N.J.R. 2908(b)	R.1992 d.22	24 N.J.R. 90(b)
6:8-1.1, 6.1, 6.2, 6.3	Preventive and remedial programs in reading, writing and mathematics	23 N.J.R. 2085(a)		
6:11-6.2	Early childhood instructional certificate	23 N.J.R. 2210(b)		
6:20-2.13, 2A.11, 3.1, 3.3, 3.4, 5.8	Free balance and restricted appropriations; tuition rates for regular public and county schools; excess surplus calculation	23 N.J.R. 2818(a)	R.1991 d.590	23 N.J.R. 3746(a)
6:20-4.1	Tuition for private schools for handicapped: administrative correction	————	————	24 N.J.R. 245(a)

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N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
ENVIRONMENTAL PROTECTION AND ENERGY—TITLE 7				
7:1-1.3, 1.4	Delegations of authority within the Department	23 N.J.R. 3276(a)		
7:1-2	Third-party appeals of permit decisions	23 N.J.R. 3278(a)		
7:1E-1.6, 1.9, 7, 8, 9, 10	Discharges of petroleum and other hazardous substances: confidentiality of information	23 N.J.R. 2848(a)		
7:1H	County environmental health standards: request for public input concerning amendments to N.J.A.C. 7:1H	23 N.J.R. 2237(a)		
7:1I-3.3	Sanitary Landfill Facility Contingency Fund: suspension of claims	22 N.J.R. 3675(a)	R.1991 d.582	23 N.J.R. 3647(b)
7:2-11.3–11.9, 11.12–11.14	Natural Areas and Natural Areas System	23 N.J.R. 1985(b)		
7:4	New Jersey Register of Historic Places: procedures for listing of historic places	23 N.J.R. 2103(a)		
7:7-4.5, 4.6	Coastal Permit Program: public hearings; final review of applications	23 N.J.R. 3280(a)		
7:7A	Freshwater Wetlands Protection Act rules: water quality certification	23 N.J.R. 338(a)		
7:9-5.8	Water pollution control: minimum treatment requirements	23 N.J.R. 1493(a)		
7:9-6	Ground water quality standards: request for comment on draft revisions	23 N.J.R. 1988(a)		
7:11-2.2, 2.3, 2.9	Sale of water from Delaware and Raritan Canal and Spruce Run/Round Valley Reservoirs System	23 N.J.R. 3686(d)		
7:11-4.3, 4.4, 4.9, 4.13	Sale of water from Manasquan Reservoir Water Supply System	23 N.J.R. 3688(a)		
7:12-1.1, 2.1, 3.2, 4.1, 4.2, 7.1, 9.8, 9.10	Shellfish growing water classification	23 N.J.R. 2993(a)	R.1991 d.592	23 N.J.R. 3751(a)
7:13	Flood hazard area control: opportunity to comment on draft revisions	23 N.J.R. 1989(a)		
7:13-7.1	Redelineation of South Branch Raritan River in Hunterdon County	23 N.J.R. 647(b)		
7:14-8.2, 8.5	Clean Water Enforcement Act: civil administrative penalties and reporting requirements	23 N.J.R. 2238(a)		
7:14-8.4	Water Pollution Control Act penalties: administrative correction	————	————	23 N.J.R. 3754(a)
7:14-8.13	Water Pollution Control Act: request for public input regarding economic benefit derived from noncompliance and determination of civil administrative penalties	23 N.J.R. 2241(a)		
7:14A-1.9, 3.10	Clean Water Enforcement Act: civil administrative penalties and reporting requirements	23 N.J.R. 2238(a)		
7:14A-15	Industrial wastewater pretreatment: preproposed rules	23 N.J.R. 149(a)		
7:14B-4.5, 9.1, 13.20	Underground storage tank systems	23 N.J.R. 2854(a)		
7:22	Financial assistance programs for wastewater treatment facilities	23 N.J.R. 3282(a)	R.1992 d.42	24 N.J.R. 246(a)
7:25-18.1	Taking of Atlantic sturgeon: preproposed amendment	23 N.J.R. 1111(a)		
7:25-18.1, 18.5, 18.12	Weakfish management program	24 N.J.R. 4(c)		
7:26-1.2, 1.4, 8.2, 8.13, 9.1, 9.4, 9.5, 9.7, 9.10, 10.4, 10.7, 10.8, 11.5, 12.1, 12.2, 12.4, 12.5, 12.9, 17.4	Hazardous waste management	23 N.J.R. 2453(b)		
7:26-2.4	Small scale solid waste facility permits: request for comment on draft revisions to N.J.A.C. 7:26-2.4	23 N.J.R. 2458(a)		
7:26-4.6	Solid waste program fees	23 N.J.R. 3690(a)		
7:26-4A.3	Fee schedule for hazardous waste generators, facilities, and transporters: correction to proposal	23 N.J.R. 1113(a)		
7:26-4A.3, 4A.5	Fee schedule for hazardous waste generators, facilities, and transporters	23 N.J.R. 814(a)		

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
7:26-5.4, 7.4, 7.6, 9.4, 12.4	Hazardous waste manifest discrepancies	23 N.J.R. 3607(a)		
7:26-7.7, 8.2, 8.3, 8.4, 8.20, 9.1	PCB hazardous waste	23 N.J.R. 2855(a)		
7:26-8.2	Hazardous waste exclusions: household waste	23 N.J.R. 3410(a)		
7:26-8.2	Hazardous waste exclusions: used chlorofluorocarbon refrigerants	23 N.J.R. 3692(a)		
7:26-8.16	Hazardous constituents in waste streams	23 N.J.R. 3093(b)		
7:27-8.1, 8.2, 8.11, 16, 17.1, 17.3–17.9, 23.2, 23.3, 23.5, 23.6, 25.2	Air pollution by volatile organic compounds	23 N.J.R. 1858(b)		
7:27-16.5	Air pollution by volatile organic compounds: corrections to proposal and addresses for inspection of copies	23 N.J.R. 2119(a)		
7:27-25.1, 25.2, 25.5, 25.7, 25.8	Vehicular fuel air pollution: extension of time to inspect copies of proposed amendments and new rules	23 N.J.R. 261(a)		
7:27A-3.2, 3.10, 3.11	Air pollution by volatile organic compounds: civil administrative penalties	23 N.J.R. 1858(b)		
7:27B-3.1, 3.2, 3.4–3.12, 3.14, 3.15, 3.17, 3.18	Air pollution by volatile organic comounds: sampling and analytical procedures	23 N.J.R. 1858(b)		
7:27B-3.10	Air pollution by volatile organic compounds: corrections to proposal and addresses for inspection of copies	23 N.J.R. 2119(a)		
7:28-1.4, 20	Particle accelerators for industrial and research use	23 N.J.R. 1401(c)		
7:50-2.11, 4.61–4.70, 5.27, 5.28, 5.30, 5.32, 6.13	Pinelands Comprehensive Management Plan: waivers of strict compliance	23 N.J.R. 2458(b)		
7:60-1	Low-level radioactive waste disposal facility: assessment of generators for cost of siting and developing	23 N.J.R. 3410(b)		
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HEALTH—TITLE 8				
8:18-1.2, 1.4, 1.5, 1.7, 1.10, 1.11, 1.13–1.17	Catastrophic Illness in Children Relief Fund Program	23 N.J.R. 2564(a)	R.1991 d.595	23 N.J.R. 3754(b)
8:21A	Good drug manufacturing practices: reopening of comment period	23 N.J.R. 1252(a)		
8:31A-1.1, 2.6, 7.4, 7.5, App. A, D	SHARE Manual: patient day add-on; EDR and OPPM cost centers	23 N.J.R. 2242(a)	R.1991 d.580	23 N.J.R. 3648(a)
8:31B	Hospital rate setting	23 N.J.R. 3097(a)		
8:31B-3.65, 3.71	Hospital reimbursement: Schedule of Rates adjustments and reconciliation	23 N.J.R. 3042(a)	R.1991 d.589	23 N.J.R. 3755(a)
8:31B-3.73	Hospital rate setting: correction to proposed amendment and extension of comment period	23 N.J.R. 3442(a)		
8:31B-5.3	Hospital reimbursement: Diagnosis Related Groups	23 N.J.R. 3114(a)		
8:31C-1	Residential alcoholism treatment facilities: cost accounting and rate evaluation	23 N.J.R. 3609(a)		
8:31C-1.21, App. A	Residential alcoholism treatment facilities: patient day add-on	23 N.J.R. 2243(a)	R.1991 d.579	23 N.J.R. 3650(a)
8:33I	Megavoltage radiation oncology units	23 N.J.R. 1906(a)		
8:33J-1.1, 1.2, 1.3, 1.6	Magnetic Resonance Imaging (MRI) services	23 N.J.R. 1906(b)		
8:33M-1.6	Adult comprehensive rehabilitation services: bed need methodology	23 N.J.R. 1908(a)		
8:39-4.1, 9.1, 9.5, 11.2, 13.4, 35.2	Long-term care facilities: patient advance directives	23 N.J.R. 3611(a)		
8:39-9.2	Long-term care facilities: mandatory administration policies and procedures	23 N.J.R. 3613(a)		
8:40	Licensure of invalid coach and ambulance services: waiver of expiration provision of Executive Order No. 66(1978)	23 N.J.R. 2245(a)		
8:40	Invalid coach and ambulance services	23 N.J.R. 2566(a)	R.1992 d.16	24 N.J.R. 119(a)
8:41-8	Mobile intensive care units: administration of medications	23 N.J.R. 3734(a)		
8:41A	Emergency medical technician-defibrillation programs: certification and operation	23 N.J.R. 1254(a)		
8:42-1.1, 6.1, 6.2, 11.2	Home health agency standards: patient advance directives	23 N.J.R. 3254(b)		
8:43-4.7, 4.15, 4.16, 7.2	Residential health care facilities: patient advance directives	23 N.J.R. 3616(a)		
8:43E-3.10, 3.15	Adult closed acute psychiatric beds: liaison participation and discharge planning	23 N.J.R. 3128(a)		

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8:43G-4.1, 5.2, 5.3, 5.5, 5.7, 5.9, 5.12, 5.16, 5.18, 7.5, 7.16, 7.22, 7.23, 7.24, 7.26, 7.28, 7.32, 7.33, 7.34, 7.37, 7.40, 8.4, 8.7, 8.11, 9.7, 9.14, 9.19, 10.1, 10.4, 11.5, 12.2, 12.3, 12.7, 12.10, 13.4, 13.13, 14.1, 14.9, 15.2, 15.3, 16.1, 16.2, 16.6, 16.7, 18.4–18.7, 19.2, 19.5, 19.13, 19.14, 19.15, 19.17, 19.18, 19.22, 19.23, 19.33, 20.1, 20.2, 22.2, 22.3, 22.12, 22.17, 22.20, 23.1, 23.2, 23.6, 24.9, 24.13, 25.1, 26.2, 26.3, 26.9, 28.1, 28.8, 28.10, 29.13, 29.17, 30.1, 30.2, 30.3, 30.5, 30.6, 30.8, 30.11, 32.3, 32.5, 32.9, 32.12, 33.6, 35.2	Hospital licensing standards	23 N.J.R. 2590(a)		
8:43G-5.1, 5.2, 5.9, 15.2	Hospital licensing standards: patient advance directives	23 N.J.R. 3256(a)		
8:43H-3.4, 5.3, 5.4, 17.2, 19.3, 19.5	Rehabilitation hospitals: patient advance directives	23 N.J.R. 3614(a)		
8:52	Local boards of health: activities and standards	23 N.J.R. 2825(a)	R.1992 d.24	24 N.J.R. 144(a)
8:57-2.1, 2.2, 2.3	AIDS prevention and control: reporting requirements	23 N.J.R. 3735(a)		
8:57-2.1, 2.2, 2.3	AIDS prevention and control: clarification of proposal summary regarding reporting of HIV infection	24 N.J.R. 59(a)		
8:65-2.4, 2.5, 6.6, 6.13, 6.16	Controlled dangerous substances: handling of carfentanil, etorphine hydrochloride, and diprenorphine	23 N.J.R. 1911(a)		
8:65-7.5, 7.10	Controlled dangerous substances: partial filling of prescriptions for Schedule II substances	23 N.J.R. 3618(a)		
8:66	Alcohol countermeasures: waiver of expiration provision of Executive Order No. 66(1978)	23 N.J.R. 177(a)		
8:71	Interchangeable drug products	23 N.J.R. 1509(a)	R.1992 d.26	24 N.J.R. 145(a)
8:71	Interchangeable drug products	23 N.J.R. 2610(a)	R.1992 d.25	24 N.J.R. 144(b)
8:71	Interchangeable drug products	23 N.J.R. 3258(a)	R.1992 d.27	24 N.J.R. 145(b)
8:71	Interchangeable drug products	24 N.J.R. 59(b)		
8:71	Interchangeable drug products	24 N.J.R. 61(a)		
8:80	HealthStart Plus: eligibility criteria	24 N.J.R. 62(a)		

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9:4-1.12	Capital projects at county colleges	23 N.J.R. 3196(b)		
9:4-3.12	Noncredit courses at county community colleges	23 N.J.R. 1056(a)		
9:7-4.2	Garden State Scholarships: academic requirements	23 N.J.R. 2211(a)	R.1991 d.599	23 N.J.R. 3756(a)
9:7-9.1, 9.2, 9.4, 9.8	Paul Douglas Teacher Scholarship Program	24 N.J.R. 8(a)		
9:11-1.5	Educational Opportunity Fund: financial eligibility for undergraduate grants	23 N.J.R. 1739(a)		

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HUMAN SERVICES—TITLE 10

10:2	State and County Human Services Advisory Councils	23 N.J.R. 3259(a)	R.1992 d.28	24 N.J.R. 95(a)
10:7	Role of county adjuster	23 N.J.R. 2953(a)	R.1992 d.31	24 N.J.R. 278(a)
10:12-3	Referral of handicapped students for adult educational services	23 N.J.R. 2959(a)	R.1992 d.37	24 N.J.R. 287(a)
10:15, 15A, 15B, 15C	Child Care Services: provision, eligibility for programs, co-payments and procedures	23 N.J.R. 2960(a)	R.1991 d.600	23 N.J.R. 3771(a)
10:16	Child Death and Critical Incident Review Board concerning children under DYFS supervision	23 N.J.R. 3417(a)		
10:49-10	Prepaid health care services for Medicaid eligibles	24 N.J.R. 64(a)		
10:50	Transportation Services Manual	23 N.J.R. 3619(a)		
10:51 et al.	Bundled drug services reimbursement: public hearing	23 N.J.R. 1310(a)		

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
10:51-1.1, 1.14, 3.3, 3.12	Bundled drug services	23 N.J.R. 281(a)		
10:52-1.1, 1.22	Bundled drug services	23 N.J.R. 281(a)		
10:53-1.1, 1.17	Bundled drug services	23 N.J.R. 281(a)		
10:54-1.1, 1.16	Bundled drug services	23 N.J.R. 281(a)		
10:56-1.1, 1.4	Bundled drug services	23 N.J.R. 281(a)		
10:57-1.1, 1.18	Bundled drug services	23 N.J.R. 281(a)		
10:60-4.3	Home Care Expansion Program: cost sharing by beneficiaries	23 N.J.R. 2826(a)	R.1991 d.578	23 N.J.R. 3651(a)
10:66-1.2, 1.10	Bundled drug services	23 N.J.R. 281(a)		
10:66-1.6, 1.7, 3.2	Ambulatory surgical center reimbursement	23 N.J.R. 3265(a)		
10:69B-4.8	Lifeline Programs: submission date for utility assistance eligibility applications	23 N.J.R. 3267(a)		
10:72-6.1–6.5	New Jersey Care: presumptive eligibility process for pregnant women	23 N.J.R. 2827(a)	R.1992 d.10	24 N.J.R. 100(a)
10:81-3.19, 8.22, 14.8, 14.20	REACH/JOBS Program: Medicaid eligibility	23 N.J.R. 2988(a)	R.1992 d.36	24 N.J.R. 287(b)
10:81-14.18, 14.18A, 14.18B	REACH child care co-payment	23 N.J.R. 2981(a)	R.1991 d.601	23 N.J.R. 3791(a)
10:81-15	Child Care Plus Demonstration	23 N.J.R. 8(a)	Expired	
10:82-1.1A	AFDC Standard of Need	23 N.J.R. 285(a)	R.1992 d.1	24 N.J.R. 101(a)
10:82-1.1A	AFDC Standard of Need: public hearings and extension of comment period	23 N.J.R. 967(a)		
10:82-3.1	Assistance Standards Handbook: bank account resources	23 N.J.R. 2625(a)	R.1991 d.603	23 N.J.R. 3796(a)
10:82-4.9	Assistance Standards Handbook: DYFS monthly foster care rates	23 N.J.R. 3420(a)		
10:82-5.3	REACH child care voucher rates	23 N.J.R. 2989(a)		
10:83-1.11	Supplemental Security Income payment levels	Emergency (expires 2-24-92)	R.1992 d.39	24 N.J.R. 300(a)
10:84-1	Efficiency and effectiveness of program operations	23 N.J.R. 1740(a)		
10:84-1	Efficiency and effectiveness of program operations: public hearing and extension of comment period	23 N.J.R. 2220(b)		
10:85-4.1	General Assistance Program: Standard of Need	23 N.J.R. 286(a)	R.1992 d.2	24 N.J.R. 103(a)
10:85-4.1	General Assistance Standard of Need: public hearings and extension of comment period	23 N.J.R. 967(a)		
10:89-2.3, 3.3, 3.5, 3.6, 4.1	Home Energy Assistance Program	Emergency (expires 2-24-92)	R.1992 d.38	24 N.J.R. 300(b)
10:120-1.2	Youth and Family Services: scope of responsibilities and services	23 N.J.R. 3420(b)		
10:122-2.1, 2.8	Child care centers: licensing fees	24 N.J.R. 71(a)		
10:122B	Division of Youth and Family Services: requirements for foster care	23 N.J.R. 3693(a)		
10:122C	DYFS: approval of foster homes	23 N.J.R. 3696(a)		
10:122D	DYFS: foster care services	23 N.J.R. 3703(a)		
10:122E	DYFS: removal of foster children and closure of foster homes	23 N.J.R. 3708(a)		
10:123A	Youth and Family Services: Personal Attendant Services Program	23 N.J.R. 2091(b)		
10:132	Youth and Family Services: court actions and procedures	23 N.J.R. 2099(a)	R.1991 d.576	23 N.J.R. 3651(b)
10:133	DYFS: initial response and service delivery	23 N.J.R. 3714(a)		
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10A:9	Inmate classification process	23 N.J.R. 3721(a)		
10A:10-3	Interstate Corrections Compact	23 N.J.R. 2221(a)	R.1991 d.586	23 N.J.R. 3756(b)
10A:16-13	Inmate commitment for psychiatric treatment	23 N.J.R. 1890(a)	R.1992 d.23	24 N.J.R. 104(a)
10A:17	Inmate social services	23 N.J.R. 3065(a)		
10A:17-7	Inmate marriage	23 N.J.R. 3422(a)		
10A:18-2.9	Identification of inmate outgoing correspondence	23 N.J.R. 2468(a)	R.1992 d.3	24 N.J.R. 107(a)
10A:20-4	Residential Community Release Agreement Programs for adult inmates	23 N.J.R. 3624(a)		
10A:22-2.6	Availability of medical information to inmates	23 N.J.R. 3424(a)		

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11:2-17.7	Automobile insurance: payment of PIP claims	23 N.J.R. 2830(a)		
11:2-17.7	Payment of health insurance claims	23 N.J.R. 3196(c)		
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11:3-29.2, 29.4, 29.6	Automobile PIP coverage: medical fee schedules	23 N.J.R. 3203(a)		
11:3-36.2, 36.4, 36.5, 36.6, 36.7, 36.11	Automobile physical damage coverage inspection procedures	23 N.J.R. 1262(a)		
11:3-40	Insurers required to provide automobile coverage to eligible persons	23 N.J.R. 3736(a)		
11:3-41	Association Producer Voluntary Placement Plan	23 N.J.R. 2275(a)		
11:3-42	Association Producer Assignment Program	23 N.J.R. 2297(a)		
11:3-43	Private passenger automobile insurance: personal lines rating plans	23 N.J.R. 3221(a)		
11:4-14.1, 15.1, 16.2, 19.2, 28.3, 36	BASIC Health Care Coverage	23 N.J.R. 3066(a)		
11:4-16.8, 23, 25	Medicare supplement coverage: minimum standards	24 N.J.R. 12(a)		
11:5-1.13	Real Estate Commission: preservation of brokers' files	23 N.J.R. 3428(a)		
11:5-1.13	Real Estate Commission: extension of comment period regarding preservation of brokers' files	23 N.J.R. 3739(a)		
11:5-1.38–1.42	Real Estate Commission: dual agency for dual compensation practices; kickbacks for referrals; written disclosures; exclusion of outside mortgage lenders	23 N.J.R. 3424(b)		
11:5-1.38–1.42	Real Estate Commission: extension of comment period regarding dual agency for dual compensation practices; kickbacks for referrals; written disclosures; exclusion of outside mortgage lenders	23 N.J.R. 3739(b)		
11:16-4	Automobile insurance: fraud and theft prevention/ detection plans	23 N.J.R. 3236(a)		
11:17A-1.3	Licensure of insurance producers and limited insurance representatives	23 N.J.R. 1912(a)	R.1992 d.44	24 N.J.R. 287(c)

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12:51	Vocational Rehabilitation Services: waiver of expiration provision of Executive Order No. 66(1978)	23 N.J.R. 1893(a)		
12:51	Vocational Rehabilitation Services	23 N.J.R. 2927(a)	R.1991 d.604	23 N.J.R. 3797(a)
12:55	Wage payments	23 N.J.R. 2939(a)	R.1991 d.605	23 N.J.R. 3807(a)
12:56-1.2–1.6	Wage and hour violations, administrative penalties and fees, hearings, and employer offenses	23 N.J.R. 2942(a)	R.1991 d.606	23 N.J.R. 3810(a)
12:58-5	Child labor violations and administrative penalties	23 N.J.R. 2944(a)	R.1991 d.612	23 N.J.R. 3811(a)
12:60-2.1, 6.1	Public works employers: inspection of payroll records	23 N.J.R. 2945(a)		
12:60-9	Prevailing wages for public works: violations, penalties, and fees	23 N.J.R. 2945(b)	R.1991 d.611	23 N.J.R. 3812(a)
12:61-1	Wage collection	23 N.J.R. 2947(a)	R.1991 d.608	23 N.J.R. 3814(a)
12:90-4.12, 4.13, 5.9, 5.14, 7.2	Boilers, pressure vessels, and refrigeration units: inspection and license fees	23 N.J.R. 2948(a)	R.1991 d.609	23 N.J.R. 3815(a)
12:100-4.2, 10, 17.1, 17.3	Safety standards for firefighters	24 N.J.R. 73(a)		
12:190-3.14	Explosives: annual fees for permits to manufacture, sell, store or use	23 N.J.R. 2949(a)	R.1991 d.613	23 N.J.R. 3815(b)
12:195-1.9	Carnival-amusement rides: annual inspection fees	23 N.J.R. 2950(a)	R.1991 d.610	23 N.J.R. 3816(a)
12:210-1	Apparel industry registration	23 N.J.R. 2951(a)	R.1991 d.607	23 N.J.R. 3816(b)
12:235-1.6	Workers' Compensation: 1992 maximum rates	23 N.J.R. 2612(a)	R.1991 d.574	23 N.J.R. 3818(a)

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12A:31-1, 3	Direct Loan Program for small, minority, and women's businesses	23 N.J.R. 2626(a)		
12A:31-2.3, 2.7	Loan Guarantee Program for small, minority, and women's businesses: financial statements	23 N.J.R. 2627(a)		
12A:121-1.2, 2	Urban Enterprise Zone program: extension of 50 percent sales tax exemption to qualified municipalities	23 N.J.R. 1893(b)	R.1991 d.591	23 N.J.R. 3761(a)
12A:121-1.2, 2	Urban Enterprise Zone program: public hearing and reopening of comment period regarding extension of 50 percent sales tax exemption to qualified municipalities	23 N.J.R. 2885(a)		

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13:20-41	Persian Gulf War commemorative license plates	23 N.J.R. 2916(a)	R.1992 d.20	24 N.J.R. 108(a)
13:30-8.4	Announcement of practice in special area of dentistry	23 N.J.R. 3429(a)		

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13:31-1.4	Exempt electrical work and use of qualified journeyman electrician	23 N.J.R. 979(a)		
13:32-1.8	Licensed master plumber: scope of practice	23 N.J.R. 1062(a)		
13:33-1.20, 1.21, 1.22, 1.23, 1.41	Board of Examiners of Ophthalmic Dispensers and Ophthalmic Technicians: fees	23 N.J.R. 3631(a)		
13:35-2.5	Medical standards for screening and diagnostic testing offices	23 N.J.R. 2858(a)		
13:35-2.6–2.12, 2.14, 2A	Certified nurse midwife practice	23 N.J.R. 3632(a)		
13:35-6.4, 6.16, 6.17	Corporate medical practices and Medical Board licensees	23 N.J.R. 161(a)		
13:35-6.4, 6.16, 6.17	Corporate medical practices and Medical Board licensees: public hearing	23 N.J.R. 1063(a)		
13:35-6.5	Medical practice: preparation of patient records	24 N.J.R. 50(a)		
13:35-6.7	Practice of medicine: prescribing of amphetamines and sympathomimetic amine drugs	23 N.J.R. 2248(a)	R.1991 d.597	23 N.J.R. 3763(a)
13:35-6A	Medical practice: declaration of death upon basis of neurological criteria	23 N.J.R. 3635(a)		
13:36-7	Board of Mortuary Science: practice regarding persons who died of infectious or contagious disease	23 N.J.R. 1517(a)		
13:36-10	Mortuary science licensees: continuing education	23 N.J.R. 1277(a)		
13:38-1.2, 1.3	Practice of optometry: permissible advertising	23 N.J.R. 2002(a)		
13:39-5.8	Prescriptions and medication orders transmitted by technological devices	23 N.J.R. 2469(a)		
13:40-5.1	Land surveys: setting of corner markers	24 N.J.R. 51(a)		
13:40A	Board of Real Estate Appraisers rules	23 N.J.R. 2628(a)	R.1991 d.598	23 N.J.R. 3763(b)
13:44D-2.4	Advisory Board of Public Movers and Warehousemen: late license renewal fee	23 N.J.R. 3638(a)		
13:44E-1.1	Scope of chiropractic practice	23 N.J.R. 2100(a)		
13:44E-2.3	Chiropractic practice: insurance claim forms	23 N.J.R. 1279(b)		
13:44E-2.6	Chiropractic practice identification	23 N.J.R. 1896(a)		
13:44F-8.1	Board of Respiratory Care: fee schedule	24 N.J.R. 52(a)		
13:45A-25.2, 25.4	Sellers of health club services: registration fees	23 N.J.R. 3637(a)		
13:45A-26.1, 26.2, 26.4, 26.14	Automotive dispute resolution: motor vehicles purchased or leased in State	24 N.J.R. 53(a)		
13:45B	Employment and personnel services	23 N.J.R. 2470(a)		
13:45B	Employment and personnel services: extension of comment period	23 N.J.R. 2919(a)		
13:47	Legalized games of chance	23 N.J.R. 3638(b)		
13:47K-5.2	Commodities in package form: request for public input regarding Magnitude of Allowable Variations (MAVs)	23 N.J.R. 3645(a)		
13:60	Motor carrier safety	23 N.J.R. 3725(a)		
13:70-1.3	Thoroughbred racing: authority of executive director of Racing Commission	23 N.J.R. 3431(a)		
13:70-14A.9	Thoroughbred racing: first-time respiratory bleeders	23 N.J.R. 2919(c)	R.1992 d.19	24 N.J.R. 108(b)
13:70-29.48	Thoroughbred racing: field horses in daily double races	23 N.J.R. 3431(b)		
13:70-29.57	Thoroughbred racing: pick-seven wager on Breeders' Cup	23 N.J.R. 1769(b)		
13:71-1.1	Harness racing: authority of executive director of Racing Commission	23 N.J.R. 3432(a)		
13:71-23.8	Harness racing: first-time respiratory bleeders	23 N.J.R. 2919(d)	R.1992 d.18	24 N.J.R. 109(a)
13:71-27.47	Harness racing: field horses in daily double races	23 N.J.R. 3432(b)		
13:71-27.55	Harness racing: pick-eight wager on Breeders' Crown	23 N.J.R. 1770(a)		
13:75-1.6	Violent Crimes Compensation Board: eligibility of claims	24 N.J.R. 54(a)		
13:75-1.7	Violent Crimes Compensation Board: reimbursement for loss of earnings	24 N.J.R. 54(b)		
13:75-1.29	Violent Crimes Compensation Board: petitions for rulemaking	24 N.J.R. 55(a)		
13:75-1.30	Violent Crimes Compensation Board: burden of proof	24 N.J.R. 55(b)		

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14:1	Rules of practice of Board of Public Utilities: waiver of expiration provision of Executive Order No. 66 (1978)	23 N.J.R. 24(b)		
14:1	Rules of practice of Board of Public Utilities	23 N.J.R. 2487(a)		
14:5	Electric service	23 N.J.R. 1519(a)	R.1991 d.583	23 N.J.R. 3652(a)

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14:10-6	Alternate operator service: preproposed amendments	23 N.J.R. 676(b)		
14:10-6, 7, 8	Alternate operator service; resale of telecommunications services; customer provided pay telephone service: public hearings on preproposal rules	23 N.J.R. 946(a)		
14:10-7	Resale of telecommunications services: preproposed new rules	23 N.J.R. 679(a)		
14:10-8	Customer provided pay telephone service: preproposed new rules	23 N.J.R. 680(a)		
14:12-6.1	Release of customer lists and billing information for demand-side management projects	23 N.J.R. 1282(b)		
14:18-7.7	Cable television: telephone system performance	23 N.J.R. 2273(a)	R.1991 d.594	23 N.J.R. 3768(a)
14:38-1.2, 2.1–2.3, 3.1–3.3, 4.1, 5.6, 6.2, 7.1, 7.3, 7.6, 8.1–8.4, 9.1, 9.2	Home Energy Savings Program	23 N.J.R. 1069(b)		

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N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
14A:11-2	Reporting of energy information by home heating oil suppliers	23 N.J.R. 2830(b)		

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STATE—TITLE 15

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
15:2-4	Commercial recording: designation of agent to accept service of process	23 N.J.R. 2483(a)		

Most recent update to Title 15: TRANSMITTAL 1991-2 (supplement August 19, 1991)

PUBLIC ADVOCATE—TITLE 15A

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TRANSPORTATION—TITLE 16

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16:28-1.38	Speed limit zone along Route 57 in Hackettstown	23 N.J.R. 3128(b)	R.1992 d.7	24 N.J.R. 113(a)
16:28-1.41	Middle Township Elementary School zone along U.S. 9, Cape May County	23 N.J.R. 2831(a)	R.1991 d.585	23 N.J.R. 3770(a)
16:28A-1.6, 1.50, 1.57	Bus stop zones along Route 7 in Nutley, Route 166 in Dover Township, and U.S. 206 in Bordentown	23 N.J.R. 3129(a)	R.1992 d.6	24 N.J.R. 114(a)
16:28A-1.7	Restricted parking and stopping along U.S. 9 in Middle Township, Cape May County	24 N.J.R. 77(a)		
16:28A-1.7, 1.20	Restricted stopping and standing along U.S. 9 in Port Republic and Route 29 in Hopewell Township	23 N.J.R. 3269(a)	R.1992 d.34	24 N.J.R. 289(a)
16:28A-1.55	Time limit parking along U.S. 202 in Bernardsville	23 N.J.R. 3742(a)		
16:28A-1.106	No stopping or standing zones along Truck U.S. 1 and 9 in Hudson County	23 N.J.R. 3645(b)		
16:29-1.70, 1.71, 1.72	No passing zones along Route 50 in Atlantic County, Route 41 in Gloucester County, and Route 143 in Camden County	23 N.J.R. 3130(a)	R.1992 d.8	24 N.J.R. 115(a)
16:30-9.10	Prohibited pedestrian use of Barnegat Bay bridges in Dover Township	23 N.J.R. 3131(a)	R.1992 d.9	24 N.J.R. 115(b)
16:31-1.1	Left turn prohibition along U.S. 206 in Lawrence Township	24 N.J.R. 78(a)		
16:41-2.2	State Highway Access Management Code	23 N.J.R. 1525(a)		
16:41-2.2	State Highway Access Management Code: public hearings and correction to proposal	23 N.J.R. 1913(a)		
16:44-1	Classification of contractors and prospective bidders	23 N.J.R. 3270(a)	R.1992 d.29	24 N.J.R. 115(c)
16:47	State Highway Access Management Code	23 N.J.R. 1525(a)		
16:47	State Highway Access Management Code: public hearings and correction to proposal	23 N.J.R. 1913(a)		
16:47-App. B, E, E1, J	State Highway Access Management Code	23 N.J.R. 2831(b)		
16:51	Practices and procedures before the Office of Regulatory Affairs	24 N.J.R. 78(b)		
16:54	Licensing of aeronautical and aerospace facilities: preproposed new rules	24 N.J.R. 80(a)		
16:74	NJ TRANSIT: destructive competition claims procedure for private route bus carriers	23 N.J.R. 1773(a)	R.1991 d.593	23 N.J.R. 3770(b)

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17:1-12.9	County and municipality early retirement incentive program: deadline for filing participation resolutions	23 N.J.R. 2847(a)	R.1991 d.581	23 N.J.R. 3654(a)
17:3-4.1	Teachers' Pension and Annuity Fund: creditable salary	23 N.J.R. 3274(a)		
17:5-4.3	State Police Retirement System: purchases of service credit	23 N.J.R. 1896(b)	R.1992 d.4	24 N.J.R. 109(b)
17:9-4.1, 4.5	State Health Benefits Program: "appointive officer"	23 N.J.R. 2612(b)		
17:14-1.9	Minority and female businesses: subcontracting targets	23 N.J.R. 395(b)		
17:25-1.1, 1.2, 1.3, 1.5, 1.11, 1.12	Collection of debts owed NJHEAA by employees in certain State, county, and municipal jurisdictions	23 N.J.R. 2226(a)		

Most recent update to Title 17: TRANSMITTAL 1991-9 (supplement October 21, 1991)

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18:3-2.1	Tax rates on alcoholic beverages	23 N.J.R. 3433(a)		
18:7-5.1, 5.10, 14.17	Corporation Business Tax: intercompany and shareholder transactions	23 N.J.R. 1522(a)		
18:7-13.1	Corporation Business Tax: abatements of penalty and interest	23 N.J.R. 3275(a)		
18:18A	Petroleum Gross Receipts Tax	22 N.J.R. 3715(a)		
18:24-1.4	Sales tax: manufacturers' coupons	23 N.J.R. 3433(b)		
18:24-2.16	Sales and Use Tax: registration of amusement event promoters	23 N.J.R. 3275(b)		
18:24-9.11	Sales and Use Tax: exempt organizations carrying on trade or business	23 N.J.R. 2005(a)	R.1991 d.577	23 N.J.R. 3654(b)
18:35-1.14, 1.25	Gross Income Tax: partnerships	23 N.J.R. 950(b)		

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19:16	Labor disputes in public fire and police departments: preproposal regarding compulsory interest arbitration	23 N.J.R. 2486(a)		
19:25-11.12	ELEC: fundraising through use of 900 line telephone service	23 N.J.R. 956(a)		
19:25-20	ELEC: lobbyists and legislative agents	23 N.J.R. 3077(a)	R.1992 d.32	24 N.J.R. 289(b)
19:61	Rules of Executive Commission on Ethical Standards	23 N.J.R. 3436(b)		

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N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
TITLE 19 SUBTITLE K—CASINO CONTROL COMMISSION/CASINO REINVESTMENT DEVELOPMENT AUTHORITY				
19:40-1.2	Twenty-four hour gaming	23 N.J.R. 3243(a)		
19:40-3.1, 3.4, 3.5	Information and filings: administrative filings	________	________	23 N.J.R. 3655(a)
19:41-9.3	Administrative suspension of license or registration, or dismissal of application upon determination of unpaid fees or civil penalties	23 N.J.R. 3249(a)	R.1992 d.35	24 N.J.R. 298(a)
19:41-9.6	Slot machine demonstration permit; possession and transportation of slot machines	23 N.J.R. 3729(a)		
19:42-5.9, 5.10	Underage gaming violations; affirmative defenses	23 N.J.R. 3084(a)	R.1992 d.12	24 N.J.R. 109(c)
19:42-10	Administrative suspension of license or registration, or dismissal of application upon determination of unpaid fees or civil penalties	23 N.J.R. 3249(a)		
19:43-1.2	Determination of casino service industries	23 N.J.R. 1963(a)		
19:44-8.3	Gaming schools: red dog instruction	23 N.J.R. 3731(a)		
19:45-1.1, 1.2, 1.46, 1.47	Complimentary distribution programs	23 N.J.R. 1308(a)		
19:45-1.1, 1.14, 1.15, 1.34	Master coin bank and coin vaults	23 N.J.R. 3085(a)		
19:45-1.1A, 1.15, 1.20, 1.25, 1.27, 1.31, 1.33, 1.34, 1.35, 1.39, 1.40, 1.40A, 1.41, 1.42, 1.43, 1.46A	Twenty-four hour gaming	23 N.J.R. 3243(a)		
19:45-1.11	Casino management information systems department	23 N.J.R. 3434(a)		
19:45-1.11, 1.12	Implementation of sic bo	23 N.J.R. 2922(a)	R.1991 d.615	23 N.J.R. 3820(b)
19:45-1.12	Staffing of table games	24 N.J.R. 56(a)		
19:45-1.12A	Low limit table games: operation and conduct	23 N.J.R. 3250(a)		
19:45-1.25	Casino checks issued to patrons	23 N.J.R. 3087(a)	R.1992 d.13	24 N.J.R. 110(a)
19:45-1.27, 1.27A	Voluntary suspension of patron's credit privileges	23 N.J.R. 3434(b)		
19:45-1.37, 1.39, 1.40A	Progressive slot jackpots and jackpots of merchandise	23 N.J.R. 1306(a)		
19:45-1.37, 1.44	Slot machines and bill changers	24 N.J.R. 58(a)		
19:45-1.38	Movement of slot machines and bill changers	23 N.J.R. 2920(a)		
19:45-1.39	Progressive slot machine submissions	23 N.J.R. 28(a)	Expired	
19:45-1.40A, 1.40B	Annuity jackpots	23 N.J.R. 1025(b)	R.1991 d.584	23 N.J.R. 3655(b)

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
19:45B-1.40B	Annuity jackpots: administrative correction	————	————	23 N.J.R. 3819(a)
19:45-1.40B	Annuity jackpot payouts	23 N.J.R. 2920(b)	R.1991 d.614	23 N.J.R. 3820(a)
19:45-1.41	Slot machine hopper fill procedure	23 N.J.R. 2921(a)		
19:45-1.42	Slot drop team requirements	24 N.J.R. 57(a)		
19:46-1.1, 1.6, 1.9, 1.16, 1.18, 1.19, 1.20	Twenty-four hour gaming	23 N.J.R. 3243(a)		
19:46-1.10	Additional wagers in blackjack	23 N.J.R. 3251(a)		
19:46-1.10	Blackjack table layout: betting areas	23 N.J.R. 3732(a)		
19:46-1.13A, 1.15, 1.16, 1.16A, 1.20	Implementation of sic bo	23 N.J.R. 2922(a)	R.1991 d.615	23 N.J.R. 3820(b)
19:46-1.22, 1.23	Slot machine demonstration permit; possession and transportation of slot machines	23 N.J.R. 3729(a)		
19:46-1.26	Progressive slot jackpots and jackpots of merchandise	23 N.J.R. 1306(a)		
19:46-1.26	Slot machines and bill changers	24 N.J.R. 58(a)		
19:46-1.27	Density of slot machines: alternatives	23 N.J.R. 192(a)		
19:46-1.27	Slot machine denominations	23 N.J.R. 3252(a)		
19:47-2.2, 2.17	Additional wagers in blackjack	23 N.J.R. 3251(a)		
19:47-2.3	Blackjack: collection of losing wagers	23 N.J.R. 3436(a)		
19:47-2.3, 2.7	Payout odds and payment of blackjack	23 N.J.R. 1781(b)		
19:47-3.3, 4.10, 7.3	Vigorish options in baccarat, minibaccarat, and baccarat-chemin de fer	23 N.J.R. 2926(a)	R.1991 d.616	23 N.J.R. 3824(a)
19:47-7.7, 7.8	Dealing of hands	23 N.J.R. 2927(a)		
19:47-8.2, 9.1–9.6	Implementation of sic bo	23 N.J.R. 2922(a)	R.1991 d.615	23 N.J.R. 3820(b)
19:50	Casino hotel alcoholic beverage control	23 N.J.R. 3087(b)	R.1992 d.14	24 N.J.R. 110(b)
19:52-1.1, 1.2	Casino entertainment	23 N.J.R. 3092(a)	R.1992 d.15	24 N.J.R. 112(a)

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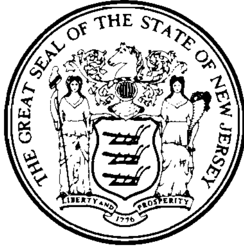
NOTES



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