NEW JERSEY REGISTER

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SUBJECT TO: DEPARTMENT OF STATE LIBRARY • ARCHIVES • TRENTON NJ 08625

MOST RECENT UPDATE TO NEW JERSEY ADMINISTRATIVE CODE: MAY 20, 1991
See the Register Index for Subsequent Rulemaking Activity.

NEXT UPDATE: SUPPLEMENT JUNE 17, 1991

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Interested persons may submit comments, information or arguments concerning any of the rule proposals in this issue until **September 4, 1991.** Submissions and any inquiries about submissions should be addressed to the agency officer specified for a particular proposal or group of proposals.

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

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

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NEW JERSEY REGISTER

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EXECUTIVE ORDERS

(a)

OFFICE OF THE GOVERNOR
Governor James J. Florio
Executive Order No. 35(1991)
Continuation of New Jersey-Israel Commission

Issued: July 16, 1991.
Effective: July 16, 1991.
Expiration: Indefinite.

WHEREAS, the New Jersey-Israel Commission (Commission) was created on May 31, 1989 by Executive Order No. 208 to enhance New Jersey's ability to implement the development of trade, capital investment and joint business ventures in addition to the development of cultural and educational exchanges between New Jersey and Israel as stated in the Sister State Agreement with Israel (Agreement); and

WHEREAS, the Commission expired on May 31, 1991; and

WHEREAS, the Commission has helped to foster a spirit of cooperation between the citizens of Israel and the citizens of New Jersey that should continue to be available in order to achieve the goals of the Agreement; and

WHEREAS, modification of the membership of the Commission and its directive has been recommended;

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

1. The New Jersey-Israel Commission shall continue in existence through and including May 31, 1993.

2. The membership of the Commission shall be modified to consist of a minimum of fifteen members and a maximum of seventy-five members. These members of the Commission shall be appointed by the Governor. An additional eight members of the Commission shall be State legislators, four of whom shall represent the General Assembly and four of whom shall represent the Senate. All legislative members shall be appointed by their respective legislative leadership.

3. The structure of the Commission shall consist of the following five subcommittees:

a. Committee on Economic Development and International Trade;
b. Committee on Research, Science and Technology;
c. Committee on Education;
d. Committee on Culture and Tourism; and
e. Committee on Agriculture and Natural Resources.

Each subcommittee shall have as an ex-officio member, one State official who will be appointed by the Governor, to provide assistance when needed. The Commission shall also have an Executive Committee comprised of the two co-chairpersons of the Commission, the five chairpersons of the Commission's five subcommittees, and five at-large members, who shall all be designated by the Governor.

4. The Commission shall report directly to the Office of the Governor.

5. This Order shall take effect immediately.

(b)

OFFICE OF THE GOVERNOR
Governor James J. Florio
Executive Order No. 36(1991)
Printing Control Office

Issued: July 17, 1991.
Effective: July 17, 1991.
Expiration: Indefinite.

WHEREAS, printing and copying services are necessary for State government to provide services and information to the citizens of the State; and

WHEREAS, the Governor's Management and Review Commission has undertaken an operational review of State print shops and printing operations and has found that present decentralized management practices have led to: an excessive number of print shops and copy centers; little coordination among departments; inconsistency in job pricing, State forms, and standards of performance; and an underutilization of personnel and equipment; and

WHEREAS, the majority of the State's 14 main print shops are located within one square mile of each other and provide decentralized services with little coordination between departments and agencies; and

WHEREAS, this current decentralization is inconsistent with Executive Order No. 13, effective January 23, 1964, and still in force, which created the Central Duplicating and Printing Control Office to supervise, coordinate, and regulate all State printing; and

WHEREAS, the consolidation of print shops and centralized oversight of printing and photocopying operations will provide substantial savings and improve the efficiency of print shop and photocopying operations and the quality of those services.

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

1. The Department of Treasury shall establish a Printing Control Office to supervise, coordinate and control all printing done by the State of New Jersey in the State's own facilities or for the State of New Jersey in privately owned and operated facilities;

2. The Printing Control Office shall exercise the following powers and duties that are consistent with the intentions and recommendations of the Governor's Management and Review Commission:

a. Consolidate State print shops and photocopying to improve or eliminate such facilities wherever possible to achieve maximum efficiency and economy;

b. Periodically review photocopier placement and use in all State agencies, and exchange or eliminate photocopiers wherever possible to achieve maximum efficiency and economy;

c. Annually review all print shops and photocopiers to assure that the most economical use is being made of State resources;

d. Determine which printing jobs are to be done in State print shops or photocopier centers and which are to be done by private vendors;

e. Review for approval all bid specifications for print jobs using current delegated purchasing authority procurement guidelines pursuant to PL. 1985, c.107, PC 23;

f. Review for approval all departmental and agency requests for equipment for duplicating, printing, photocopying and graphics;

g. Determine and control quality standards, peformance measures, and pricing methodologies for all State print and photocopier shops;

h. Provide technical assistance and guidance to print shops and all State personnel involved in the procurement of printing services.

3. Each department, division, office or agency of the State is authorized and directed, to the extent not inconsistent with law, to cooperate with and assist the Department of Treasury by making available the necessary information, personnel and support required to carry out the designs of this Order.

4. This Order shall take effect immediately.

RULE PROPOSALS

ADMINISTRATIVE LAW

(a)

OFFICE OF ADMINISTRATIVE LAW

Special Hearing Rules
Division of Consumer Affairs
Lemon Law Hearings; Exceptions
Proposed Repeal and New Rule: N.J.A.C. 1:13A-18.2

Authorized By: Jaynee LaVecchia, Director, Office of Administrative Law.
Authority: N.J.S.A. 52:14F-5(e), (f) and (g).
Proposal Number: PRN 1991-403.

Submit comments by September 4, 1991 to:
Steven L. Lefelt, Deputy Director
Office of Administrative Law
Quakerbridge Plaza, Building 9, CN 049
Quakerbridge Road
Trenton, New Jersey 08625

The agency proposal follows:

Summary

In lemon law cases from the Division of Consumer Affairs, the Division Director has only 10 days from receipt of the initial decision to adopt, reject or modify the decision. Due to this extremely short review period, and because the Lemon Law Act did not specifically provide any exception period, the Office of Administrative Law (OAL) special rules for these cases do not permit exceptions or replies to be filed. However, it appears that a number of parties wish to comment on the initial decisions and attempt to do so by contacting the agency on an *ex parte* basis by telephone or otherwise. Therefore, OAL now believes that exceptions should be permitted although these exceptions must be provided to the agency very rapidly so that a timely final decision can be issued.

The proposed new rule permits exceptions, but requires those exceptions to be received by the Division of Consumer Affairs no later than seven days from the date of initial decision mailing. Decisions will be mailed to the agency and to the parties on the same date. Assuming that, on the average, decisions are received within two days of mailing, exceptions should be received in time to be considered by the agency. Parties may choose any method of delivery which ensures receipt at the agency by the seventh day from date of mailing.

The proposed new rule continues to prohibit the filing of replies or cross-exceptions.

Social Impact

The proposed new rule provides the parties with an opportunity to comment on the initial decision while requiring that the exceptions be filed within an extremely short time frame. The proposed new rule provide parties with greater opportunity to participate in the adjudicatory process and provides the Division with the opportunity to receive comments from the parties while attempting to ensure that the agency still has time to review the matter.

Economic Impact

Parties wishing to avail themselves of the opportunity to file exceptions may have to incur some costs to ensure that the comments are received in a timely manner by the agency. In some cases these costs may include overnight delivery, fax costs or the cost of a personal delivery.

Regulatory Flexibility Statement

A regulatory flexibility analysis is not required because the proposed new rule does not impose reporting, recordkeeping or other compliance requirements on small businesses, as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. As part of an adjudicatory process, the new rule permits, within a specified time frame, any party, including small businesses to file an exception.

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

1:13A-18.2 Exceptions; replies

[No exceptions or replies to the initial decision shall be permitted.]

(a) If a party wishes to take exception to the initial decision, such exception must be submitted in writing to the Director of the Division of Consumer Affairs, the judge and to all parties. Exceptions must be received by the Division of Consumer Affairs no later than seven days after the date the initial decision was mailed to the parties. Exceptions shall conform to the requirements of N.J.A.C. 1:1-18.4(b) and (c).

(b) No replies or cross-exceptions shall be permitted.

BANKING

(b)

OFFICE OF REGULATORY AFFAIRS

Closing Branch Offices
Proposed Amendment: N.J.A.C. 3:1-2.17

Authorized By: Jeff Connor, Commissioner, Department of Banking.
Authority: N.J.S.A. 17:1-8.1.
Proposal Number: PRN 1991-391.

Submit comments by September 4, 1991 to:
Robert M. Jaworski
Assistant Commissioner
Department of Banking
CN 040
Trenton, N.J. 08625

The agency proposal follows:

Summary

Concurrent with this proposal, the Department has filed an adoption notice for a new rule, N.J.A.C. 3:1-2.17, which requires notice before a bank, savings bank or savings and loan association closes a branch office (see adoption notice published elsewhere in this issue of the New Jersey Register). In response to the proposal of the rule (see 23 N.J.R. 801(a), March 18, 1991) the Department received comments which recommended substantive changes.

In particular, it was suggested that notice of the proposed branch closing be placed in the branch. The Department agrees that posting such notice will be effective in informing depositors of the impending branch closing. Acccordingly, it is proposed that such a requirement be imposed.

In addition, it was suggested that a record of any hearings and/or meetings concerning the branch closing be included in the Community Reinvestment Act (CRA) files of the bank. This would allow community members to have a perspective of the bank's role in communities around the State. The Department agrees that those records should be available. Accordingly, it has proposed an amendment requiring banks, savings banks and savings and loan associations to maintain a file at their principal office in this State which describes any meetings that occurred incident to this rule, and the outcome of the meetings. Records of a meeting shall be maintained in the file for at least two years.

Social Impact

Posting notice in the lobby of a branch will have the beneficial impact of alerting depositors of the impending branch closing. Requiring that a record of recent branch closing meetings be maintained at the principal office will allow the public to review these records, and will allow them to have a perspective of the bank's role throughout the State.

Economic Impact

The cost of posting notice in the branch and maintaining a file in the principal office of the depository will have a marginal negative economic impact on the institution closing a branch office.

Regulatory Flexibility Analysis

The proposed amendments place compliance and recordkeeping requirements on banks, savings banks and savings and loan associations, many of which are small businesses as defined by the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. Neither of these requirements are

viewed as burdensome when compared with the substantial impact a branch closing may have on the community. Further, the impact of a branch closing will be significant regardless of the size of the institution. Accordingly, no differentiation in complying with the notification or the recordkeeping is made for small businesses.

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

3:1-2.17 Closing of branch offices

(a) (No change.)

(b) Beginning within 10 calendar days after notification of the Department, the bank, savings bank or savings and loan association shall publish notice of the proposed closing once a week for two successive weeks in a newspaper designated by the Commissioner, which is published and circulated in the municipality in which said branch is to be closed, or if there be no such newspaper, then in a newspaper of general circulation in the municipality. The institution shall include in this notice the name of the institution, the location of the branch office which will be closed and the prospective date of closing, the location of the depository's nearest branch office, and a statement indicating that all comments to the closing of the branch may be made to the institution and to the Department of Banking, along with the mailing address of the Department and the institution. **In addition, for at least 30 days prior to the branch closing, the bank, savings bank or savings and loan association shall conspicuously post notice of the proposed branch closing in the branch to be closed. This notice in the branch shall contain at least the same information required in the newspaper notice.**

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

(e) Banks, savings banks and savings and loan associations shall maintain a file in their principal office which is open to the public and which contains a description of any meetings or hearings which occurred pursuant to this section in the past two years.

(a)

OFFICE OF REGULATORY AFFAIRS

Reporting of Crimes

Proposed Amendments: N.J.A.C. 3:6-4.5 and 3:26-3.1
Proposed New Rules: N.J.A.C. 3:6-4.6 and 3:26-3.2

Authorized By: Jeff Connor, Commissioner, Department of Banking.

Authority: N.J.S.A. 17:1-8.1.

Proposal Number: PRN 1991-380.

Submit comments by September 4, 1991 to:

Robert M. Jaworski
Assistant Commissioner
Department of Banking
CN-040
Trenton, N.J. 08625

The agency proposal follows:

Summary

In response to the proposed readoption of Chapter 6 of its rules (see 23 N.J.R. 147(a), January 22, 1991), the Department of Banking received a comment from a trade association concerning the criminal reporting requirements contained in subchapter 4. The rules as proposed for readoption required a bank or savings bank to notify criminal authorities of all apparent crimes, regardless of amount. The commenter suggested that these rules be amended to allow the institution greater flexibility for reporting minor crimes. The rules were readopted without change at 23 N.J.R. 998(a), effective April 1, 1991 with the Department responding to the commenter that the suggested amendment was to be addressed in the near future.

In addition, the commenter noted that the proposed readoption increased the threshhold amounts for filing criminal referrals with the Department. Crimes involving an agent or employee of $5,000 or less, and outside crimes involving non-affiliated persons of $9,000 or less, were exempt from the reporting requirements. The commenter suggested that the Department extend these exemption amounts, recently adopted for banks and savings banks, to savings and loan associations.

In these proposed rules and amendments, the Department has extended the $5,000 and $9,000 exemptions to savings and loan associations. In addition, it has proposed that a bank, savings bank and savings and loan association will only need to notify the appropriate criminal authorities if it is required to report to the Department.

Social Impact

By exempting certain minor crimes from reporting requirements, the Department will now be able to further concentrate its resources on major crimes. In addition, it will relieve the administrative burden on depositories. It is hoped that this will have a positive social impact of enabling the Department and depositories to respond to crimes in a more efficient manner.

Economic Impact

By limiting the reports that depositories must make, the proposed rules and amendments will have a positive economic impact on depositories.

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 the proposed rules and amendments will not impose reporting, recordkeeping or other compliance requirements on small businesses, since reporting requirements will be reduced. Therefore, a regulatory flexibility analysis is not required.

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

3:6-4.5 Notice of crime by other perpetrators

In the event of a crime against the bank, capital stock savings bank or mutual savings bank by one other than an officer, director, attorney, or agent or employee of the institution, including crimes in which no immediate loss or any loss is incurred by the bank, capital stock savings bank or mutual savings bank, the board of directors or managers shall promptly report the apparent criminal violation to the Commissioner of Banking if he suspected criminal activity involves an actual or probable loss in excess of $9,000. [Appropriate criminal authorities must be notified in all cases, irrespective of amount.] For purposes of reporting to the Department pursuant to this section, a suspected civil fraud shall be treated like a crime.

3:6-4.6 Notice to criminal authorities

(a) A bank, capital stock savings bank or mutual savings bank must notify the appropriate criminal authorities of all suspected criminal activity it is required to report to the Commissioner.

(b) A bank, capital stock savings bank or mutual savings bank may notify the appropriate criminal authorities of any suspected criminal activity which it is not required to report pursuant to (a) above.

3:26-3.1 Action upon detection or discovery of crime

(a) Every State association, including any service corporation which is owned, wholly or jointly, by a State association, shall immediately notify the Commissioner [by telephone] of the detection or discovery of an embezzlement, defalcation, misapplication, or misuse of funds **in excess of $5,000,** by any director, officer, employee, attorney or agent of the state association or service corporation. [As soon thereafter as is practical, the association's or service corporation's management or auditor shall submit to the Commissioner a written report of the crime or crimes discovered or detected, including the names of the individuals involved, the extent of any loss, and the method used to effectuate the embezzlement, defalcation, misapplication or misuse. Compliance with the requirement in this subsection for a written report shall be evidenced:

1. By the filing of a copy of any forms required under rules adopted by any appropriate Federal agency concerning internal crimes; or

2. By filing Department of Banking Form No. S.L. 4.]

An association may comply with this section by filing with the Commissioner a copy of forms required under rules adopted by any appropriate Federal agency concerning reporting of crimes.

[(b) Every State association shall notify the Commissioner in the manner described in (a) above, of every crime or criminal activity

not related to the association or service corporation wherein any director, officer, employee, attorney or agent of the association was charged, indicted or convicted.

(c) Every State association shall notify the Commissioner in the manner described in (a) above, of every crime either attempted or perpetrated against the association or service corporation by individuals other than an officer, director, employee, attorney or agent of the association irrespective of the amount of loss. In the case of robbery, burglary or non-employee larceny, compliance with this subsection shall be evidenced by the filing with the Commissioner of a copy of any form required under rules adopted by any appropriate Federal agency concerning external crimes or by filing with the Commissioner Department of Banking Form No. S.L.5.]

(b) In the event of a crime against the association by one other than an officer, director, attorney, or agent or employee of the institution, including crimes in which no immediate loss or any loss is incurred by the association, the association shall promptly report the apparent criminal violation to the Commissioner of Banking if the suspected criminal activity involves an actual or probable loss in excess of $9,000. For purposes of reporting to the Department, a suspected civil fraud shall be treated like a crime.

3:26-3.2 Notice to criminal authorities

(a) An association must notify the appropriate criminal authorities of any suspected criminal activity which it is required to report to the Commissioner.

(b) An association may notify the appropriate criminal authorities of any suspected criminal activity which it is not required to report pursuant to (a) above.

(a)

OFFICE OF REGULATORY AFFAIRS

License Qualifying Examinations

Proposed Amendments: N.J.A.C. 3:18-10.3 and 3:38-1.3

Authorized By: Jeff Connor, Commissioner, Department of Banking.

Authority: N.J.S.A. 17:11A-54 and 17:11B-13.

Proposal Number: PRN 1991-377.

Submit comments by September 4, 1991 to:

Robert M. Jaworski
Assistant Commissioner
Department of Banking
CN-040
Trenton, N.J. 08625

The agency proposal follows:

Summary

The Department of Banking proposes to amend rules concerning the Mortgage Bankers and Brokers Act, N.J.S.A. 17:11B-1 et seq., and the Secondary Mortgage Loan Act, N.J.S.A. 17:11A-34 et seq., to provide that applicants who fail to pass the licensing exam successive times shall be prohibited from taking the exam for specified periods of time.

Pursuant to current rules, applicants seeking to become a mortgage banker or broker or a secondary mortgage loan licensee must first pass a licensing examination. The exam is prepared by the Department of Banking, and covers topics such as the contents of Federal and State legislation and regulations on mortgage lending, New Jersey real estate law, basic knowledge of mortgage documents and related State and Federal legislation and regulations such as the Real Estate Settlement Procedures Act, the Equal Credit Opportunity Act and Regulation Z. Currently, applicants for secondary mortgage loan licenses are able to take the exam only twice in any 12 month period. There is no similar prohibition in effect concerning mortgage bankers and brokers.

Pursuant to these proposed amendments, applicants who fail the licensing exam twice will be prohibited from taking the exam for six months. This would codify current Department policy. In addition, an applicant who fails the examination a third or subsequent time will be prohibited from taking the examination for one year from the date of the third or subsequent examination. The Department believes that such successive failures are an indication that the applicant needs additional experience in the industry, or needs to study the applicable law more thoroughly. The six-month and one-year periods allow the applicant time to obtain this experience and/or knowledge.

Social Impact

The proposed amendments will assist in limiting licensure to those who are most qualified to act as mortgage lenders.

Economic Impact

To the extent that these proposed amendments delay licensure of certain applicants for mortgage lending licenses, it may have a negative economic impact on these applicants.

Regulatory Flexibility Statement

A regulatory flexibility analysis is not necessary in that the proposed amendments do not impose reporting, recordkeeping or compliance requirements on small businesses as defined by the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The proposed amendments apply to the examination of individual applicants for licensure as individual or sole proprietorships. Until such time as the applicant becomes licensed, the individual cannot be considered a small business.

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

3:18-10.3 Examinations

(a) (No change.)

(b) An applicant [is eligible to take the examination no more than twice in any 12 month period] **who fails the examination twice shall be prohibited from taking the examination for six months from the date of the second examination. An applicant who fails the examination a third or subsequent time shall be prohibited from taking the examination for one year from the date of the third or subsequent examination.** The failure of an applicant to take or pass the examination within one year of the acceptance of the application shall void the application. Any applicant who passes the exam but does not perfect his license by the posting of a bond within one year from the date of passage of the exam must be re-examined.

(c) (No change.)

3:38-1.3 Examinations

(a) Upon acceptance of an application for an individual, the Department will notify the applicant of the date of the next scheduled examination, which shall not be more than 90 days from the date of acceptance of the application. The failure of an applicant to take or pass the examination within one year of the acceptance of the application shall void the application. Any applicant who passes the exam but does not perfect his license by the posting of a bond within one year from the date of passage of the exam must resubmit to an examination. **An applicant who fails the examination twice shall be prohibited from taking the examination for six months from the date of the second examination. An applicant who fails the examination a third or subsequent time shall be prohibited from taking the examination for one year from the date of the third or subsequent examination.**

(b) (No change.)

EDUCATION

(b)

STATE BOARD OF EDUCATION

Early Childhood Instructional Certificate

Proposed Amendment: N.J.A.C. 6:11-6.2

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

Authority: N.J.S.A. 18A:1-1, 18A:4-15, 18A:6-7, 18A:6-34, 18A:6-38 and 18A:26-10.

Proposal Number: PRN 1991-406.

Submit written comments by September 4, 1991 to:
Irene Nigro, Rules Analyst
New Jersey Department of Education
225 West State Street, CN 500
Trenton, New Jersey 08625

The agency proposal follows:

Summary

In 1990, the State Board of Education adopted regulations authorizing the issuance of a "generalist" certificate for teachers of self-contained classrooms, covering nursery school through grade eight (N-8). Some educators urged the Board in public testimony instead to create two separate certificates, covering grades N-3 and N-8, respectively. The State Board did not accept this proposal which was opposed by teacher and administrator organizations. However, Board members asked the Department of Education to continue discussing the issue with those on both sides in order to determine whether an approach exists which might meet the most basic and legitimate concerns of each.

The Department of Education recommends, based on its discussions with persons on both sides of the issue, the establishment of the certificate "Teacher of Early Childhood Education (N-3)" to co-exist with the already-approved certificate "Teacher of Elementary Education (N-8)."

There are other instances in which groups of professionals voluntarily choose to specialize their preparation, license and practice without interfering with the right of generalists to practice as well. Pediatricians, for example, specialize in the treatment of children. However, there is no artificial age definition of "children" in State medical law, such that a child must "graduate" to a general practitioner on a certain birthday. Nor is it a legal requirement that young children be taken to pediatricians, nor are general practitioners barred legally from serving children below a certain age level.

The proposed amendment would apply a similar approach to self-contained classroom teaching through the creation of two certificates: N-3 and N-8. Districts would be free to employ persons of either category for lower-grade assignments, based on the philosophy, orientation, and structure of their programs and on the perceived educational needs of their students.

Under such an approach, colleges would be permitted to propose N-3 preparation programs. These programs would conform to the standards and requirements which apply to all teacher preparation programs under rules of the State Board of Education.

This compromise would have the following advantages: (a) early childhood educators who wish to specialize would have a means of doing so; (b) other capable, experienced educators would not be required artificially to restrict their practice; (c) differences of preparation philosophy and emphasis would not generate a proliferation of artificially specialized education courses; (d) quality in the teacher job market might actually be enhanced through the addition of a new dimension of flexibility and competition, for example providing schools the choice between specialists and generalists; and (e) public schools would retain at least some of the hiring flexibility that private daycare centers have.

However, the greatest strength of the recommended approach is that it would provide New Jersey with two valuable opportunities.

First, the State would have the opportunity to stimulate the development of high-quality specialized preparation programs without the pressure of having to generate a large quantity of early childhood specialists. The Department would be able to approve selectively only those programs with high levels of institutional commitment, curriculum quality, faculty quality, etc.

Second, the generalist/specialist approach would allow the State and the education community to examine both systems in operation over an extended period. If a close examination shows that one approach is demonstrably superior to the other, then school districts will ultimately tend to hire candidates produced by that approach. If this occurs, then increasing numbers of prospective teachers will pursue the demonstrably superior approach in order to become more marketable. Ultimately, the better system would, de facto, become the dominant system, and the State would have little choice but to consider embracing it.

Social Impact

The proposed amendment would allow practitioners who wish to specialize the opportunity to do so. It would provide communities with the opportunity to choose teachers whose preparation and license are consistent with the philosophy, curriculum and staffing arrangements of the employing school. It would provide the State Board and Department of Education an opportunity to study the two certification systems and to compare in practice their respective benefits, disadvantages and consequences. It would afford the opportunity to explore the feasibility of creating high quality specialist programs that produce meaningful results.

Economic Impact

Candidates for the proposed Early Childhood Certificate will be required to pay college tuition, which varies among institutions, for academic preparation. They will be required to pay a $45.00 licensing examination fee, and a $40.00 application fee.

Regulatory Flexibility Statement

A regulatory flexibility analysis is not required because the proposed amendment does not impose reporting, recordkeeping or other compliance requirements on small businesses as defined by the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. This amendment impacts solely upon New Jersey school districts, schools operated by the New Jersey Department of Education and individuals seeking teacher certification.

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

6:11-6.2 Endorsements and authorizations

(a) Teaching endorsements and authorizations are listed below:

1.-5. (No change.)

6. Early childhood education: This endorsement authorizes the holder to teach all subjects in grades nursery through three.

Recodify existing 6-30 as **7-31.** (No change in text.)

HIGHER EDUCATION

(a)

STUDENT ASSISTANCE BOARD

Garden State Scholarships

Academic Requirements

Proposed Amendment: N.J.A.C. 9:7-4.2

Authorized By: Student Assistance Board, M. Wilma Harris, Chairperson.

Authority: N.J.S.A. 18A:71-26.8 and 18A:71-26.9.

Proposal Number: PRN 1991-381.

Submit comments by September 4, 1991 to:
Brett E. Lief
Administrative Practice Officer
Department of Higher Education
20 West State Street
CN 542
Trenton, NJ 08625

The agency proposal follows:

Summary

The proposed amendment limits eligibility under a portion of the Garden State Scholarship Program to students ranking in the top 20 percent of their classes as of the end of the junior year rather than the top 30 percent in ranking contained in the current rule. Students may not apply directly for these scholarships but rather each year the secondary schools are requested to provide the names, addresses, Social Security numbers, and academic information for these students who then form the pool from which the various scholarships are awarded. Individual awards are then determined using sets of additional academic criteria.

Social Impact

The Garden State Scholarship Program comprises three distinct awards, two of which would be unaffected by the proposed amendment by virtue of their higher level of qualifying rank and/or additional qualifying academic criteria, specifically the "Distinguished Scholar" awards and the "Urban Scholar" awards. The third category of scholarships is the "Garden State Scholar" award which is available to students who are not offered a Distinguished or Urban Scholar award but who currently rank in the top 30 percent of their graduating class and achieve a minimum combined Scholastic Aptitude Test (SAT) score

of 1000. An academic index (A1) which combines the student's class rank and SAT scores is calculated for each student meeting these minimum criteria. The proposed amendment changes the qualifying rank for Garden State Scholar awards from the top 30 percent to the top 20 percent.

During the 1991 selection process, approximately 7,000 students were nominated by the secondary schools whose class rank was in the 21 to 30 percent range. Of these students, only 184 (three percent) had SAT scores high enough to receive a Garden State Scholar award offer. In addition, all students who have been offered awards under the Garden State Scholarship Program must attend a New Jersey college or university. With this additional requirement, the yield for students in the 21-30 percent range who have been offered a Garden State Scholar award translates into about 40 actual awards worth $20,000. That is, less than one percent of the 7,000 students who were nominated with class ranks below the top 20 percent actually qualified and accepted the scholarship, and the relatively few awardees received less than one half of one percent of the total funds. On the other hand, over 3,000 students in the upper 20 percent of their graduating class met the minimum criteria but could not be considered for award offers due to the limited number of scholarships.

The proposed amendment to change the minimum class rank criterion from the top 30 percent to the top 20 percent would also reduce the work required by high school guidance offices in compiling nominations and accompanying information by about one-third, yet it would have a negligible effect on the students actually selected. There would be no net reduction in the number of award offers. Rather, class rank would be weighed a bit more heavily over SAT scores in the selection process, which would favor those qualified students ranking in the top 20 percent of their class who meet the criteria but are not currently offered an award due to the limited number of awards. In addition, to ascertain whether or not the exclusion of qualified students with class ranks in the 21-30 percent range would disproportionately affect a particular class of potential awardees, a review of the descriptive information available for these students indicated that this proposed amendment would not reduce the diversity of scholarship awardees.

Economic Impact

The proposed amendment, as discussed in the Social Impact statement would have no effect on the individual award amounts currently provided to qualified students under the Garden State Scholarship Program and does not impact program funding since award offers would continue to be made within the available appropriation.

Regulatory Flexibility Statement

A regulatory flexibility analysis is not required because the proposed amendment does not impose reporting, recordkeeping or other compliance requirements on small businesses as defined by the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The proposed amendment limits eligibility in the Garden State Scholarship Program for a Garden State Scholar award to students who rank in the top 20 percent of their graudating class rather than the top 30 percent contained in the current rule.

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

9:7-4.2 Academic requirements

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

(g) Garden State Scholars shall be selected on the basis of the following criteria:

1. Class rank within the top [30] **20** percent of the graduating class at the end of the junior year; and

2. SAT scores of 1,000 or above at the end of the junior year, or through the January administration of the SAT in the senior year.

(h)-(i) (No change.)

(a)

NEW JERSEY HIGHER EDUCATION ASSISTANCE AUTHORITY

Policy Governing New Jersey College Loans to Assist State Students (NJCLASS)

Proposed Amendment: N.J.A.C. 9:9-7.7

Authorized By: New Jersey Higher Education Assistance Authority, Philip Koebig , Chairman.

Authority: N.J.S.A. 18A:72-10.

Proposal Number: PRN 1991-401.

Submit comments by September 4, 1991 to:

Brett Lief
Acting Administrative Practice Officer
Department of Higher Education
20 West State Street
CN 542
Trenton, N.J. 08625

The agency proposal follows:

Summary

The New Jersey Higher Education Assistance Authority (NJHEAA) is statutorily responsible for the creation and administration of student loan programs in New Jersey. The NJHEAA recently proposed new rules governing a new State loan program, New Jersey College Loans to Assist State Students (NJCLASS) (see 23 N.J.R. 1257(a)), which are adopted elsewhere in this New Jersey Register. The NJCLASS program is intended to assist New Jersey students who cannot obtain Federally guaranteed loans because they either are not available or the students do not meet program eligibility requirements as defined by the Federal government or the students have additional financial need unmet by the Federally subsidized student loans. This proposed amendment to the NJCLASS program rules provides borrowers with the option of having loan interests, as well as loan principal, deferred during the in-school period. Currently, NJCLASS rules provide that borrowers may defer the payments of loan principal during the in-school period, but interest payments must begin within 60 days after the loan disbursement. New Jersey educational institutions with graduate students have indicated that the option to capitalize loan interest was a critical factor in the attractiveness of the NJCLASS loans to these particular students.

Social Impact

Certain classes of students, especially independent graduate students, are in need of financial assistance to attend school but cannot afford to make any payments during their in-school period. The proposed amendment allows students in this position to obtain necessary educational financing and to defer repayment of loan principal and interest until graduation from school when they are in a more favorable economic position. Without this alternative, many of these students would be unable to continue their education.

Economic Impact

The proposed amendment will provide financial aid to certain categories of individuals who otherwise could not afford to attend school. In order to keep the NJCLASS program interest rate as low as possible for the majority of borrowers who will not be capitalizing interest, this additional program feature is offered as an option at an increased interest rate to help offset associated costs. It is anticipated that the increased rate will be approximately three basic points higher than the rate established for the NJCLASS program.

Regulatory Flexibility Statement

A regulatory flexibility analysis is not required because the proposed amendment does not impose reporting, recordkeeping or other compliance requirements on small businesses as defined by the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The proposed amendment offers NJCLASS student loan recipients the option of deferring repayment of loan interest until they have completed their schooling.

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

9:9-7.7 Repayment of loan

(a) (No change.)

(b) Payment of the interest to lender during the in-school period on a NJCLASS loan must begin within 60 days after the loan is disbursed, **unless the borrower chooses the option of capitalizing interest during the in-school period.**

(c) Borrowers who choose to capitalize interest during the in-school period shall, in exchange for this option, be required to pay an increased loan interest rate, as established by the Authority pursuant to N.J.A.C. 9:9-7.6(a), over the regular program interest rate in effect at the time of borrowing.

Recodify (c)-(f) as **(d)-(g)** (No change in text.)

HUMAN SERVICES

(a)

DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES

Independent Clinic Services Manual Partial Care

Proposed Amendments: N.J.A.C. 10:66-1.6 and 10:66-3

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

Authority: N.J.S.A. 30:4D-2, 6b(3)(12), 30:4D-7, 7a, b, and c; 42 CFR 440.90.

Proposal Number: PRN 1991-399.

Submit comments by September 4, 1991 to:

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

The agency proposal follows:

Summary

This proposal pertains to the HCPCS (Health Care Financing Administration Common Procedure Coding System) codes for the Independent Clinics Services Manual, which are referenced at N.J.A.C. 10:66-3 but are not published in the Code. The actual HCPCS codes are described in Appendix A5 of subchapter 3 pertaining to Independent Clinic Services.

The particular HCPCS code being amended pertains to partial care, which is described in Appendix A5 as a mental health service whose primary purpose is to maximize the client's independence and community living skills in order to reduce unnecessary hospitalization. Partial care programs provide a package of services necessary to meet the comprehensive needs of the individual client.

The proposed amendment increases the rate paid for half-day partial care (code Z0170) from $23.00 to $46.00 and for full-day partial care (code Z0180) from $38.50 to $77.00. This increase is being done to make the rates more closely approximate costs.

The proposed amendment also contains a codification of the existing definition of half-day service vis-à-vis full-day service. A half-day service means three or more hours of participation in active programming exclusive of meals. A full-day service means five or more hours of participation in active programming exclusive of meals (see amended N.J.A.C. 10:66-1.6(i)1iii in the proposed text below).

Social Impact

The proposed amendments should not impact on Medicaid patients who are currently receiving partial care services. These patients will continue to receive partial care services and Medicaid will continue to pay for these services which qualify for federal funding. There is one technical change being made. The listing of partial care services (N.J.A.C. 10:66-1.6) will separate therapy and counseling to clarify that they are distinct entities and to be consistent with the HCPCS code description.

The proposed amendments should not have an impact on those independent clinics that provide ambulatory mental health services. These proposed amendments merely increase the reimbursement rate for the service.

Economic Impact

There is no cost to the Medicaid patient for partial care services. Medicaid patients who are eligible medically needy individuals may have to meet spend down requirements in order to qualify for partial care programs (N.J.S.A. 30:4D-6g).

Those independent clinics who provide partial care services will continue to be reimbursed by Medicaid. There will be a decrease in State governmental expenditures for this service. The increase in the Medicaid rate, which is comprised of 50 percent Federal funds, will be offset by a commensurate decrease in DMH&H funding, which is primarily State appropriations. The increased Medicaid rate will more closely approximate the actual cost of service provision. Currently, the independent clinic providers receive payments from DMHSH to offset costs not reimbursed by other third party payers, including Medicaid. Increasing Medicaid payments, which are eligible for 50 percent Federal matching funds, will reduce the State dollars funded by DMH&H.

Regulatory Flexibility Statement

The proposed amendments impose no reporting, record keeping or compliance requirements on small businesses as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq; therefore, no regulatory flexibility analysis is required. The proposed amendments revise the Medicaid reimbursement rates for partial care services provided by independent clinics and clarify the definitions of "half-day" and "full-day" services.

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

10:66-1.6 Scope of service

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

(i) Mental health services rules are as follows:

1. Mental health clinics shall provide the following mental health services by, or under the direction of, a psychiatrist.

i.-ii. (No change.)

iii. Partial [care] **Care: For purposes of partial care, full-day means five or more hours participation in active programming exclusive of meals, and half-day means three or more hours of participation in active programming exclusive of meals.** A Partial Care program shall provide a full system of services including:

(1) Assessment and evaluation;
(2) Service procurement;
(3) Therapy [and counseling];
(4) Information and referral;
(5) Counseling;
[(5)]**(6)** Daily living education;
[(6)]**(7)** Community organization;
[(7)]**(8)** Pre-vocational therapy;
[(8)]**(9)** Recreational therapy;
[(9)]**(10)** Health-related services.

iv. (No change.)

2.-5. (No change.)

(j)-(p) (No change.)

10:66-3 HCFA COMMON PROCEDURE CODING SYSTEM (HCPCS)

APPENDIX A5

HCPCS Code	Description	Maximum Fee Allowance S	$	NS
	Partial Care: A mental health service whose primary purpose is to maximize the client's independence and community living skills in order to reduce unnecessary hospitalization. It is directed toward the acute and chronically disabled individual. [PC] **Partial Care** programs shall provide, as listed below, a full system of services necessary to meet the comprehensive needs of the individual client. Services shall be provided or arranged for, to meet the individual needs of participating clients. These services shall include: Assessment and evaluation; Service [Procurement] **procurement;** Therapy*; [1] Information and referral; Counseling; Daily living education; Community organization; Pre-vocational [Therapy] **therapy*;** Recreational [Therapy] **therapy*;** Health-related **services***. Partial Care [Programs] **programs** shall be available daily for five days a week, with additional planned activities each week[,] during evening and/or weekend hours as needed. Individual clients need not attend every day but as needed. Partial [care] **Care** programs specifically developed for children may be available four days a week, with one evening and/or weekend activity(ies). The staff of the Partial Care [Program] **program** should include a Director who shall be a qualified professional from the specialties of psychiatry, psychology, social work, psychiatric nursing, vocational rehabilitation, or a related field with training and/or experience in direct service provision and administration. A qualified psychiatrist shall be available to the [PC] **Partial Care** program on a regularly-scheduled basis, for consultation. Other staff deemed necessary to implement a Partial Care [Program] **program** which meets the requirements of this section should include qualified mental health professionals, paraprofessionals and volunteers. In order to qualify as an approved Partial Care [Program] **program** the program must be certified by the Department.			
Z0170	Partial Care, half-day **(three or more hours of participation in active programming exclusive of meals)**	[23.00 **46.00**	23.00] **46.00**	
Z0180	Partial Care, full[y]-day **(five or more hours of participation in active programming exclusive of meals)**	[38.50 **77.00**	38.50] **77.00**	

Note: Except for transportation these rates reflect full payments with a prohibition against multiple billing for more than one service to a Medicaid patient in a given day.

[1]* These services may be provided directly or arranged by [PC] **Partial Care** staff through other [Program Elements] **program elements** or agencies, to avoid duplication.

(a)

DIVISION OF ECONOMIC ASSISTANCE

Public Assistance Manual

Payment Methods of Child Care for Employed REACH AFDC-C and -F Participants

Proposed Amendments: N.J.A.C. 10:81-14.12 and 14.18

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

Authority: N.J.S.A. 44:10-1 et seq.; Title II of the Family Support Act of 1988 (FSA), Pub.L. 100-485; 45 CFR 233.20(a)(11)(i); 45 CFR 255.3; and Section 402(a)8(A)iii of the Social Security Act.

Proposal Number: PRN 1991-387.

Submit comments by September 4, 1991 to:
Marion E. Reitz, Director
Division of Economic Assistance
CN 716
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The Family Support Act of 1988 (FSA), Public Law 100-485, requires states to provide child care for eligible AFDC families when it is determined that such care is necessary to accept or maintain employment or to enable participation in a Job Opportunities and Basic Skills (JOBS) education or training program. The FSA provisions allow states the opportunity to choose between two child care payment options for JOBS participants who are employed and remain eligible for AFDC-C and -F: (1) direct payment through the JOBS program to providers of child care; and (2) the allowance for payment by the participant family of those costs using the AFDC-C and -F child care disregard process.

The disregard process requires the employed individual to take responsibility for paying the cost of child care; those costs are then deducted (disregarded) from earnings in determining the REACH/JOBS family's AFDC-C or -F assistance grant. In the direct payment method, payment for child care is made to the child care provider, and the cost of child care is not disregarded in calculating the AFDC grant.

Since Federal JOBS provisions contain the option of making direct payment for child care of employed JOBS individuals, the State has decided to convert to that payment option rather than use of the disregard process for employed participants in the State's Realizing Economic Achievement (REACH) program as currently described at N.J.A.C. 10:81-14.18. Under prior Federal statute, the disregard procedure had been the only allowable option of payment for child care when an AFDC-C or -F recipient became employed but still retained eligibility for AFDC. Direct payment to providers simplifies the payment process because it eliminates transitioning through multiple payment methods during the course of an individual's progress from participation in a REACH/JOBS training component, to employment, to self-sufficiency from welfare dependence. Current rules at N.J.A.C. 10:81-14.18 require that direct payment of child care be made while the participant is in training, the disregard method be used while the individual is employed (in conjunction with a possible supplemental direct payment), and the direct payment method of child care be used during the transition to post-AFDC employment. Therefore, direct payment to child care providers for employed REACH/JOBS participants is the preferred option of payment rather than use of the disregard.

There are, however, exceptions under Federal provisions and under current State operational procedures where the Federal child care/incapacitated adult care disregard method must remain available to eligible, employed REACH/JOBS participants when appropriate. As such, the disregard mechanism remains the method of payment for expenditures for care of an incapacitated adult in employed AFDC-C or -F families, regardless of child care payment methods.

The proposed amendments are being submitted in conjunction with proposed amendments to N.J.A.C. 10:82 concerning payment options for child care for employed REACH/JOBS AFDC-C and -F eligible families. The proposed amendments reflect the operational transition to the direct payment option in making child care payments for employed REACH/

JOBS participant families who remain eligible for AFDC-C or -F benefits.

The proposed amendments at N.J.A.C. 10:81-14.12 are included for clarification of related REACH/JOBS child care concerns. Language is deleted which references the previous AFDC child care disregard maximum payment limits for REACH/JOBS participants in the Community Work Experience Program (CWEP). The proposed amendments at N.J.A.C. 10:81-14.12 clarify that payments for child care during participation in a REACH/JOBS CWEP component are allowed based on child care service needs up to the payment limits set forth at N.J.A.C. 10:82-5.3(g) and in accordance with provisions for payment of child care during REACH/JOBS participation as detailed at N.J.A.C. 10:81-14.18.

The proposed amendments at N.J.A.C. 10:81-14.18(c) correct a cross-reference and update the subsection to include "JOBS" as part of the REACH support services, as provided throughout the proposed amendments.

The proposed amendments at N.J.A.C. 10:81-14.18(d) and (g) set forth the preferred option of direct vendor payments to authorized providers of REACH/JOBS child care services for employed AFDC-C or -F REACH/JOBS participants. Language concerning use of the disregard method of payment for child care is deleted at N.J.A.C. 10:81-14.18(d)1 and (g)4 and revised and relocated more appropriately under N.J.A.C. 10:81-14.18(g)5 (1) and (2) to address situations when the disregard method will remain available to employed REACH/JOBS participants.

The proposed amendment at N.J.A.C. 10:81-14.18(g)4i delineates use of the prospective AFDC eligibility determination process when a REACH/JOBS participant reports the start of employment and the direct payment option applies. Language reaffirms, in accordance with the Social Security Act provisions, that incapacitated adult care costs shall always be disregarded regardless of the method of payment of REACH/JOBS child care costs. N.J.A.C. 10:81-14.18(g)4ii explains that if an employed REACH/JOBS family remains prospectively eligible for AFDC, child care costs shall not be disregarded in determining that family's AFDC benefit when the direct payment option is utilized.

Current text at N.J.A.C. 10:81-14.18(g)4ii through v has been recodified as N.J.A.C. 10:81-14.18(g)4iii through vi with no change to current language; N.J.A.C. 10:81-14.18(g)5 has been recodified as N.J.A.C. 10:81-14.18(g)6.

The proposed amendments at N.J.A.C. 10:81-14.18(g)5i through iv add text that delineates situations where the disregard method of payment for child care prevails for employed AFDC-C or -F REACH/JOBS participants. Those situations are as follows:

The employed AFDC-C or -F REACH/JOBS family was receiving AFDC on October 13, 1988, based on application of the child care disregard and that family would be financially disadvantaged due to loss of AFDC eligibility as a result of the direct payment of child care costs rather than use of the child care disregard; or

The AFDC-C or -F employed REACH/JOBS family selects a child care provider who does not meet the criteria as an authorized child care arrangement for direct payment through REACH/JOBS.

The family who applies for AFDC-C or -F has an employed family member who would be defined as a REACH/JOBS mandatory participant (that is, not exempt from REACH/JOBS participation) through the interim time period covering referral to REACH/JOBS case management until such time that income maintenance is subsequently advised by case management of the direct payment of child care costs through REACH/JOBS; or

The employed AFDC-C or -F REACH/JOBS family was receiving AFDC on or before April 1, 1991, and was utilizing the disregard process to meet child care costs for an active member who was employed.

The proposed amendment at N.J.A.C. 10:81-14.18(g)5iii(1) is text which has been relocated from N.J.A.C. 10:81-14.18(g)4 and revised to reflect the cost of care in excess of the Federal disregard limits may be supplemented by REACH/JOBS for authorized child care arrangements up to the maximum REACH/JOBS rates, and issued as direct vendor payments to the child care provider when the disregard method is used.

The proposed amendment at N.J.A.C. 10:81-14.18(g)5iii(2) clarifies that bridge payments to assist the family in transition to work are also available as direct vendor payments to employed AFDC-C or -F REACH/JOBS families using the disregard payment procedure.

The proposed amendment at N.J.A.C. 10:81-14.18(g)5iii(3) provides that employed AFDC-C and -F REACH/JOBS families may voluntarily request that the direct payment method be used rather than the disregard method of payment for child care.

Social Impact

The Family Support Act of 1988 provides that states be given maximum flexibility in deciding how to meet the child care needs of JOBS participants. The proposed amendments to allow use of direct payments to the child care provider for employed REACH/JOBS families, except in circumstances where the disregard method must be used, are expected to have a positive impact for the REACH/JOBS participant, the child care provider, and the county welfare agencies. The expediency of the direct payment option selected by the State for payment of REACH/JOBS child care costs for employed REACH/JOBS participants will help to prevent the break-down of child care arrangements and thereby permit continuity of child care with the same provider.

The direct payment of REACH/JOBS child care costs for employed AFDC-C and -F REACH/JOBS participants will help in alleviating operational and participant confusion caused by changing from the direct payment to the disregard method and then again to the direct payment method, as has been the situation when a REACH/JOBS participant transitioned from a training component to employment while on AFDC, and then to post-AFDC employment. This option also eliminates the need for the AFDC-C or -F REACH/JOBS participant to expend money for child care at a crucial time of adjustment when the individual obtains employment.

The disregard procedure will be retained in certain situations to ensure that child care/incapacitated adult care will be provided in instances where the direct payment option would not be appropriate, in accordance with Federal statute and REACH/JOBS operational procedures.

Economic Impact

The proposed amendments provide procedural adjustments and modification to REACH/JOBS child care payment procedures. By modifying procedures for less frequent use of the child care disregard process (except in those situations where use of the disregard method is appropriate) and by emphasizing the direct payment procedure for employed REACH/JOBS individuals, the payment process will be a straightforward approach for the child care provider, the participant, and the county welfare agencies.

Direct payment of child care costs for employed REACH/JOBS participants may appear to increase the burden of payment on the State; however, such costs are in actuality offset by the savings in the Title IV-A benefit area. Federal financial participation is available to the State for costs of JOBS child care and is matched 50 percent through Title IV-A funding.

The proposed amendments may affect REACH/JOBS individuals who, through current application of the disregard method of payment for child care, may retain eligibility for possibly three or four months after beginning employment. Through direct payment of child care costs for employed REACH/JOBS participants by the State IV-A agency, more of the REACH/JOBS family's earned income will be counted in the calculation of the AFDC benefit because such families will not have child care costs disregarded. The elimination of the child care deduction may, therefore, curtail the period of AFDC eligibility; however, such families are compensated because the child care costs are paid by the agency, thus offsetting any loss in the assistance benefit.

Regulatory Flexibility Statement

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

10:81-14.12 REACH Community Work Experience Program

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

(c) Participation services and reimbursement: The services of child care and transportation that are necessary to CWEP participation will be provided as part of the REACH Agreement. In cases where the county selected entity is unable to provide these necessary services, the county selected entity must provide reimbursement for necessary transportation and child care costs that are incurred by the recipient and directly related to participation in CWEP.

1. (No change.)

2. Child care costs: Participants shall be reimbursed for child care costs in such amounts as are determined by the CWA to be reasonable, necessary, and cost-effective, or by direct payment to the child care provider. [Rates are determined on a Statewide basis through analysis of costs incurred for special needs care, full day care, before and after school care and summer rates for programs for school-age children as set forth at N.J.A.C. 10:81-14.18. However, in no event shall the reimbursement using CWEP funds exceed the earned income child care disregard limits set forth at N.J.A.C. 10:82-4.4 for full and part-time participation in CWEP.] **Child care payments shall be made in accordance with N.J.A.C. 10:81-14.18 and N.J.A.C. 10:82-5.3.**

3.-4. (No change.)

(d)-(h) (No change.)

10:81-14.18 REACH/**JOBS** support services: child care

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

(c) Types of care and payments: REACH/**JOBS** child care payments are available for care in an infant, toddler, preschool child, school-age child or child with special needs in various types of arrangements, including full and part-time day care and care before and after school. The **Statewide** rates for REACH/**JOBS** child care payments are **set forth at N.J.A.C. 10:82-5.3(g) and are also** available from the Department of Human Services, CN 700, Trenton, NJ 08625, or the local Division of Youth and Family Services District Office or the county welfare agency.

1.-2. (No change.)

3. Costs of transportation: Payment in addition to the REACH /**JOBS** training-related expenses allotment may be made for the cost of transportation of a child to and from a day care center in accordance with N.J.A.C. 10:82-[5.3(d)3] **5.3(c)3.**

(d) Duration of payment: REACH/**JOBS** child care benefits are routinely available to participants for participation in a REACH/ **JOBS** employment-directed activity; for a limited time to bridge the period between participation in REACH employment-directed activities or between a REACH/**JOBS** employment-directed activity and employment; for the post-employment period after commencement of employment that does not result in ineligibility for AFDC, that is, while a participant is employed and receiving AFDC, **as a direct payment or** to supplement as necessary, child care paid by the participant as required by the Social Security Act (see (g)4 below); and, after the commencement of employment that results in ineligibility for AFDC, one year post-AFDC child care, subject to payment of a post-AFDC child care fee.

1. Post-employment child care: The post-employment period shall start with the first week in which a participant is employed and receiving AFDC and shall expire when the participant is either ineligible for AFDC for reason other than sanction or penalty or is no longer employed. State REACH funds shall be used for [the cost of post-employment child care in any month in which the cost of child care exceeds $175.00 for any child age two or older and $200.00 for any child under age two (see (g)3 below).] **child care costs of REACH/JOBS employed individuals. Such payments may be made as direct payment of child care costs or, as supplemental payments for families using the disregard process if the costs of child care exceed the Federal child care disregard limits set forth at N.J.A.C. 10:82-2.8(a). Payment is made only when the care is provided through a REACH/JOBS authorized child care arrangement (see (f) below).**

i. (No change.)

2.-4. (No change.)

(e)-(f) (No change.)

(g) Payment [methods] **procedures**: [The two methods in the REACH program for issuing payments] **REACH/JOBS funds are expended** for child care [are] **as direct** vendor payments to [the provider and] **providers or as** direct payments to [the participant] **participants**.

1.-3. (No change.)

4. Employed **REACH/JOBS** participants receiving AFDC-C **or** -F: [For an employed REACH participant receiving AFDC, the actual cost of child care up to and including $175.00 per month per child age two or older and $200.00 per month per child under age two shall be disregarded from the participant's earnings, before that income is used to compute the montly AFDC grant. Therefore, an employed participant shall pay the first $175.00 or $200.00 for each child in child care directly to the provider. The amount in excess of $175.00 or $200.00 shall be considered a REACH post-employment child care payment to be issued as a vendor payment to the provider in accordance with (g) above.] **The preferred method of payment of REACH/JOBS child care benefits for employed AFDC-C or -F REACH/JOBS participants shall be by direct vendor payment to authorized providers of service that meet those requirements set forth in (f) above.**

i. [When a participant begins employment and is deemed prospectively eligible for AFDC, REACH child care payments may be continued for the first and second months of employment to assist transition of the family from prospective to retrospective budgeting. Because the participant will not have paid for child care during those months, the child care disregard of earnings will not be applied to AFDC grants for the third and fourth months of employment.] **When the REACH/JOBS participant reports the start of employment, the income maintenance worker shall determine eligibility for AFDC prospectively by deducting the work expense disregard and the applicable $30.00 and one-third disregard as set forth at N.J.A.C. 10:82-2.8 and 4.4. Additionally, actual expenditures made by the REACH/JOBS family for care of an incapacitated adult living in the AFDC-C or -F household shall be disregarded in the eligibility determination and benefit calculation up to a maximum of $175.00 per month per incapacitated adult during full-time employment of the REACH/JOBS participant, or up to $135.00 per month for part-time employment (see N.J.A.C. 10:82-2.8). Cost of care of the incapacitated adult remains the responsibility of the REACH/JOBS family; no supplemental monies for incapacitated adult care are provided through REACH/JOBS in excess of the disregard limits. Such adult care costs if incurred by the family shall always be disregarded regardless of the method of payment of REACH/JOBS child care costs. No disregard shall be applied in the prospective eligibility determination for REACH/JOBS child care purposes (except as delineated in (g)5 below) as those costs are made by direct vendor payment by the agency.**

ii. If the employed REACH/JOBS family remains prospectively eligible for AFDC, the costs of REACH/JOBS child care shall not be disregarded in the computation of the family's AFDC assistance benefit except in situations as delineated in (g)5 below. The income maintenance worker shall explain to the participant that actual REACH/JOBS child care costs shall be paid directly to the child care provider.

Recodify ii.-v. as **iii.-vi.** (No change in text.)

5. Exceptions to direct payment of REACH/JOBS child care for employed REACH/JOBS AFDC-C and -F participants: The earned income disregard procedure for expenditures made for care of a child (see N.J.A.C. 10:82-2.8 for disregard limits) shall remain available to eligible families participating in REACH/JOBS in the situations delineated in (g)5i through iv below:

i. The REACH/JOBS child care payment is made to a child care provider selected by the AFDC-C or -F family participating in REACH/JOBS and that provider does not meet the criteria set forth in (f) above as an authorized child care arrangement for direct payment through REACH/JOBS funds. In addition, no supplemental monies over the disregard limits are provided through REACH/ JOBS for such unauthorized arrangements.

ii. Any AFDC-C or -F REACH/JOBS family who has an employed family member who has been participating in REACH/JOBS prior to April 1, 1991 and who has been utilizing the disregard method on or before April 1, 1991, for payment of child care costs (see (g)5iii(1), (2) and (3) below for applicable procedures).

iii. Any employed AFDC-C or -F family who has been continuously eligible for and was receiving AFDC-C or -F benefits on October 13, 1988 and had earnings on that date whereby the child care disregard was the method of payment for child care costs, and who would be financially disadvantaged due to the loss of AFDC eligibility as a result of the direct payment of child care costs rather

than the use of the disregard when employed and participating in REACH/JOBS.

(1) The employed REACH/JOBS AFDC-C or -F participant shall pay actual child care costs up to the Federal disregard limits directly to the provider of care. The child care disregard shall be applied to that first budget month in which the REACH/JOBS employed participant begins payment for child care costs. Cost of care in excess of the Federal disregard limits may be supplemented by the REACH/JOBS program as a REACH/JOBS post-employment child care payment up to the maximum rates authorized by DHS (see N.J.A.C. 10:82-5.3(g)). Supplemental REACH/JOBS payments are issued as vendor payments to the child care provider when the child(ren) is in an authorized child care arrangement (see (f) above). Such REACH/JOBS supplemental payments shall not be counted as income or resources in any month received.

(2) Direct vendor payment by the agency is available as a bridge payment (see (d)3 above) for families using the disregard payment procedure, to assist the REACH/JOBS family in transition to work. That bridge payment through REACH/JOBS may be paid by the agency as a direct payment to the provider for care in authorized arrangements up to the receipt of the first pay check or for a period not to exceed one month. Child care costs paid through a bridge payment shall not be disregarded in the calculation of the REACH/JOBS family's assistance payment.

(3) REACH/JOBS families may voluntarily request direct payment of child care costs rather than the use of the disregard process. Upon request, a prospective AFDC elgibility determination shall be made to determine if continued eligibility exists if the child care disregard is not applied. The participant shall be informed of the result of the determination and of the consequences. If eligibility continues to exist and the client decides to have direct payment rather than the disregard, the case record shall be documented as to the request and appropriate action taken.

iv. Any AFDC-C or -F applicant family which has an employed family member who is defined as a REACH/JOBS mandatory participant (that is, not exempt from REACH/JOBS participation) shall utilize the disregard procedure for costs of child care due to employment during the interim time period covering referral of that mandatory individual to REACH/JOBS case management; and, until such time (subject to timely and adequate notice provisions at N.J.A.C. 10:81-7.1 and 14.7) that income maintenance is subsequently advised by case management of the direct payment of child care costs through REACH/JOBS.

[5.]**6.** (No change in text.)

(h)-(j) (No change.)

(a)

DIVISION OF ECONOMIC ASSISTANCE

Assistance Standards Handbook

AFDC-C and -F: Child Care/Incapacitated Adult Care Disregard; Direct Payment of Child Care for Employed REACH Participants

Proposed Amendments: N.J.A.C. 10:82-2.8, 4.4 and 5.3

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

Authority: N.J.S.A. 44:7-6 and 44:10-3; Title II of the Family Support Act of 1988 (FSA), Pub. L.100-485; 45 CFR 233.20(a)(11)(i); 45 CFR 255.3; and Section 402(a)8(A)iii of the Social Security Act.

Proposal Number: PRN 1991-397.

Submit comments by September 4, 1991 to:
Marion E. Reitz, Director
Division of Economic Assistance
CN 716
Trenton, New Jersey 08625

The agency proposal follows:

Summary

On January 7, 1991, New Jersey incorporated provisions of Title II of the Family Support Act of 1988 (FSA), Public Law 100-485 enacted on October 13, 1988, into the Realizing Economic Achievement (REACH) program. The FSA established the Job Opportunities and Basic Skills (JOBS) program under Title IV-F of the Social Security Act for recipients of Aid to Families with Dependent Children (AFDC).

The Family Support Act requires states to provide child care for eligible AFDC-C or -F families when it is determined that such care is necessary to accept or maintain employment or to enable participation in a JOBS education or training program. The JOBS provisions allow states the opportunity to choose between two child care payment options for JOBS participants who are employed and remain eligible for AFDC-C and -F: (1) direct payment to providers of child care; and (2) payment using the AFDC-C and -F child care disregard process.

The disregard procedure requires the employed REACH/JOBS individual to take responsibility for paying the cost of child care; and, those costs are then deducted (disregarded) from earnings in determining the REACH/JOBS family's AFDC-C or -F assistance grant. If the actual cost of child care exceeds the allowable Federal deduction, then the State may issue supplemental child care payments directly (direct vendor payments) to the child care provider for employed REACH/JOBS participants.

New Jersey currently uses a combination of payment methods to meet child care costs for REACH/JOBS participants. Direct payment to child care providers by use of vouchers is utilized for individuals participating in REACH/JOBS activity components. As REACH/JOBS participants transition from training activities into unsubsidized employment, the method of payment of child care costs changes from the direct payment process to use of the AFDC child care disregard. Under prior Federal statute, the disregard procedure had been the only allowable method of payment for child care when an AFDC-C or -F recipient became employed but still retained eligibility for AFDC.

Since Federal JOBS provisions contain the option of making direct payment for child care for employed JOBS individuals, the State has decided to convert to that payment method rather than the disregard process currently described at N.J.A.C. 10:82. Direct payment to child care providers simplifies the payment process because it eliminates transitioning through multiple payment methods during the course of an individual's progress from participation in a REACH/JOBS training component, to employment, to self-sufficiency from welfare dependence. For example, current rules at N.J.A.C. 10:82 require that direct payment of child care is made while the REACH/JOBS participant is in training; the disregard method is used while the individual is employed (in conjunction with a possible supplemental direct child care payment); and the direct payment method of child care is used during the transition to post-AFDC employment.

Direct payment to child care providers rather than the disregard method is the preferred method of payment for child care for employed REACH/JOBS participants. However, there are exceptions under Federal provisions and current State operational procedures where the Federal child care/incapacitated adult care disregard method must remain available to eligible participants when appropriate. Those situations as delineated in the proposed amendments at N.J.A.C. 10:82-2.8 and 4.4 are as follows:

The employed AFDC-C or -F family was receiving AFDC on October 13, 1988, based on application of the child care disregard and that family would be financially disadvantaged due to loss of AFDC eligibility as a result of the direct payment of child care costs rather than use of the child care disregard; or

The family pays the expense of care for an incapacitated adult living in the AFDC-C or -F household to enable the employment of the AFDC-C or -F individual; or

The employed AFDC-C or -F individual works 30 or more hours per week, is exempt from REACH/JOBS, and does not volunteer to participate in the REACH/JOBS program; or

The family who applies for AFDC-C or -F has an employed family member, who would be defined as a REACH/JOBS mandatory participant (that is, not exempt from REACH/JOBS participation), through the interim time period covering referral to REACH/JOBS case management, until such time that income maintenance is subsequently advised by case management of the direct payment of child care costs through REACH/JOBS; or

The AFDC-C or -F employed REACH/JOBS family selects a child care provider who does not meet the criteria as an authorized child care arrangement for direct payment through REACH/JOBS; or

The AFDC-C or -F employed REACH/JOBS family was receiving AFDC on or before April 1, 1991, and was utilizing the disregard process to meet child care costs for an active member who was employed.

The proposed amendments are as follows: N.J.A.C. 10:82-5.3(a) is revised to reflect, more appropriately, provisions concerning child care payments rather than child care arrangements.

N.J.A.C. 10:82-5.3(b)1 through 5 have been deleted. Proposed text at N.J.A.C. 10:82-5.3(b)1, 2 and 3 reorganizes previous language to clarify payment procedures for employed AFDC-C, -F and -N non-REACH/JOBS individuals, and REACH/JOBS participants.

N.J.A.C. 10:82-5.3(b)4 establishes direct payment of child care costs for employed AFDC-C and -F REACH/JOBS participants as the preferred method of payment, up to the maximum allowable child care rates.

Text deleted at N.J.A.C. 10:82-5.3(b)2 concerning child care "bridge" payments paid during the transition of a REACH/JOBS participant to work, has been revised for clarification purposes, and relocated at N.J.A.C. 10:82-5.3(b)5.

The proposed language at N.J.A.C. 10:82-5.3(b)6 and (b)6i expands previous language deleted at N.J.A.C. 10:82-5.3(b)2. When use of the disregard payment method is retained for REACH/JOBS participants, supplemental child care payments may be provided through direct payment, when child care costs exceed the Federal disregard limits, for authorized child care arrangements only.

N.J.A.C. 10:82-5.3(b)7 and 8 reiterate previous language deleted from N.J.A.C. 10:82-5.3(b)2.

N.J.A.C. 10:82-5.3(e), concerning rules for in-home care, has been modified for clarification purposes.

Social Impact

The Family Support Act of 1988 provides states maximum flexibility in selecting child care payment strategies for AFDC-C and -F recipient families participating in the JOBS program. The direct payment of child care to the child care provider by use of vouchers is the preferred method of payment for employed AFDC-C or -F REACH/JOBS participants. This procedure will help to alleviate operational and participant confusion caused by changing from the direct payment to the disregard method and then again to the direct payment method, as has been the situation when a REACH/JOBS participant transitioned from a training component to employment while on AFDC, and then to post-AFDC employment. The direct method of payment of child care also eliminates the need for the REACH/JOBS AFDC-C or -F participant to expand money for child care at a crucial time of adjustment when the individual obtains employment.

The expediency of the direct method of providing child care payment for employed REACH/JOBS participants will help to prevent the breakdown of child care arrangements and allow for continuity of child care with the same provider. Therefore, the proposed amendments of using direct payments to the child care provider are expected to have a positive impact for the REACH/JOBS participant, the child care provider, and the county welfare agencies.

The disregard method shall be retained in certain situations to ensure that child care/incapacitated adult care will be provided in instances where the direct payment method would not be appropriate, in accordance with Federal statute and REACH/JOBS operational procedures.

Economic Impact

The proposed amendments provide procedural adjustments and modifications to REACH/JOBS child care payment procedures. By modifying procedures to ensure less frequent use of the child care disregard (except in those situations where use of the disregard method is appropriate) and by emphasizing the child care direct payment procedure for employed REACH/JOBS participants, the payment process will be a straightforward approach for REACH/JOBS child care providers, REACH/JOBS participants, and county welfare agencies.

Less frequent use of the disregard method of payment for child care services for employed REACH/JOBS participants does not in any way entail higher child care payments to providers, nor increase costs to the State IV-A agency. Currently, the portion of the child care met by the family is disregarded as an "expense of employment" in the determination of the ADFC benefit amount. The resulting AFDC benefit amount increases due to subtracting (that is, disregarding) the child care costs in the eligibility determination process. Additionally, the State IV-A agency has been allowed to supplement the disregard levels of child care payments up to maximum REACH/JOBS rates for employed REACH/JOBS participant families. Federal financial participation is available to the State, and child care vouchers are matched 50 percent through Title IV-A funding for child care costs through JOBS. Therefore, no net difference occurs in actual expenditures for the agency by increased usage of the direct payment method in REACH/JOBS.

The proposed amendments may affect REACH/JOBS individuals who, through current application of the disregard method of payment for child care, may retain eligibility for possibly three or four months after beginning employment. Through direct payment of child care costs for employed REACH/JOBS participants by the State IV-A agency, more of the REACH/JOBS family's earned income will be counted in the calculation of the AFDC benefit because such families will not have child care costs disregarded. The elimination of the child care deduction may, therefore, curtail the period of AFDC eligibility; however, such families are compensated because the child care costs are paid by the agency, thus offsetting any loss in the assistance benefit.

Regulatory Flexibility Statement

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

10:82-2.8 Determination of calculated earned income; AFDC-C and -F procedures

(a) From the total gross earnings of each **employed** person in the AFDC-C and -F segments, deduct the cost of producing income if self-employed (see N.J.A.C. 10:82-4.3), and proceed as follows:

1. From gross earnings deduct the first $90.00 of such earnings for each employed individual in the eligible family[,] to cover work-related expenses[,] including, but not limited to, transportation and mandatory payroll deductions.

2.-3. (No change.)

4. Deduct an amount equal to the actual expenditures for child care or for care of an incapacitated [individual] **adult** living in the same home as the AFDC-C or -F eligible family **when any of the circumstances in (b) below apply to the eligible family**. In no event shall this deduction exceed the limits as follows:

i.-ii. (No change.)

iii. $135.00 per month, per child age two or older, or incapacitated adult, for part-time employment **(for example, employment of less than 120 hours per month)**;

iv. $150.00 per month, per child under age two, for part-time employment **(for example, employment of less than 120 hours per month)**.

[5. Part-time employment shall be defined as employment of less than 120 hours per month.]

(b) The deduction described in (a)4 above shall be made for actual expenditures for child care or for care of an incapacitated adult living in the same home as the AFDC-C or -F eligible family when any of the following circumstances apply to the eligible family:

1. That employed AFDC-C or -F family who had been continuously eligible for and was receiving AFDC-C or -F benefits on October 13, 1988, and had earnings on that date whereby the child care disregard was the method of payment for child care costs, and who would be financially disadvantaged due to loss of AFDC eligibility as a result of the direct payment of child care costs rather than use of the child care disregard when employed and participating in REACH/JOBS;

2. The family pays expenditures for care of an incapacitated adult living in the AFDC-C or -F household to enable the AFDC-C or -F employed individual to remain employed. This disregard process shall be used in determining the calculated earned income to an AFDC-C or -F family to meet the costs of care of an incapacitated

adult in the household if the family incurs such expenses, regardless of the fact that direct payment for child care costs may be paid by the agency (see N.J.A.C. 10:82-5.3(b) and 10:81-14.18(d)1);

3. An AFDC-C or -F applicant family which has an employed family member who is defined as a REACH/JOBS mandatory participant (that is, not exempt from REACH/JOBS participation) shall use the disregard method for costs of child care due to employment during the interim time period covering referral of the mandatory individual to REACH/JOBS case management; and until such time (subject to timely and adequate notice provisions at N.J.A.C. 10:81-7.1 and 14.7) that income maintenance is subsequently advised by case management of the direct payment of child care costs through REACH/JOBS;

4. The employed individual who works 30 or more hours per week, is exempt from REACH/JOBS, and does not volunteer as a participant in the REACH/JOBS program (see N.J.A.C. 10:81-14.3(c) and 14.3A(a)14);

5. The REACH/JOBS child care payment is made to a child care provider selected by the AFDC-C or -F family participating in REACH/JOBS, and that provider does not meet the criteria at N.J.A.C. 10:82-5.3(c) through (f) and N.J.A.C. 10:81-14.18(f) as an authorized child care arrangement for direct payment through REACH/JOBS; or

6. The AFDC-C or -F REACH/JOBS family who has an employed family member who has been participating in REACH/JOBS prior to April 1, 1991, and who has been utilizing the disregard process on or before April 1, 1991, to meet child care costs for that active REACH/JOBS member who was employed.

10:82-4.4 Disregard of earned income in AFDC-C and -F segments

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

(d) The CWA shall disregard from the remaining earned income, the actual costs paid for child care or for care of an incapacitated individual in the same home as the AFDC-C or -F eligible family **when the circumstances described at N.J.A.C. 10:82-2.8(b) exist.** The amount of the disregard shall not exceed the limits as follows:

1.-4. (No change.)

(e) (No change.)

10:82-5.3 Payment for child care **through Title IV-A funds**

(a) "Child care" for the purposes of this section means [arrangements] **payment** for care of a child [in a child care center, with family day care providers (including registered family day care homes and approved homes), with providers of in-home care, school-age child care or in day camps] **in both REACH/JOBS and non-REACH/JOBS situations through Title IV-A funding.** For individuals participating in the REACH/JOBS program, including individuals eligible for post-AFDC REACH/JOBS benefits, the provisions of N.J.A.C. 10:81-14.18 shall apply. With the exception of (h) below concerning care in approved maternity homes, no child care payment shall be authorized which exceeds the maximum rates established by the Department of Human Services (see (g) below). Actual costs per child per week shall be reasonably related to the hours of child care needed, **and** to accommodate [the] **any** special circumstance situation **as defined in N.J.A.C. 10:82-5.2(c)** on a case-by-case basis. If a child is placed in the care of more than one child care provider in any single week, the total cost of care distributed among providers shall be based on the child care arrangements, the age or special circumstance situation of the child and the hours of care provided.

(b) Further provisions related to child care expenses are:

[1. Expenses of child care may be paid when the parent, parent-person or parent-minor who normally cares for the child, is participating in employment-directed activities through REACH or is eligible for post employment child care, including post-assistance benefits (through REACH).

2. Child care expenses for employed AFDC-C and -F segment families shall be met by the eligible family through the child care disregard process set forth at N.J.A.C. 10:82-2.8(a)4 and 4.4(d). If the parent, parent-person or parent-minor is a REACH participant, REACH funds may be used to supplement the cost of post-employment child care up to the maximum rates established by the Department of Human Services (see (g) below), in any month in which the cost of such child care exceeds the child care disregard limits. At the time a participant gains employment, during the transition of a REACH participant to work, child care may be paid by the agency as a bridge payment through REACH up to the receipt of the first pay check or for a period not to exceed one month (see N.J.A.C. 10:81-14.18(d)4). Those costs paid through a bridge payment shall not be disregarded in the calculation of the family's assistance payment. The child care disregard is applied to that budget month in which the participant begins payment for child care costs. No payments are authorized for child care expenses incident to the employment of non-needy caretaker relative.

3. Expenses of child care incident to employment in the AFDC-N segment shall be provided, when necessary, as a vendor payment of actual costs of care to the provider of care in accordance with N.J.A.C. 10:81-14.18. No child care payment shall be authorized which exceeds the maximum rates established by the Department of Human Services.

4. Child care as an expense incident to training for employment or incident to a program of vocational rehabilitation may be provided as an additional payment if not available through a special training program or agency. Such payment can be made directly to the client or as a vendor payment from the Title IV-A administrative account.

5. Authorizations for payments of child care costs are limited to providers of child care who satisfy the criteria delineated in (c) through (f) below.]

1. Child care may be provided for participation in a non-REACH/JOBS vocational rehabilitation programs, when such expenses are not available through those programs or sponsoring agencies. Child care payments for vocational rehabilitation purposes can be made directly to the individual or as a vendor payment to the child care provider.

2. Child care expenses for employed AFDC-C and -F segment families (non-REACH/JOBS participants) shall be met by the eligible family through the child care disregard process set forth at N.J.A.C. 10:82-2.8(a)4 and (b) and 4.4(d).

3. Expenses of child care incident to employment of an AFDC-N segment REACH/JOBS individual shall be provided, when necessary, as a direct payment of actual costs of care (not to exceed the maximum rates in (g) below) to the provider of child care and in accordance with N.J.A.C. 10:81-14.18.

4. Expenses of child care incident to employment of an AFDC-C or -F segment REACH/JOBS parent, parent-person or parent-minor shall be provided, when necessary, as a direct payment of actual costs of child care when appropriate (see N.J.A.C. 10:82-2.8(a)4 and (b) and 4.4(d)). The direct payment to the provider of child care costs for employed REACH/JOBS families shall not exceed the maximum child care rates (see (g) below) established by the Department of Human Services for an authorized child care arrangement as described in (c) through (f) below.

5. Expenses of child care during the period of time between REACH/JOBS activities or between an employment-directed activity and the start of employment for an AFDC-C, -F, or -N REACH/JOBS participant. Such payments are termed "bridge" payments and shall not be disregarded in the calculation of the family's assistance payment. Child care may be paid by the agency as a bridge payment through REACH/JOBS up to the receipt of the first pay check or for a period not to exceed one month (see N.J.A.C. 10:81-14.18(d)3).

6. If the family circumstances satisfy any one of the situational criteria at N.J.A.C. 10:82-2.8(b), requiring use of the child care disregard method to meet child care/incapacitated adult care expenses caused by the employment of a REACH/JOBS individual, then REACH/JOBS funds may be used to supplement the cost of child care in any month in which the costs of such child care exceed the Federal child care disregard limits up to the maximum rates established by the Department of Human Services (see (g) below). The supplement is provided by direct payment to the provider only for authorized child care arrangements (see (c) through (f) below).

i. If the REACH/JOBS participant meets the criteria at N.J.A.C. 10:82-2.8(b) for payment of child care through the disregard method,

then the child care disregard is applied to that budget month in which the participant begins payment for child care costs.

7. Authorization of payment of child care costs through REACH/ JOBS funds are limited to providers of child care who satisfy the criteria delineated in (c) through (f) below.

8. No payments are authorized for child care expenses incident to the employment of a non-needy caretaker relative.

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

(e) In-home care rules are:

1. "In-home care" means care for a child in the child's usual home and may be used when this is the child care **arrangement** preferred by the participant.

[The "REACH Home Approval Checklist" (see N.J.A.C. 10:81, Appendix A) shall be used to evaluate the in-home care for payment through REACH funds for REACH participants utilizing in-home care arrangements.]

[3.]**2.** The authorized rate for in-home care shall be [deemed to be] **provided** for all services and supervision pertaining to the care of the children and is not for the performance of household tasks unrelated to child care. Payment shall not be authorized for services provided by a non-needy caretaker relative who resides in the same home as the child when that relative is legally responsible (**for example, parent, adoptive parent or legal guardian**) for any member of the eligible family; or an individual who is a member of the AFDC assistance unit.

i. The "REACH Home Approval Checklist" (see N.J.A.C. 10:81, Appendix A) shall be used to evaluate in-home care.

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

(f)-(h) (No change.)

(a)

DIVISION OF ECONOMIC ASSISTANCE

Assistance Standards Handbook
Division of Youth and Family Services (DYFS) Monthly Foster Care Rates

Proposed Amendment: N.J.A.C. 10:82-4.9

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 1991-398.

Submit comments by September 4, 1991, to:
Marion E. Reitz, Director
Division of Economic Assistance
CN 716
Trenton, New Jersey 08625

The agency proposal follows:

Summary

N.J.A.C. 10:82-4.9(c) sets forth for informational purposes, subject to periodic modification, basic monthly Division of Youth and Family Services (DYFS) foster child care rates as established by the Department of Human Services' DYFS. The rates are stated in the Assistance Standards Handbook for general informational purposes, and the proposed amendment indicates that the base rates to be paid by DYFS for monthly foster child care have been increased; as well, the upper age ranges have been revised. These DYFS rate changes became effective January 1, 1991.

Social Impact

The proposed amendment provides county welfare agencies with information about basic monthly foster care payments when children are placed in the homes of recipients of public assistance. The proposed amendment indicating increased DYFS foster child care rates will continue to provide equitable determinations of eligibility when CWA staff are considering the income of public assistance recipients.

Economic Impact

The proposed amendment to N.J.A.C. 10:82-4.9(c) updates the rates published in the New Jersey Administrative Code to conform with increased base rates for monthly foster child care, as established by DYFS, effective January 1, 1991. The increased rates apply to public assistance recipients who have foster care children placed in their homes. Such increases in rates will not impact on eligibility or grant level determinations made by county agencies. In any event, the incidence of utilization of public assistance households for foster care placement is insignificant.

Regulatory Flexibility Statement

The proposed amendment has been reviewed with regard to the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The 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 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]):

10:82-4.9 Division of Youth and Family Services

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

(c) The basic monthly rates for foster care as established by the Division of Youth and Family Services are as follows:

[1. Child under six years, $176.00 per month;
2. Six through nine years, $188.00 per month;
3. Ten through 14 years, $208.00 per month;
4. Fifteen years and over, $220.00 per month.]

Age:	**New Base Rate/Child**
0-5	**$222.00 per month**
6-9	**$235.00 per month**
10-12	**$261.00 per month**
13 and over	**$277.00 per month**

(b)

DIVISION OF ECONOMIC ASSISTANCE

Notice of Public Hearing and Extension of Comment Period
Program Administration
Programs Administered/Supervised by the Department of Human Services

Proposed New Rules: N.J.A.C. 10:84

Take notice that the Department of Human Services, at the request of the Board of Chosen Freeholders of the County of Warren, will conduct a public hearing concerning proposed new rules at N.J.A.C. 10:84 which were published in the New Jersey Register on June 3, 1991 at 23 N.J.R. 1740(a). The proposed new rules set forth, pursuant to P.L. 1990 c.66, certain expanded obligations and authorities of the Commissioner pertaining to the administration of public assistance programs by county welfare agencies.

The **public hearing** concerning the proposed rulemaking at N.J.A.C. 10:84 will be held on Wednesday, August 21, 1991, at the following location and time:

Division of Economic Assistance
Quakerbridge Plaza
Building No. 10
Quakerbridge Road
Trenton, New Jersey 08625
10:00 A.M.-4:00 P.M.

Individuals interested in testifying at the hearing must advise the Division of Economic Assistance, Trenton, New Jersey, by telephone at (609) 588-2291 no later than noon, August 20, 1991, and provide their name(s), organization represented, and telephone number. Interested speakers will be limited to 10 minutes of oral testimony.

Interested parties may submit written testimony at the hearing or by mail until September 4, 1991. Those comments should be addressed to:

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

CORRECTIONS

(a)

THE COMMISSIONER

Interjurisdictional Agreements and Statutes
Interstate Corrections Compact
Proposed New Rules: N.J.A.C. 10A:10-3

Authorized By: William H. Fauver, Commissioner, Department of Corrections.
Authority: N.J.S.A. 30:1B-6; 30:1B-10 and 30:7C-1 et seq.
Proposal Number: PRN 1991-389.

Submit comments by September 4, 1991 to:
Elaine W. Ballai, Esq.
Regulatory Officer, Standards Development Unit
Department of Corrections
CN 863
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The proposed new rules establish the procedures by which states, that are members of the Interstate Corrections Compact (N.J.S.A. 30:7C-1 et seq.), may transfer inmates for confinement in correctional facilities of other states that are members of the Compact or Federal facilities. The proposed new rules set forth the role of the Commissioner, New Jersey Department of Corrections, as the Compact Administrator of the Interstate Corrections Compact for the State of New Jersey; the types and content of riders to contracts between the New Jersey Department of Corrections and other Interstate Corrections Compact member states; the reasons for considering and arranging interstate transfers; and the procedures for processing the transfer of inmates for confinement in correctional facilities of other states or Federal facilities.

Social Impact

The proposed new rules will facilitate the processing and transfer of inmates to correctional facilities of other states or the Federal government. The consensual transfer process enables inmates to transfer to correctional facilities in states closer to the inmates' homes, thus enhancing family and social ties. Successful reintegration into their home communities is hereby encouraged through the maintenance of continuity with family and social groups. The non-consensual transfer process enables the New Jersey Department of Corrections to neutralize the adverse effects of certain disruptive criminal activities by transferring designated individuals to out-of-State locations. The interstate transfer of inmates under the rules of the Interstate Corrections Compact assists the Department of Corrections in providing a safe and orderly environment for both inmates and staff.

Economic Impact

Whenever possible, inmates are exchanged for bed space days rather than payment so as to avoid direct economic cost. However, there are occasionally emergency cases, such as natural disasters, fires, or riots which may require transfer of a substantial number of inmates. In these cases, payment may be necessary.

With regard to transfer of inmates into the Federal prison system, $250,000 is budgeted yearly, but the actual cost varies depending on the number of inmates being held, their custody status and other factors.

An indirect economic benefit to the State of New Jersey occurs as a result of transfer, in that certain troublesome inmates are relocated in order to reduce the potential for expensive disruptive events such as riots, fires or such incidents.

Regulatory Flexibility Statement

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

Full text of the proposal follows:

SUBCHAPTER 3. INTERSTATE CORRECTIONS COMPACT

10A:10-3.1 Statutory authority

N.J.S.A. 30:7C-1 et seq. established the Interstate Corrections Compact which provides that the State of New Jersey may enter into a contract with any other signatory state of the United States whereby prisoners from contracting states may be transferred between such states and confined in correctional facilities outside the state of conviction on a reciprocal basis or as otherwise provided for by the contract or a rider.

10A:10-3.2 Definitions

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

"Legal rights" means State or Federal constitutional rights.

"Receiving state" means a state compact member of the Interstate Corrections Compact receiving an inmate transferred from a sending state.

"Sending state" means a state compact member of the Interstate Corrections Compact which is transferring an inmate committed and convicted within the sending state's jurisdiction to another state who is a compact member.

"State" means a state of the United States; the United States of America; a territory or possession of the United States; the District of Columbia; and the Commonwealth of Puerto Rico.

"State compact member" means any state having membership in the Interstate Corrections Compact.

10A:10-3.3 Applicability

(a) The Interstate Corrections Compact is applicable to adult inmates under the jurisdiction of the Division of Adult Institutions, New Jersey Department of Corrections, except those adult inmates sentenced under N.J.S.A. 2A:164-3 or N.J.S.A. 2C:47-1 et seq.

(b) The State of New Jersey shall accept only adult state inmates from contracting states.

10A:10-3.4 Eligibility criteria for interstate transfer consideration

(a) Inmates considered for interstate transfer must be sentenced for a term of imprisonment such that the earliest parole or release dates are not less than one and a half years from the date of application for transfer. Exceptions to this rule shall be made on a case-by-case basis and may include:

1. Inmates in protective custody;
2. Inmates considered to be security risks;
3. Inmates who require special treatment; and/or
4. Consensual transfers

(b) The types of inmates who may be considered for interstate transfers under the Interstate Corrections Compact are:

1. An inmate who is a bona fide resident of the prospective receiving state to which the inmate desires to be transferred;

2. An inmate who by his or her behavior demonstrates that he or she constitutes a threat to the safety, security or orderly operation of any New Jersey correctional facility;

3. An inmate whose continued presence in any New Jersey correctional facility poses a threat to himself or herself;

4. An inmate who can demonstrate a substantial and bona fide reason for being transferred to another state; or

5. A New Jersey inmate who meets the classification and custody criteria of out-of-State correctional facilities where bed space is offered for lease or per diem costs by a state which is a state compact member of the Interstate Corrections Compact. Interstate transfer of an inmate of this type shall be considered:

i. When an executive order is issued by the Commissioner, New Jersey Department of Corrections;

ii. In response to an adult correctional facility emergency, such as overcrowding or a catastrophic occurrence; and/or

iii. In accordance with a court order.

10A:10-3.5 Administrator of the Interstate Corrections Compact

(a) The Commissioner, New Jersey Department of Corrections, is the designated Interstate Compact Administrator of the Interstate Corrections Compact for New Jersey.

(b) The Commissioner, in his or her capacity as Interstate Compact Administrator, is authorized to designate a Deputy Compact Administrator who shall have full authority to act for the Administrator in all matters pertaining to the Interstate Corrections Compact.

(c) The Commissioner has designated the Supervising Interstate Specialist of the Office of Interstate Services, Division of Adult Institutions, to act as Deputy Compact Administrator of the Interstate Corrections Compact.

10A:10-3.6 Riders to contracts

(a) The three types of riders which may be affixed to authorized contracts between the New Jersey Department of Corrections and another state compact member are as follows:

1. A rider to extend the duration of the contract;
2. A rider to set forth the particulars of individual transferring arrangements or special care and custody; and
3. A rider mutually agreeing to a change or amendment to the original contractual terms.

(b) Riders may be ratified by the signatures of the Interstate Compact Administrator and/or Deputy Compact Administrator and his or her counterpart in the other state compact member.

(c) Year-to-year riders may be utilized to extend the original contract up to five years from the date the original contract became effective. After five years a new contract may be arranged.

(d) A rider setting forth the particulars of an inmate's transfer shall contain information regarding:

1. The inmate's identification;
2. The inmate's sentence;
3. Any specialized housing or programming;
4. Paroling arrangements; and
5. The method of exchange agreed upon in the inmate's case, such as:

i. Time bank;
ii. Money;
iii. Inmate for inmate; or
iv. Any other method of exchange agreed upon.

(e) A rider shall remain in full force as long as the inmate is in the custody of the receiving state or until either state compact member desires to make a major change or amendment to the original conditions of the contract or rider(s).

10A:10-3.7 Reasons for interstate transfer

(a) Inmate interstate transfer may be considered, arranged and implemented either at the request of an inmate (consensual), or at the request of the Superintendent (non-consensual) or upon executive order for any of the following reasons:

1. To confine an inmate in his or her home state when that state is other than the one in which the inmate was convicted;
2. To place an inmate in another state where special facilities exist for treating:

i. Drug abuse;
ii. Alcohol abuse;
iii. Diagnosed mental/emotional illnesses; or
iv. Medical conditions and/or specialized medical treatment.

3. To adjust prison populations via executive order to avoid overcrowding and/or county jail backlog;
4. To provide temporary housing arrangements for inmates at times of crisis;
5. To comply with a court order;
6. To provide for the care and custody of security risk inmates;
7. To provide protective custody; or
8. At the discretion of the Compact Administrator.

10A:10-3.8 Processing consensual interstate transfers

(a) An inmate desiring an interstate transfer shall make such request initially to the Institutional Classification Committee (I.C.C.) on Form 822-I INMATE REQUEST FOR TRANSFER UNDER INTERSTATE CORRECTIONS COMPACT. The correctional facility shall forward a copy of this initial request to the Deputy Compact Administrator within 15 days.

(b) The inmate's request shall be reviewed by the I.C.C. within one month of application to verify the information provided on the request.

(c) If all information provided on Form 822-I is verified and the reason for the requested transfer falls within the reasons enumerated in N.J.A.C. 10A:10-3.7, a complete classification summary shall be prepared and submitted, within three months of the inmate's initial request, to the Superintendent for his or her review and approval (see N.J.A.C. 10A:10-3.9).

(d) The I.C.C. shall also submit to the Superintendent, along with the classification summary, a written statement which indicates the consensus of opinion within the I.C.C. which either supports or rejects the inmate's request for transfer.

(e) If the inmate's request is approved by the Superintendent, the Superintendnet shall forward to the Assistant Commissioner, Division of Adult Institutions, a complete set of documents along with the application and a cover letter which shall explicitly state the reason(s) the Superintendent is supporting the requested transfer.

(f) If the Assistant Commissioner, Division of Adult Institutions, approves the inmate's request, all documents shall then be forwarded to the Deputy Compact Administrator who shall determine whether the application and proposed transfer complies with the terms of the Interstate Corrections Compact, N.J.S.A. 30:7C-1 and this subchapter.

(g) Subsequent to an affirmative determination, the Deputy Compact Administrator shall seek acceptance of the inmate by a receiving state.

(h) The inmate requesting transfer shall be notified in writing by the Superintendent of the decision of the New Jersey Department of Corrections regarding the inmate's request.

(i) If a subsequent acceptance or rejection is received, the Deputy Compact Administrator shall notify the Superintendent who, in turn, shall notify the inmate of the Deputy Compact Administrator's decision regarding the inmate's request for an interstate transfer.

(j) If another state compact member is agreeable to the desired transfer, the following steps shall be taken:

1. The contract with the state or agency where the transfer is being contemplated must be verified;
2. A contract may either be initiated or renewed if there is no current contract with the state or agency where the contract is contemplated;
3. If necessary, a rider to the current contract may be completed and authorized;
4. Assistance shall be provided by the correctional facility, if the inmate requires assistance in understanding the terms and conditions of the transfer;
5. The appropriate Form (822-IIA or 822-IIB) shall be completed, signed and then authorized, by the Deputy Compact Administrator of the Interstate Corrections Compact;
6. When the transfer is approved, authorized escort officers, carrying appropriate credentials identifying themselves and the inmate, shall transport the inmate to the receiving state unless other mutually agreeable arrangements for transportation are made;
7. Form 822-IIA or Form 822-IIB AGREEMENT OF WAIVER and any materials not previously transferred to the receiving state, shall accompany the transportation officers and the inmate to the receiving state; and
8. A receipt for the inmate, Form 822-V RECEIPT FOR INMATE AS AN INTERSTATE TRANSFEREE, shall be obtained from the receiving state and copies of the receipt shall be forwarded to the New Jersey Deputy Compact Administrator and to the Superintendent of the sending correctional facility.

10A:10-3.9 Classification summary

(a) Pursuant to the requirements of N.J.A.C. 10A:10-3.8(c), the Classification Department of the sending state shall prepare a classification summary to be forwarded to the Superintendent which contains current information concerning the inmate in the areas of:

1. The inmate's particular needs;
2. Age;
3. Family status;
4. Social contacts with family and friends;
5. Institutional adjustment;
6. Educational needs and history;
7. Vocational needs and history;
8. Treatment program needs and history;
9. Military history;
10. Judgment of conviction;
11. Nature and circumstances of present offense;
12. Parole eligibility information and current time calculation;
13. Prior convictions record;
14. Records from previous confinements regarding adjustment;
15. Detainers on file or pending disposition(s);
16. Drug dependency or involvement;
17. Sexual offenses;
18. Escape history;
19. Current psychological and psychiatric reports;
20. Photograph;
21. Fingerprints; and
22. Medical history and recommendations which shall include:

i. A report on the results of a general physical examination; and

ii. Known medical problems of the inmate within three months prior to the review of the inmate's request for interstate transfer.

(b) The classification summary of the sending state may then be forwarded to a state contemplating approval of the inmate's request to be transferred to that state.

10A:10-3.10 Written notice of non-consensual transfers

(a) Prior to out-of-State transfer, the inmate shall receive written notice on Form 822-III, NOTICE OF INTENT TO SEEK NON-CONSENSUAL INTERSTATE TRANSFER, informing the inmate that he or she has been referred for out-of-State transfer and that a hearing is scheduled before a New Jersey Department of Corrections' Disciplinary Hearing Officer.

(b) The notice shall be personally served upon the inmate at least 48 hours prior to the scheduled hearing, and shall contain a summary of information which will be considered by the Disciplinary Hearing Officer.

(c) Confidential materials may be withheld from the inmate, but the information shall be made part of a confidential correctional facility record for the out-of-State transfer proceedings.

(d) The inmate shall also be given a copy of this subchapter along with Form 822-III.

10A:10-3.11 Investigation of non-consensual transfers other than emergency transfer prompted by executive order

(a) At least 24 hours before the scheduled hearing, an investigator assigned by the Superintendent shall visit the inmate to obtain the names of prospective witnesses.

(b) The investigator shall obtain written statements from the named witnesses and such statements shall be included in the Disciplinary Hearing Officer's final record of the proceedings.

(c) The Disciplinary Hearing Officer may exercise his or her discretion to limit the number of written statements obtained to avoid the collection of evidence which is merely repetitive or is not necessary for an adequate understanding of the case.

(d) When the Disciplinary Hearing Officer determines that the inmate is either illiterate or cannot adequately collect and present evidence on the inmate's own behalf, the inmate may choose an inmate to provide assistance. Such choice may be made from a list of available inmate paralegals who are authorized by the Superintendent to assist inmates with legal services.

10A:10-3.12 Hearing on non-consensual transfers

(a) The hearing shall be conducted in-person, unless the inmate refuses to appear without the use of force, or where the Disciplinary Hearing Officer determines that the hearing cannot be held at the inmate's cell because of the inmate's disruptive behavior.

(b) The Disciplinary Hearing Officer shall review the correctional facility reports, witnesses' statements and other material(s) offered as relevant and necessary for a proper understanding of the circumstances upon which the recommendation for out-of-State transfer is based.

(c) Witnesses' statements shall be read to the inmate, unless disclosure would subject the witnesses or other persons to threat of harm and/or the statements or reports are marked confidential. Where the Disciplinary Hearing Officer determines that clarification is desirable, he or she may call the witnesses to appear in person.

(d) The inmate shall be permitted to speak on his or her own behalf and offer evidence to contest the referral for out-of-State transfer, or to provide the Disciplinary Hearing Officer with reasons for rejecting said recommendation.

(e) The Disciplinary Hearing Officer shall not grant a postponement of a hearing unless there are exceptional circumstances as, for example, sudden serious illness, prison fire or security problems requiring lockdown.

10A:10-3.13 Decision on non-consensual transfers

(a) The inmate shall be provided with the Disciplinary Hearing Officer's decision in writing on Form 822-IV NOTICE OF DECISION REGARDING INTERSTATE TRANSFER within 15 working days after the hearing due to the time and distance considerations involved in interstate information exchange.

(b) The decision shall summarize the information relied upon and the reasons for out-of-State transfer, if approved.

(c) Confidential information shall be strictly safeguarded and appropriately marked for the inmate's classification file.

(d) In instances when the Disciplinary Hearing Officer approves the non-consensual transfer, a copy of the Disciplinary Hearing Officer's decision and appropriate classification data shall be forwarded to the Office of Interstate Services, Division of Adult Institutions.

10A:10-3.14 Interstate transfer by executive order

(a) Upon issuance of an executive order by the Commissioner, New Jersey Department of Corrections, Form 822-VI NOTICE OF EMERGENCY TRANSFER shall be served, when feasible, upon the selected inmate(s) meeting the classification and custody criteria of contracting states offering bed space for lease and/or per diem cost reimbursement. Form 822-VI shall be served, when feasible, on the inmate 24 hours prior to the intended transfer, and the notice shall include:

1. The conditions upon which the executive order was predicated;
2. The name of the state and the correctional facility to which the inmate shall be transferred;
3. The address of the correctional facility;
4. The security designation of the correctional facility;
5. The custody level of the inmate;
6. The date of transfer;
7. The listing of personal property which may be transferred to the receiving correctional facility;
8. The arrangement(s) for personal property which cannot be transferred to the receiving correctional facility; and
9. Any additional pertinent information.

(b) In emergency situations when time does not permit Form 822-VI NOTICE OF EMERGENCY TRANSFER to be served upon the inmate 24 hours prior to the transfer, Form 822-VI shall be served upon the inmate within 30 days of the transfer.

10A:10-3.15 Review of requests from other state compact members for transfer of inmates to New Jersey

(a) Any request from another state or jurisdiction for incarceration of out-of-State inmates in New Jersey shall be forwarded to the Deputy Compact Administrator.

(b) The Deputy Compact Administrator shall ensure that the request contains minimally the information outlined in N.J.A.C. 10A:10-3.9.

(c) The request shall then be forwarded to the Assistant Commissioner, Division of Adult Institutions, for approval or disapproval.

(d) Upon receipt of the determination of the Assistant Commissioner, the Deputy Compact Administrator shall determine whether the application and transfer comply with the Interstate

Corrections Compact and these rules. The requesting state shall then be notified of the decision by the Deputy Compact Administrator.

10A:10-3.16 Receiving state acting as agent for sending state

(a) Whenever the duly constituted authorities in a state compact member have entered into a contract with another state compact member and decide that confinement in, or transfer of an inmate to, a correctional facility within the territory of another state compact member is necessary or desirable, said officials may direct the confinement be within a correctional facility within the territory of that state compact member. The receiving state shall act as agent for the sending state.

(b) Inmates confined in a correctional facility pursuant to the terms of the Interstate Corrections Compact shall be, at all times, subject to the legal jurisdiction of the sending state and may, at any time, be removed therefrom for any of the following reasons:

1. For transfer to a prison or other correctional facility within the sending staff;
2. For transfer to another correctional facility in a third party compact state in which the sending state may have a contractual or other right to confine inmates;
3. For release on probation or parole;
4. For discharge; or
5. For any other purpose permitted by the Interstate Corrections Compact or this subchapter, provided that the sendng state continues to be obligated to such reimbursements as may be required pursuant to the terms of any contract.

(c) Each receiving state shall provide to the sending state regular reports on the inmate(s) that the sending state has in correctional facilities of the receiving state pursuant to the Interstate Corrections Compact.

(d) The regular report shall include a conduct and work record of each inmate and shall be certified to the official designated by the sending state, in order that:

i. Each inmate's record may be reviewed by the designated official in determining and altering the disposition of said sending state; and

ii. The report may be a source of information for the sending state.

(e) Any decision of the sending state pertaining to the administration of the terms of the inmate's sentence for which the sending state retains jurisdiction pursuant to the Interstate Corrections Compact shall be conclusive upon and not reviewable within the receiving state.

(f) If, however, at the time the sending state seeks to remove an inmate from a correctional facility in the receiving state and there is a pending criminal charge(s) against the inmate within such state or if the inmate is formally accused of having committed within such state a criminal offense, the inmate shall not be returned without the consent of the receiving state until discharge from prosecution or other form of proceeding, imprisonment or detention for such offense.

10A:10-3.17 Administration of conditions of confinement, hearings and administrative proceedings to which inmates are entitled

(a) All inmates who may be confined to a correctional facility pursuant to the provisions of the Interstate Corrections Compact shall be treated in a reasonable and humane manner and shall be treated equally to similarly situated inmates under the jurisdiction of the receiving state with regard to:

1. The terms and conditions of confinement;
2. Custody status;
3. Program eligibility and participation;
4. Medical services; and
5. Psychiatric services.

(b) The fact of confinement in a receiving state shall not deprive any inmate so confined of any legal rights which said inmate would have had if confined in an appropriate correctional facility of the sending state.

(c) Any hearing or hearings to which an inmate confined pursuant to the Interstate Corrections Compact may be entitled by the statutes of the sending state may be conducted by the appropriate authorities of the sending state, or of the receiving state acting as agents of the sending state.

(d) The receiving state shall provide adequate facilities for such hearings as may be conducted by the appropriate officials of a sending state.

(e) In the event such hearing or hearings are held before officials of the receiving state, the governing statute providing for the hearing is that of the sending state. The nature and character of the hearing process is governed by the regulations and procedures administering such hearings in the receiving state.

(f) Inmates in the receiving state, pursuant to the Interstate Corrections Compact, shall be subject to the receiving state's rules and regulations governing discipline and disciplinary sanctions except that any sanction providing for the loss of commutation credits shall not affect the terms and conditions of the sending state's sentence in excess of the amount provided for by the laws and regulations governing disciplinary sanctions in the sending state.

(g) The record of the hearing or hearings, as requested by the sending state, will be made. Said record, together with any recommendations of the receiving state's hearing official(s), shall be transmitted forthwith to the sending state's official(s) before whom the hearing would have been held if it had taken place in the sending state. A final determination shall be made by the sending state.

(h) In any and all proceedings conducted pursuant to the provisions of this subchapter, the officials of the receiving state act solely as agents of the sending state and no final determination shall be made in any matter pertaining to the administration of the imposed sentence except by the appropriate officials of the sending state.

10A:10-3.18 Release/return of transferred inmate

(a) A transferred inmate from New Jersey shall be returned to New Jersey for a court appearance in which the inmate is named as a defendant or when subpoenaed, and for the opportunity for a reasonable amount of consultation with counsel in connection with such court proceedings.

(b) Any inmate confined pursuant to the Interstate Corrections Compact shall be released within the sending state, unless the inmate and the sending and receiving states agree that the inmate will be paroled to a party, under the Interstate Corrections Compact for the supervision of parolees and probationers, who will provide supervision for the parolee.

(c) An inmate may be returned to the sending state at the request of the receiving state due to behavior which poses a threat to the safe, secure, and orderly operation of the correctional facility in the receiving state. In such cases where the inmate is not charged with a prohibited act by the receiving state due to the expedited nature of the inmate's return, the sending state may charge the inmate based on such written reports and/or affidavits as are forwarded by the receiving state.

(d) Form 259 DISCIPLINARY REPORT shall be prepared by the Office of Interstate Services as soon as possible after the return, but in any case, within no more than five working days of the inmate's return.

(e) The report shall be forwarded to the Superintendent of the correctional facility where the inmate is housed. The Superintendent will make a decision whether to proceed and appoint an appropriate individual to investigate the charges. The investigator shall have 10 working days to complete the investigation. All written informational exchanges which occur between the investigator and the out-of-State agency where the alleged act(s) occurred, shall be coordinated by the Office of the Interstate Services.

(f) Nothing in this section shall preclude the placement of the inmate in Prehearing Detention until completion of the investigation. This time may be extended by the Assistant Commissioner, Division of Adult Institutions, New Jersey Department of Corrections, due to extraordinary circumstances.

(g) Where applicable, all other procedures as stated in N.J.A.C. 10A:4 shall be followed with the exception that appeals shall be forwarded to the Office of the Assistant Commissioner, Division of Adult Institutions, New Jersey Department of Corrections.

10A:10-3.19 Rights of parents or guardians

The parents, guardian, trustee or other person or persons entitled under the statutes of the sending state to act for, advise or otherwise function with respect to any inmate shall not be deprived of or restricted in exercising any power with respect to any inmate confined pursuant to the terms of the Interstate Corrections Compact.

10A:10-3.20 Escapees and transportation

(a) An inmate who escapes from a correctional facility in which the inmate is confined pursuant to the Interstate Corrections Compact shall be deemed a fugitive from the sending state and from the state in which the correctional facility is located.

(b) In the case of an escape to a jurisdiction other than the sending or receiving state, the responsibility for initiating extradition or rendition proceedings shall be that of the sending state, but nothing contained herein shall be construed to prevent or affect the activities of officers and agencies of any jurisdiction directed toward the apprehension and return of an escapee.

(c) Authorized transportation officers of the sending state shall be permitted to transport inmates pursuant to the Interstate Corrections Compact through any and all United States territories or states without interference.

10A:10-3.21 Forms

(a) The following forms related to the Interstate Corrections Compact shall be reproduced by each correctional facility from originals that are available by contacting the Standards Development Unit:

1. 259 DISCIPLINARY REPORT;
2. 822-I INMATE REQUEST FOR TRANSFER UNDER INTERSTATE CORRECTIONS COMPACT;
3. 822-IIA AGREEMENT OF WAIVER—REGARDING TRANSFER OF CUSTODY;
4. 822-IIB AGREEMENT OF WAIVER—REGARDING INTERSTATE TRANSFER:
5. 822-III NOTICE OF INTENT TO SEEK NON-CONSENSUAL INTERSTATE TRANSFER;
6. 822-IV NOTICE OF DECISION REGARDING INTERSTATE TRANSFER;
7. 822-V RECEIPT FOR INMATE AS AN INTERSTATE TRANSFEREE; and
8. 822-VI NOTICE OF EMERGENCY TRANSFER.

TREASURY-GENERAL

(a)

DIVISION OF PURCHASE AND PROPERTY

Preference Laws; Out-of-State Vendors

Proposed Repeal and New Rule: N.J.A.C. 17:12-2.11

Authorized By: Nathan Scovronick, Executive Director, Department of the Treasury.

Authority: N.J.S.A. 52:18A-30(d), 52:25, 52:27H-6(f), 52:34-12(d) and 52:32-1.4.

Proposal Number: PRN 1991-386.

Submit written comments by September 4, 1991 to:

Lana J. Sims, Director
Division of Purchase and Property
Department of the Treasury
CN 039
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The Division of Purchase and Property proposes to repeal the current rule and propose a new rule at N.J.A.C. 17:12-2.11 regarding preference laws and out-of-State vendors. Pursuant to N.J.S.A. 52:32-1.4, the Division must reciprocally apply against an out-of-State bidder on a New Jersey State Contract for goods and services any in-State preference which is applied in favor of the out-of-State bidder in another state because of the location of the bidder's principal place of business in that other state. The purpose of these proposed amendments is to define such key terms as "in-State preference," "out-of-State bidder," and "principal place of business."

The new provisions also describe when and how the reciprocal preference may be applied and may be waived. The Director will maintain a list of states who offer in-State preference to bidders and will apply the same preference in favor of New Jersey bidders when they compete with firms from those states. All bidders will be given notice of the reciprocal rules in Requests for Proposals. New Jersey bidders having evidence of an in-State preference not listed or having evidence of a residential preference being offered by political subdivisions of a state (that is, cities, counties, etc.) will present that evidence in sufficient detail to allow verification. The Director will waive application of the reciprocal preference on contracts supported by Federal funds and may waive application if the fiscal consequences of bypassing the out-of-State bidder would be against the best interest of the State.

Social Impact

The new provisions are intended to further the statutory intent of N.J.S.A. 52:32-1.4 to foster fair and equal competition amongst bidders from all states in every state. In-state preference laws, which discriminate against New Jersey vendors solely because such vendors have their principal places of business in New Jersey, violate free market principles and harm the public interest in procuring the best goods and services at the lowest prices. The purpose of N.J.S.A. 52:32-1.4 and this new rule is to encourage other states to end their in-state preferences and to ensure thereby that New Jersey vendors can compete on fair and equal terms in all states. At the same time, these rules should help New Jersey vendors to bid on an equal footing for State contracts against out-of-State vendors who are benefited by in-state preferences afforded by the home states of these out-of-State vendors.

Since this proposed new rule will particularly affect New Jersey businesses, the Division is making a special effort to solicit comments and suggestions from the New Jersey Department of Commerce and Economic Development and from business organizations.

Economic Impact

N.J.S.A. 52:32-1.4 requires, in the evaluation of bid prices, that the Director apply any in-state preferences reciprocally against out-of-State bidders. These reciprocal in-state preferences may make uncompetitive some out-of-State bids which would otherwise be the lowest-priced. This will likely result in some extra costs for goods and services where lower-priced bids from out-of-State vendors are by-passed because of the application of reciprocal in-State preferences. The estimated amount of these extra costs will be reported annually to the State Treasurer. At the same time, to the extent that the reciprocal application of in-State preferences results in more State contracts for New Jersey vendors, the State should reap the economic benefit of increased tax revenues from those vendors and the public should reap the benefit of a more prosperous economy.

Regulatory Flexibility Statement

The proposed new rule will not impose any reporting, record keeping or compliance requirements on small businesses, as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. However, under the new rule, a bidder may request that the Director apply a reciprocal in-State preference against an ostensibly out-of-State bidder. In such a case, a small business bidder on a State contract may have to document the location of its principal place of business and/or to demonstrate that it maintains a regular place of business in New Jersey.

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

17:12-2.11 Preference laws; out-of-[state] **State** vendors

[(a) Pursuant to the provisions of Public Law 1985, Chapter 156, the Director, Division of Purchase and Property shall conduct an annual survey of all states to obtain information concerning their statutes, rules and regulations related to in-state preference for the procurement of commodities and services. The Director shall apply a like policy to bids submitted by out-of-State vendors competing in New Jersey with New Jersey bidders for public contracts.

(b) The Director may waive the reciprocity action when, in his judgement, it is determined to be in the best interest of the State.]

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

"In-state preference" means a procedure established by statute, rule, regulation or practice whereby a state or local government procurement agency gives a bidder an advantage in the evaluation of bids based on whether the bidder maintains his principal place of business within the borders of the state or locality, and includes any advantage given to a bidder based on whether the goods or services offered in a bid were produced, manufactured, mined or grown within the borders of the state or locality.

"Out-of-state bidder" means a bidder who does not have a regular place of business in New Jersey.

"Principal place of business" means an office, factory, warehouse or other space of a bidder which is recognized by a state or local government as the basis for applying an in-state preference in favor of the bidder.

"Regular place of business" means a bona fide office, factory, warehouse or other space which is regularly maintained by the bidder, occupied by one or more of the bidder's employees and used in carrying on the bidder's business. The maintenance of a temporary job site or field office in New Jersey, the storage of goods in New Jersey, and the employment of an independent agent or subcontractor in New Jersey do not constitute regular place of business.

(b) Pursuant to the provisions of Public Law 1985, chapter 156 (N.J.S.A. 52:34-1.4 et seq.), the Director, Division of Purchase and Property shall apply on a reciprocal basis against an out-of-State bidder any in-state preference which is applied in favor of that bidder by the state or locality in which the bidder maintains his principal place of business.

(c) The Director shall provide to prospective bidders notice of the State's intent as to in-state preference through appropriate language in the terms, conditions and/or specifications of the bid solicitation.

(d) For purposes of implementing these provisions, the Director shall maintain and make available for public inspection a list of states having statutes, rules and/or regulations which grant in-state preferences in the competitive bidding for goods and services. The Director shall develop and maintain the list based on surveys conducted by the Division and/or by research conducted by national organizations of state and local governments, procurement agencies, government officials and purchasing agents, such as the National Association of State Purchasing Officials, the National Institute of Governmental Purchasing, and the Council of State Governments. In addition, the Director may receive and review information from prospective bidders which indicates that any state or local government agency outside of New Jersey applies an in-state preference in its procurement statutes, rules, regulations, ordinances, charters or practices.

(e) The Director shall also apply in-State preference in the evaluation of bids whenever a bid is received from an out-of-State bidder where residential preference statutes, rules, regulations, or practices exist in political sub-divisions of a state. It shall be the responsibility of the bidder or bidders for a specific procurement to provide written evidence to the Director of the existence of such local government preference rules, regulations, ordinances, charters, or practices either with the bidder's proposal or within five working days of the public bid opening.

(f) Consistent with the procedures and practices of the Division of Purchase and Property, the Director shall reasonably apply any reciprocal in-State preference in a similar manner and to similar affect as the other state or locality. Where an in-state preference is applied by another state or locality in the form of a percentage which is added to or subtracted from bidders' prices, markups or discounts, the Director shall similarly apply the same percentage against an affected out-of-State bidder. Where an in-state preference is applied by another state or a locality in the form of a categorical rejection of certain bids, the Director shall apply a similar categorical rejection against an affected out-of-State bidder.

(g) The bidder or bidders who would benefit by the imposition of in-state preference must otherwise be eligible for an award as a responsive and responsible bidder.

(h) The Director may consider waiving a reciprocal in-State preference on a specific procurement. The Director may waive the application of a reciprocal in-State preference where such waiver would be in the best interests of the State, including where the resulting prices for goods and services would exceed the reasonable estimate of the using agency or would otherwise be unreasonably high, or where the State is entering into a long-term contract or a contract for large quantities of goods or services.

(i) The Director shall waive a reciprocal in-State preference on procurements supported by Federal funds where Federal rules prohibit the use of residential preference.

(j) The Director shall waive reciprocal in-State preference when the action would result in an award to a vendor who has a poor record of complaints or contract terminations pursuant to N.J.A.C. 17:12-4.

(k) The Director shall waive reciprocal in-State preference when a public exigency requires the immediate delivery of articles or performance of the service.

(l) Nothing in these rules shall be deemed to modify or restrict the authority of the Director pursuant to N.J.S.A. 52:34-12 to award any contract to that bidder whose bid the Director determines is "most advantageous to the State, price and other factors considered."

(m) The Director shall annually prepare, following the close of the State's fiscal year, a report for the State Treasurer on the cost consequences to the State of applying the reciprocal in-State preference described in these rules.

(a)

OFFICE OF THE STATE TREASURER

Debts Owed to New Jersey Higher Education Assistance Authority by State, County or Municipal Employees, and Any Officer or Employee of a Local Board of Education, a County or Municipal Board of Health or an Autonomous Authority Created by a County or Municipality Pursuant to Statute and Any Officer or Employee of Rutgers the State University, the University of Medicine and Dentistry of New Jersey, the New Jersey Institute of Technology, or Any Public Authority Established Pursuant to State Law

Proposed Amendments: N.J.A.C. 17:25-1.1, 1.2, 1.3, 1.5, 1.11 and 1.12

Authorized By: Douglas C. Berman, State Treasurer; Barry Skokowski, Director, Division of Local Government Services, Department of Community Affairs; Dr. Edward D. Goldberg, Chancellor, Department of Higher Education; John Ellis, Commissioner, Department of Education.

Authority: N.J.S.A. 18A:72-25.5; 52:18A-30; 18A:72-24; 18A:72-23.

Proposal Number: PRN 1991-378.

Submit comments by September 4, 1991 to:
Office of the Treasurer
Director of Fiscal and Resources
CN 211
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The proposed amendments are being promulgated pursuant to N.J.S.A. 18A:72-23 and 25.5 to provide for a system whereby the New Jersey Higher Education Assistance Authority (NJHEAA) in conjunction with the Department of the Treasury, shall cooperate in identifying any officer or employee of a local board of education, a county or municipal board of health or an autonomous authority created by a county or municipality pursuant to statute and any officer or employee of Rutgers the State University, the University of Medicine and Dentistry of New Jersey, the New Jersey Institute of Technology, or any public authority established pursuant to State law who are delinquent in payments to

the NJHEAA on any note or obligation held by the NJHEAA pursuant to N.J.S.A. 18A:72-16. Under the existing rules, procedures are provided to deduct from the wages of State, county, or municipal employees. The provision regarding State, county or municipal employees has not been altered. The changes incorporated herein only affect any officer or employee of a local board of education, a county or municipal board of health or an autonomous authority created by a county or municipality pursuant to statute and any officer or employee of Rutgers the State University, the University of Medicine and Dentistry of New Jersey, the New Jersey Institute of Technology, or any public authority established pursuant to the State law. These amendments extend the original procedures to include the deducting from the wages of any officer or employee of a local board of education, a county or municipal board of health or an autonomous authority created by a county or municipality pursuant to statute and any officer or employee of Rutgers the State University, the University of Medicine and Dentistry of New Jersey, the New Jersey Institute of Technology, or any public authority established pursuant to State law the sum of any such debt owed to the NJHEAA.

Social Impact

The proposed amendments will provide for the deduction of 10 percent of the gross wages by the Chief Financial Officer of any board, authority, school district or any public authority established pursuant to State law employees who are delinquent in payments to the NJHEAA. These deductions will be forwarded to the NJHEAA and applied to the loan accounts of the affected employees. The primary impact of the amendments is economic, as described below.

Economic Impact

Any officer or employee of a local board of education, a county or municipal board of health or an autonomous authority created by a county or municipality pursuant to statute and any officer or employee of Rutgers the State University, the University of Medicine and Dentistry of New Jersey, the New Jersey Institute of Technology, or any public authority established pursuant to State law who is delinquent in his or her payments to the NJHEAA on educational loans will have his or her payroll checks decreased, possibly by the amount of the outstanding debt. This will assist the collection of debts owed to the NJHEAA.

Regulatory Flexibility Statement

The proposed amendments have no effect on small businesses, as the term is defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 (P.L. 1986, c.169). The amendments allow for deductions from the wages of any officer or employee of a local board of education, a county or municipal board of health or an autonomous authority created by a county or municipality pursuant to statute and any officer or employee of Rutgers the State University, the University of Medicine and Dentistry of New Jersey, the New Jersey Institute of Technology, or any public authority established pursuant to State law who is delinquent in his or her payments to the NJHEAA.

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

CHAPTER 25
COLLECTION OF DEBTS

SUBCHAPTER 1. DEBTS OWED TO **THE** [N.J.H.E.A.A.] **NJHEAA** BY STATE, COUNTY, OR MUNICIPAL EMPLOYEES, **AND ANY OFFICER OR EMPLOYEE OF A LOCAL BOARD OF EDUCATION, A COUNTY OR MUNICIPAL BOARD OF HEALTH OR AN AUTONOMOUS AUTHORITY CREATED BY A COUNTY OR MUNICIPALITY PURSUANT TO STATUTE AND ANY OFFICER OR EMPLOYEE OF RUTGERS THE STATE UNIVERSITY, THE UNIVERSITY OF MEDICINE AND DENTISTRY OF NEW JERSEY, THE NEW JERSEY INSTITUTE OF TECHNOLOGY OR ANY PUBLIC AUTHORITY ESTABLISHED PURSUANT TO STATE LAW**

17:25-1.1 Purpose

The purpose of this subchapter is to establish a policy and to provide a system whereby the New Jersey Higher Education Assistance Authority [(N.J.H.E.A.A.)] **(NJHEAA)** in conjunction with the Department of Treasury shall cooperate in identifying State, county, or municipal employees, **and any officer or employee of a local board of education, a county or municipal board of health or an autonomous authority created by a county or municipality pursuant to statute, and, any officer or employee of Rutgers the State University, the University of Medicine and Dentistry of New Jersey, the New Jersey Institute of Technology or any public authority established pursuant to State law** who are delinquent in payments to the [N.J.H.E.A.A.] **NJHEAA** on any note held pursuant to N.J.S.A. 18A:72-16, [and] **18A:72-23,** 18A:72-25.2 **and 18A:72-25.4.** It is also the intent of this subchapter to establish procedures for deducting from the wages of such State, county, or municipal employees, **and any officer or employee of a local board of education, a county of municipal board of health or an autonomous authority created by a county or municipality pursuant to statute, and any officer or employee of Rutgers the State University, the University of Medicine and Dentistry of New Jersey, the New Jersey Institute of Technology or any public authority established pursuant to State law** the sum of any such debt owed to the [New Jersey Higher Education Assistance Authority] **NJHEAA.** The procedures contained in this subchapter afford the State, county, or municipal employee **and any officer or employee of a local board of education, a county or municipal board of health or an autonomous authority created by a county of municipality pursuant to statute and any officer or employee or Rutgers the State University, the University of Medicine and Dentistry of New Jersey, the New Jersey Institute of Technology or any public authority established pursuant to State law** the opportunity to assert any legal rights he or she may have prior to the deduction from the wages.

17:25-1.2 Definitions

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

...

"Debtor" means any New Jersey State, county, or municipal employee or **any** officer **or employee of a local board of education, a county or municipal board of health or an autonomous authority created by a county or municipality pursuant to statute and any officer or employee of Rutgers the State University, the University of Medicine and Dentistry of New Jersey, the New Jersey Institute of Technology or any public authority established pursuant to State law** on the State, county, [or] municipal, **or school district** payroll(s) owing money to or having a note or obligation to the Authority in which payments are more than 60 days delinquent, which obligation has not been adjudicated satisfied by court order, set aside by court order, or discharged in bankruptcy.

...

"Financial officer" means the Chief Financial Officer (or equivalent) of the appropriate county, [or] municipal local unit **or school district** having authority over the county, [or] municipal **or school district** payroll system(s).

...

"Net proceeds collected" means gross proceeds collected through total deductions from a debtor's State, county, [or] municipal **or school district** payroll checks minus any collection fee charged by the Department or local unit to provide for any expenses of the collection effort.

"Payroll check" means the wages received by New Jersey State, county or municipal employees [and], **any** officer[s] **or employee of a local board of education, a county or municipal board of health or an autonomous authority created by a county or municipality pursuant to statute and any officer or employee of Rutgers the State University, the University of Medicine and Dentistry of New Jersey, the New Jersey Institute of Technology or any public authority established pursuant to State law** paid by the State, county, [or] municipal **or school district** payroll in return for services provided to the employee's or officer's respective State, county, [or] municipal **or school district** agency, department, office or other entity using the State, county, [or] municipal **or school district** payroll system by which the employee or officer is employed.

17:25-1.3 Procedure for deduction from wages

(a) (No change.)

(b) For county and municipal employees, **and any officer or employee of a local board of education, a county or municipal board of health or an autonomous authority created by a county or municipality pursuant to statute and any officer or employee of Rutgers the State University, the University of Medicine and Dentistry of New Jersey, the New Jersey Institute of Technology or any public authority established pursuant to State law,** the Authority shall notify the financial officer in writing and supply the financial officer with a list of persons currently in default on notes held by the Authority. The financial officer shall notify the Authority of those persons currently in default on notes held by the Authority who are currently receiving wages as county or municipal employees or officers, **or as officers or employees of a local board of education, a county or municipal board of health or an autonomous authority created by a county or municipality pursuant to statute, or as officers or employees of Rutgers the State University, the University of Medicine and Dentistry of New Jersey, the New Jersey Institute of Technology or any public authority established pursuant to State law.** Upon notification by the financial officer, and after the liquidated sum due is finally established by Authority records, the Authority shall forward a list to the financial officer as to those debtors for which the Authority requests deductions to be made.

17:25-1.5 Notice to debtor

(a) Within 10 days after the notification to the Authority that the employee or officer is receiving wages from the State, county, [or] municipal **or school district** payroll system, the Authority shall notify the alleged debtor by regular mail of the proposed deduction. [and inform the alleged debtor of the right to make a request to the Authority within 30 days after the date of notice, for a hearing on the alleged debt and the proposed deduction.]

(b) The Authority shall also advise debtors of the right to request a hearing if they are contesting the accuracy or existence of the alleged debt, or any other material issue of fact. Requests for hearing shall be made to the Authority, in writing, within 30 days after the date of notice and shall include a full explanation of the facts justifying the request for the hearing.

(c) Debtors having extraordinary circumstances which would make it an extreme financial hardship to be subject to the proposed deduction may provide written materials in support of their hardship claim to the Authority. The Authority shall promptly review these materials and report its decision to the debtor.

17:25-1.11 Disposition of proceeds collected; collection assistance fees

(a) (No change.)

(b) From the gross proceeds collected by the Department or financial officer through deductions, the Department, [or] local unit **or school district** shall retain one percent, which amount shall be charged to the Authority as a collection assistance fee.

17:25-1.12 Accounting to the Authority; credit to debtor's obligation

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

(e) For county and municipal employees, **and any officer or employee of a local board of education, a county or municipal board of health or an autonomous authority created by a county or municipality pursuant to statute and any officer or employee of Rutgers the State University, the University of Medicine and Dentistry of New Jersey, the New Jersey Institute of Technology or any public authority established pursuant to State law** under circumstances and subject to the approval of the appropriate local government, **board, Authority or school district** official, the financial officer may employ such alternative method of payment as may be agreed upon with the Authority.

(a)

OFFICE OF THE STATE TREASURER

Local Public Employee Charitable Fund-Raising Campaign

Proposed Amendments: N.J.A.C. 17:29-2.3, 2.4, 2.6, 2.7, 3.2, 3.4 and 4.6

Proposed New Rule: N.J.A.C. 17:29-1.5

Authorized By: Nathan Scovronick, Executive Director, Department of the Treasury.

Authority: N.J.S.A. 52:14-15.9cl and N.J.S.A. 52:18A-30.

Proposal Number: PRN 1991-385.

Submit comments by September 4, 1991 to:

Steven B. Frakt
Special Assistant to the State Treasurer
State House
CN 002
Trenton, New Jersey 08625-0002

The agency proposal follows:

Summary

The Local Public Employee Charitable Fund-Raising Campaign is a voluntary fund-raising campaign conducted annually among public employees of local units of government who may authorize their contributions to be deducted from their paychecks. The campaign is governed by a steering committee consisting of the fund-raising organizations whose applications have been approved for inclusion in the campaign. The campaign is managed by a campaign manager selected by the steering committee.

In order to promote a more efficient and effective campaign, and to provide assurance to public employees as to the charitable nature and purpose of the participating organizations and agencies, the proposed amendments clarify various administrative and operational aspects of the campaign, provide more specific guidance as to the conduct of the campaign, and require more detailed information from applicants. The specific provisions of this proposal are as follows:

Proposed new rule N.J.A.C. 17:29-1.5 clarifies that charitable solicitations at local public work sites can only be undertaken as part of the unified campaign; that the campaign is to be conducted in an equitable manner; that a charitable agency cannot participate as both an affiliated and an unaffiliated agency; and that the local governmental unit will not assume any of the responsibilities of the Campaign Steering Committee.

Proposed amendments to N.J.A.C. 17:29-2.3 provide that the campaign manager shall remain in office until the election of a successor; specify the administrative requirements for the position of campaign manager; and clarify that the Campaign Steering Committee may establish a grievance procedure.

Proposed amendments to N.J.A.C. 17:29-2.4 codify a minor procedural change with regard to the issuance of a letter of eligibility for charitable fund-raising organizations. Organizations who participate in the State campaign are eligible to participate in a local campaign upon submission of the letter of eligibility from the State Campaign Steering Committee rather than the State Treasurer.

Proposed amendments to N.J.A.C. 17:29-2.6 revise the timetable for an appeals procedure for organizations denied eligibility. It extends the deadline for filing an appeal from five to 10 days; extends the convening of an appeals panel by the Chief Executive of the local government unit from five to 20 days; and extends the panel's time for deliberation from five to 10 days.

Proposed amendments to N.J.A.C. 17:29-2.7 require additional documentation as part of the application for a fund-raising organization, including a copy of IRS form 990, evidence of registration as a charity under New Jersey law, a copy of the annual audit, and various affirmations regarding the nature of the organization and its affiliated charities.

Proposed amendments to N.J.A.C. 17:29-3.2 revise the timetable for the appeals procedure for unaffiliated agencies in a manner similar to the revisions for fund-raising organizations in proposed amendments to N.J.A.C. 17:29-2.6.

Proposed amendments to N.J.A.C. 17:29-3.4 require additional documentation as part of the application for an unaffiliated charitable agency similar to the information required for fund-raising organizations under proposed amendments to N.J.A.C. 17:29-2.7.

Proposed amendments to N.J.A.C. 17:29-4.6 provide that an employee's pledge/designation card shall be valid only for the year of the campaign.

Social Impact

The proposed amendments and proposed new rule will improve the administration and operation of the Local Public Employee Charitable Fund-Raising Campaign. This will enhance the access of charitable organizations and agencies to the public workplace and will afford public employees at the local level a broad avenue of expression in designating recipients of their charitable contributions.

Economic Impact

The proposed amendments and proposed new rule will have no economic impact on local government finances, nor will they subject charitable organizations and agencies to any additional administrative costs. The rule and amendments only clarify application procedures and campaign operation. In any event, the charitable campaign is run on a voluntary basis and the modest administrative costs of the campaign are deducted from contributions. It should be noted that to the extent that the campaign operates more efficiently and effectively, it may encourage greater charitable giving by public employees.

Regulatory Flexibility Analysis

As defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., the term "small business" may apply to some charitable agencies wishing to participate in the Local Public Employee Charitable Fund-Raising Campaign. The only requirements imposed on such agencies relate to the application process, the documentation for which should be maintained by the agency in the normal course of operation. The Department anticipates no capital costs need be expended or professional services engaged by small businesses to comply with these rules. Therefore, no differentiation in the application process based upon business size is provided.

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

17:29-1.5 Campaign management

(a) No charitable agency or charitable fund-raising organization shall engage in any direct solicitation activity at the work site of employees of local units of government, except as a participant in a Campaign and in accordance with N.J.A.C. 17:29.

(b) No charitable agency shall participate in a Campaign as both an affiliated and an unaffiliated agency.

(c) All activities of the Campaign shall be conducted in a manner that promotes a unified solicitation on the behalf of all participants. While it is permissible to individually identify the fund-raising organizations or charitable agencies in the Campaign for informational purposes, no person affiliated with the Campaign shall engage in any Campaign activity that is construed to either advocate or criticize any specific fund-raising organization or charitable agency.

(d) No official or employee of a local unit of government shall assume the duties and responsibilities of the Campaign Steering Committee, the Campaign Steering Committee Chairman, or the Campaign Manager. In the event of the inability of the Committee to function, or a continuing vacancy in the position of Chairman or Manager, the Chief Executive Officer of a local unit of government shall have the right to cancel the Campaign. The Chief Executive Officer may designate a local employee coordinator to assist the Campaign Steering Committee.

17:29-2.3 Duties of Campaign Steering Committee

(a) Each local Campaign Steering Committee shall:

1. Elect a chairman to conduct the meetings of the local Campaign Steering Committee [and.]. **The chairman shall serve for a term of one year and shall continue to serve until the election of a successor. The chairman shall be eligible for re-election;**

2. Elect and oversee a Campaign Manager, **who shall demonstrate to the satisfaction of the Campaign Steering Committee the administrative, financial, technical and management capability to organize, publicize and operate an extensive fund-raising campaign in an efficient and equitable manner in accordance with N.J.A.C. 17:29; and**

3. Establish policies and procedures in the operation and administration of the local unit of government Campaign, **including the hearing of any grievances concerning the operation and administration of the Campaign.**

17:29-2.4 Eligibility of fund-raising organizations

(a) (No change.)

(b) Charitable fund-raising organizations found eligible to participate on the State Campaign, Steering Committee shall automatically be eligible to participate on a local Campaign Steering Committee upon application to the local unit of government. The letter of the State [Treasurer] **Campaign Steering Committee** so stating eligibility shall be proof of such eligibility. See N.J.A.C. 17:28-6.

(c) (No change.)

17:29-2.6 Appeal procedure

(a) Any charitable fund-raising organization receiving notice of ineligibility shall have [five] **10** days from receipt of such notice to submit to the Chief Executive Officer of the local unit of government any additional information addressing any deficiencies in the application.

(b) Within [five] **20** days of receipt of any additional information, the Chief Executive Officer shall convene a special appeal panel consisting of the representatives of the employees or management and the representative of the Chief Executive Officer to review the charitable fund-raising organization's application and any additional documentation or information submitted by the charitable fund-raising organization to address any deficiency in the application as determined by the Chief Executive Officer.

(c) The special appeal panel shall conduct its review within [five] **10** days and in that time notify the Chief Executive Officer of its decision. The decision of the special appeal panel shall be final.

17:29-2.7 Application form/organization

(a) (No change.)

(b) In addition to [such] **the** background information **required in (a) above**, the applicant must submit:

1. With respect to the requirements set forth in N.J.S.A. [52:14:15.9c7a] **52:14-15.9c7a**, b, and c, from the Internal Revenue Service **a** Letter of Determination or other proof from the Internal Revenue Service that the applicant:

i. Is exempt from [federal] **Federal** income tax under Section 501(c)(3) of the Internal Revenue Code;

ii. Qualifies for tax deductible contributions under Section 170(b)(1)(A)(vi) or (viii) of the Internal Revenue Code;

iii. Is not a private foundation as defined in Section 509(a) of the Internal Revenue Code; and

2. With respect to the requirements set forth in N.J.S.A. 52:14-15.9c7e, annual financial reports which demonstrates that the organization raised, in each of the two fiscal years preceding its application to participate in the local Campaign, at least $15,000 from individual citizens of New Jersey; [and]

3. With respect to N.J.S.A. 52:14-15.9c7g, annual financial reports which demonstrate that the organization raised at least $25,000 and distributed that sum among a minimum of five charitable agencies (not necessarily located [with] **within** the State) in each of its two fiscal years preceding its application to participate in a [State] **local** Campaign[.];

4. A copy of the organization's Internal Revenue Service form 990 for each of the organization's two fiscal years preceding its application;

5. Documentary evidence that the organization is registered or exempt from registration pursuant to the provisions of Title 15 of the Revised Statutes or Title 15A of the New Jersey Statutes and the "Charitable Fund Raising Act of 1971" (P.L. 1971, c.469; N.J.S.A. 45:17A-1 et seq.);

6. A copy of the organization's independent auditor's report for each of the organization's two fiscal years preceding its application;

7. A copy of the organization's annual report for each of the organization's two fiscal years preceding its application;

8. A statement affirming that the organization is directed by a governing body whose members have no material conflict of interest in their service on the governing body, and a list of the members of the governing body and the identification of its officers;

9. A list of the affiliated charitable agencies to which the organization gave funds in its two fiscal years prior to the application and a list of the agencies to which it expects to give funds received in the Campaign, and a description of the health, welfare or human care services that each provides;

10. A statement affirming that each of the organization's affiliated charitable agencies is:

i. Registered pursuant to the provisions of Title 15 of the Revised Statutes or Title 15A of the New Jersey Statutes and the "Charitable Fund Raising Act of 1971" (P.L. 1971, c.469; N.J.S.A. 45:17A-1 et seq.), except for an agency exempt from registration under the law; and

ii. Engaged in the provision of health, welfare or human care services; and

11. A statement affirming that the organization will be represented at meetings of the Campaign Steering Committee and providing the name of the representative.

(c) In order to meet its application requirement, each charitable fund-raising organization found eligible to participate on the State Campaign Steering Committee need only submit along with its request to participate in the Campaign the letter of the State [Treasurer] **Campaign Steering Committee** so stating eligibility to participate in the State Campaign. **Charitable fund-raising organizations which participated on the Local Campaign Steering Committee for the immediately preceding Campaign and which do not participate on the State Campaign Steering Committee need only submit the most recent information to update the information required in (b) above.**

17:29-3.2 Application [Procedure] **procedure**

(a) (No change.)

(b) The application procedure for charitable agencies is as follows:

1. At least [seventy five] **75** days prior to the local unit of government Campaign, the Chief Executive Officer of the local unit of government shall publish in one local newspaper (if one exists) and one [statewide] **Statewide** newspaper notice of application for charitable agencies wishing to participate in the local unit of government Campaign. The Chief Executive Officer shall also notify the Campaign Steering Committee, through the State Treasurer, at least 20 days prior to the application deadline, that the local unit of government is taking applications.

2. No later than [ten] **10** days after the close of the application due date, the Chief Executive Officer of the local unit of government, with the advice of the local Campaign Steering Committee, shall review applications of unaffiliated charitable agencies wishing to participate in the local Campaign and shall notify each applicant of its eligibility or ineligibility to participate in the local Campaign. In cases of ineligibility, the notice shall set forth reasons for such ineligibility.

3. Any charitable agency receiving notice of ineligibility shall have [five] **10** days from receipt of such notice to submit to the Chief Executive Officer of the local unit of government any additional information addressing any deficiency in the applicant.

4. No later than [five] **20** days after receipt of any additional information, the Chief Executive Officer shall convene a special appeal panel consisting of the representatives of the employees or management and the representative of the Chief Executive Officer to review the charitable [agencies] **agency's** application and any additional documentation or information submitted by the charitable agency to address any deficiency in the application as determined by the Chief Executive Officer.

5. The special appeal panel shall conduct its review within [five] **10** days and in that time notify the Chief Executive Officer of its decision. The decision of the special appeal panel shall be final.

17:29-3.4 Application form/unaffiliated charitable agency

(a) (No change.)

(b) In addition to [such] **the** background information **required in (a) above**, the applicant must submit:

1. With respect to the requirements set forth in N.J.S.A. 52:14-15.9c7a, b, and c, a Letter of Determination from the Internal Revenue Service or other proof from the Internal Revenue Service that the applicant:

i.-ii. (No change.)

iii. Is not a private foundation as defined in Section 509(a) of the Internal Revenue Code; [and]

2. With respect to the requirements set forth in N.J.S.A. 52:14-15.9c7e, annual financial reports which demonstrates that the agency raised, in each of its **two** fiscal years preceding its application to participate in a local unit of government Campaign, at least $15,000 from individual citizens of New Jersey[.];

3. A Copy of the agency's Internal Revenue Service form 990 for each of the agency's two fiscal years preceding its application;

4. Documentary evidence that the agency is registered or exempt from registration pursuant to the provisions of Title 15 of the Revised Statutes or Title 15A of the New Jersey Statutes and the "Charitable Fund Raising Act of 1971" (P.L.1971, c.469; N.J.S.A. 45:17A-1 et seq.);

5. A copy of the agency's independent auditor's report for each of the agency's two fiscal years preceding its application;

6. A copy of the agency's annual report for each of the agency's two fiscal years preceding its application;

7. A statement affirming that the agency provides health, welfare or human care services within New Jersey, and a description of the services; and

8. A statement affirming that the agency is directed by a governing body whose members have no material conflict of interest in their service on the governing body, and a list of the members of the governing body and the identification of its officers.

17:29-4.6 Designated contributions

(a) Employees may designate, on a Campaign pledge/designation card, their contribution to a specific charitable fund-raising organization and/or charitable agency, and/or may select the undesignated option. For contributions through the payroll deduction there shall be a minimum of $.50 per week ($26.00 per year) per organization or agency designated. The minimum contribution requirement shall be met for each additional organization or agency designated.

(b) A campaign pledge/designation card shall be valid only for the calendar year of the Campaign. An employee who wishes to participate in a subsequent Campaign must file a new Campaign pledge/designation card valid for the subsequent Campaign.

TREASURY-TAXATION

(a)

DIVISION OF TAXATION

Local Property Tax
Extension of Time to File Property Tax Appeal
Proposed Amendment: N.J.A.C. 18:12-5.1

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

Authority: N.J.S.A. 54:3-21.5

Proposal Number: PRN 1991-400.

Submit comments by September 4, 1991 to:

Nicholas Catalano
Chief Tax Counselor
Division of Taxation
50 Barrack Street
CN 269
Trenton, NJ 08646

The agency proposal follows:

Summary

N.J.A.C. 18:12-5.1, in its present form, limits extensions of the August 15 deadline to appeal to county boards of taxation when tax bills are mailed late to September 14 of the tax year. The proposed amendment would authorize the Director of the Division of Taxation to approve extensions beyond September 14. The purpose of the change is to give the Director the authority to ensure administratively that all taxpayers

have a reasonable opportunity to appeal, even when tax bills are mailed after, or only shortly before, September 14.

N.J.S.A. 54:3-21.4 authorizes county boards of taxation, with the approval of the Director, to extend the August 15 deadline for appealing to county boards of taxation pursuant to N.J.S.A. 54:3-21. In turn, N.J.S.A. 54:3-21.5 authorizes the Director to approve "reasonable extensions" of the appeal deadline "provided, however, that no such extension shall be for more than 30 days from the date otherwise provided by law." Inasmuch as 30 days from the August 15 deadline is September 14, N.J.S.A. 54:3-21.5 requires that any extensions authorized by the Director must in the first instance not be beyond September 14. But once an extension has been approved by the Director to September 14, for example, the new deadline for appeal, as provided by law, becomes September 14. If the taxpayer applies for a second extension because he has not received his tax bill sufficiently in advance of the September 14 deadline, N.J.S.A. 54:3-21.5 authorizes the Director to approve an additional extension, but for no more than 30 days from the date "otherwise provided by law." The second extension could therefore be approved to as far as October 14, since October 14 would be 30 days from the September 14 deadline provided by law pursuant to the previous extension. There is no statutory limit on the number of extensions the Director may approve.

Social Impact

The proposed amendment should benefit taxpayers by making it easier to obtain extensions of the deadline for filing appeals from tax assessments when tax bills are mailed late. Under the rule's current form, extensions beyond September 14 must be obtained by means of a cumbersome and time consuming civil action in Superior Court. Delays experienced in obtaining extensions have resulted in a substantial amount of frustration and uncertainty among taxpayers, county boards of taxation, and municipalities. By providing an efficient administrative mechanism for approving extensions beyond September 14, the amended rule should reduce and even eliminate such frustration and uncertainty.

Economic Impact

The proposed amendment should have a negligible economic impact, since extensions of time to appeal have generally been granted by the Superior Court. Changing N.J.A.C. 18:12-5.1 to allow the Director to approve extensions beyond September 14 would not encourage municipalities to delay adopting budgets and mailing tax bills. An efficient administrative mechanism for extending appeal deadlines merely ensures that no matter how delinquent a tax bill is, the taxpayers will have a fair and reasonable opportunity to challenge the assessment.

Regulatory Flexibility Statement

The proposed amendment will 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 amendment will ease regulatory burdens on all taxpayers by providing a more efficient mechanism for extending the deadline for appeals from tax assessments pursuant to the Director's authority under N.J.S.A. 54:3-21.5.

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

18:12-5.1 Extension of time to file property tax appeal due to failure to mail or deliver tax bill

(a) With respect to any tax year, a property owner may, upon written application to the county board of taxation of the county in which his property is located, request, pursuant to N.J.S.A. 54:3-21.4, that the county board of taxation extend his time to appeal to such board to a date not later than September 14 of the tax year, upon a showing under oath that the local taxing district failed to mail or deliver a tax bill to him before July 15 of the tax year. **If an extension of the taxpayer's time to appeal to such board has already been granted by the board and approved, in writing, by the Director of the Division of Taxation pursuant to N.J.S.A. 54:3-21.4 and 5, the taxpayer may request an extension of time beyond September 14 of the tax year, but not more than 30 days from the date of the extension previously approved, upon a showing under oath that the local taxing district failed to mail or otherwise deliver a tax bill to him at least 30 days prior to the date of the extension previously approved.**

(b) The county board of taxation may, upon receipt of an application by an aggrieved property owner to extend the time to appeal **either** to a date not later than September 14 of the tax year **or, alternatively, to a date not later than 30 days from an extension previously approved**, grant such extension, provided there is a showing that:

1. The taxing district failed to mail or otherwise deliver a tax bill to such taxpayer before July 15 of the tax year;

2. It appears that the appeal is taken pursuant to N.J.S.A. 54:3-[21.4 and 5.]**21; and**

3. The Director of the Division of Taxation has approved said application.

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

(h) [These regulations are] **This section** promulgated pursuant to N.J.S.A. 54:3-21.5 and shall take effect with all tax appeals filed pursuant to N.J.S.A. 54:3-21 for the tax year 1973 and thereafter **with the exception that the last sentence in (a) above and related provisions in (b) above shall take effect for the tax year 1991 and thereafter.**

OTHER AGENCIES

(a)

CASINO CONTROL COMMISSION

Rules of the Games; Gaming Equipment; Accounting and Internal Controls

Red Dog; Red Dog Table; Personnel Assigned to the Conduct of Gaming

Proposed New Rules: N.J.A.C. 19:47-6

Proposed Amendments: N.J.A.C. 19:45-1.11 and 1.12; 19:46-1.17 and 1.19; and 19:47-8.2

Proposed Repeal and New Rule: N.J.A.C. 19:46-1.14

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

Authority: N.J.S.A. 5:12-69(a), 70(f), (j), 99, and 100(e).

Proposal Number: PRN 1991-388.

Submit comments by September 4, 1991 to:

Catherine A. Walker
Senior Assistant Counsel
Casino Control Commission
Arcade Building
Tennessee Avenue and Boardwalk
Atlantic City, N.J. 08401

The agency proposal follows:

Summary

The proposed repeal, new rules and amendments included in this proposal are intended to govern the implementation of the newly authorized game of "red dog" in Atlantic City casinos. The actual rules of the game are set forth in proposed new rules N.J.A.C. 19:47-6.1 through 6.9 and are self-explanatory.

Briefly, red dog is a card game in which players wager whether the value of the third card drawn by the dealer is between the values of the initial two cards drawn by the dealer. Winning wagers are paid in accordance with payout odds which are based upon the "spread," or difference in values, between the initial two cards which are dealt. Players also win when all three cards dealt are identical in value; winning wagers on hands which result in "three of a kind" are always paid at odds of 11 to one. If the initial two cards dealt by the dealer are consecutive in value, in other words, there is no spread, the hand is declared a tie and all wagers are returned to the players.

Proposed new rule N.J.A.C. 19:46-1.14 contains requirements governing the physical characteristics of a red dog table. The provisions concerning minimum and maximum wagers currently codified at N.J.A.C. 19:46-1.14 are proposed for repeal because they are duplicative of requirements contained in N.J.A.C. 19:47, rules of the games.

The remainder of the proposed amendments to N.J.A.C. 19:45 and 19:46 are technical amendments which merely add the game of red dog to various existing regulatory requirements governing the operation of card games in Atlantic City casinos. (Note that the text of N.J.A.C.

19:45-1.11 and 1.12 proposed herein for amendment is the text of the rules as amended pursuant to an adoption published elsewhere in this issue of the New Jersey Register.) The proposed amendment to N.J.A.C. 19:47-8.2 establishes, in accordance with the mandates of N.J.S.A. 5:12-100(e), the required spread between the minimum and maximum wagers offered at a red dog table.

Social Impact

The proposed new rules and amendments are not anticipated to have any social impact independent of that created by the statutory authorization of the new game. The proposed rules of the game are fairly simple and straightforward and do not reflect any significant social judgments made by the Commission. It is anticipated that the implementation of the new game may generate patron interest in the game but it is unclear at this time whether new or additional patrons will be attracted to Atlantic City as a result of the introduction of red dog.

Social Impact

The implementation of any new game will, by its very nature, require casino licensees to incur some costs in preparing to offer the game to the public. These costs will presumably be offset by the increased casino revenues generated by the new game. Moreover, to the extent that the new game does generate increased casino revenues, senior and disabled citizens of New Jersey will benefit from the additional tax revenues which will be collected. As noted above, however, any attempt to quantify the effects of the introduction of red dog on casino revenue would be highly speculative at this time. The proposed amendments and new rules are not anticipated to result in any significant costs to the regulatory agencies.

Regulatory Flexibility Statement

The proposed amendments will only affect the operations of casino licensees, none of which qualifies as a small business under the provisions of the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq.

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

19:45-1.11 Casino licensee's organization

(a) (No change.)

(b) In addition to satisfying the requirements of (a) above, each casino licensee's system of internal controls shall include, at a minimum, the following departments and supervisory positions. Each of these departments and supervisors shall be required to cooperate with, yet perform independently of, all other departments and supervisors. Mandatory departments are as follows:

1.-3. (No change.)

4. A table games department supervised by a casino key employee holding a license endorsed with the position of the casino manager. The table games department shall be responsible for the operation and conduct of the following games:

i. Craps;

ii. Blackjack;

iii. Baccarat;

iv. Roulette;

v. Bix six; [and]

vi. Minibaccarat; **and**

vii. Red dog.

5.-9. (No change.)

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

19:45-1.12 Personnel assigned to the operation and conduct of gaming and slot machines

(a) (No change.)

(b) The following personnel shall be used to operate the table games in an establishment:

1. (No change.)

2. Dealers shall be the persons assigned to each craps, baccarat, blackjack, roulette, minibaccarat, **red dog,** and big six table to directly operate and conduct the game.

3.-4. (No change.)

5. Floorperson shall be:

i. (No change.)

ii. The first level supervisor assigned the responsibility for directly supervising the operation and conduct of gaming at not more than a total of four blackjack, roulette, **red dog,** or big six tables or a combination thereof;

iii. (No change.)

iv. The first level supervisor assigned the responsibility for directly supervising the operation and conduct of gaming at not more than two minibaccarat tables or a combination of one minibaccarat table and a blackjack, roulette, **red dog** or big six table.

6. Pit boss shall be:

i. The third level supervisor assigned the responsibility for the overall supervision of the operation and conduct of craps games at no more than eight craps tables. Nothing in this subsection shall preclude a pit boss from supervising a combination of table games including craps, blackjack, roulette, minibaccarat, bix six, **red dog,** or baccarat, provided, however, the number of supervised tables complies with the following limitations:

Craps Games	All Other Table Games
1	9
2	8
3	6
4	4
5	3
6	2
7	1

ii. The second level supervisor assigned the responsibility for the overall supervision of the operation and conduct of table games at not more than a total of 12 black jack, roulette, minibaccarat, big six, **red dog,** or baccarat tables or a combination thereof.

7.-9. (No change.)

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

19:46-1.14 [Maximum and minimum wagers] **Red dog table; physical characteristics**

[Each casino licensee shall cause to be conspicuously posted and remain posted at each gaming table a sign stating the minimum and maximum wagers permitted at such table.]

(a) Red dog shall be played at a table having on one side places for the players and on the opposite side a place for the dealer.

(b) The cloth covering the red dog table shall have imprinted thereon the name of the casino.

(c) Each red dog layout shall have two separate designated betting areas for each player, clearly marked to distinguish between the original wager and the raise wager in a manner approved by the Commission, and situated so that the betting area for the raise wager is closer to the player than the betting area for the original wager. Such betting areas shall not exceed seven in number.

(d) Each red dog layout shall have an area designated for the placement of the first, second and third card.

(e) Each red dog layout shall have a drop box and a tip box attached to it with the location of said boxes on the same side of the gaming table but on opposite sides of the dealer, as approved by the Commission.

(f) Each red dog layout shall have inscribed thereon the payout odds required by N.J.A.C. 19:47-6.5.

19:46-1.17 Cards; physical characteristics

(a) Cards used to play blackjack, baccarat[/], minibaccarat **and red dog** shall be in decks of [fifty-two] **52** cards each with each card identical in size and shape to every other card in such deck.

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

19:46-1.19 Dealing shoes

(a) (No change.)

(b) Cards used to game at blackjack, [and] minibaccarat **and red dog** shall be dealt from a dealing shoe which shall be securely chained to the gaming table during gaming hours and secured in a locked compartment during non-gaming hours. Cards used to game at baccarat shall be dealt from a dealing shoe which shall be secured in a locked compartment during non-gaming hours.

(c) A device which automatically shuffles cards may be utilized at the game of blackjack, [and] minibaccarat **and red dog** in addition to or in place of a dealing shoe, provided that such device is submitted to and approved by the Commission.

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

SUBCHAPTER 6. [(RESERVED)] RED DOG

19:47-6.1 Cards; number of decks; value of cards; dealing shoe

(a) Red dog shall be played with at least one deck of cards with backs of the same color and design and two additional solid yellow or green cutting cards.

(b) The "value" of the cards in each deck shall be as follows:

1. Any card from 2 to 10 shall have its face value;
2. Any jack shall have a value of 11;
3. Any queen shall have a value of 12;
4. Any king shall have a value of 13; and
5. Any ace shall have a value of 14.

(c) All cards used to game at red dog shall be dealt from a dealing shoe specifically designed for such purpose and located on the table to the left of the dealer.

19:47-6.2 Opening of the table for gaming

(a) After receiving the one or more decks of cards at the table, the dealer shall sort and inspect the cards and the floorperson assigned to the table shall verify the inspection in accordance with N.J.A.C. 19:46-1.18(f).

(b) Following the inspection of the cards by the dealer and the verification by the floorperson assigned to the table, the cards shall be spread out face up on the table for visual inspection by the first player to arrive at the table. The cards shall be spread out by deck according to suit and in sequence. The cards in each suit shall be laid out in sequence within the suit.

(c) After the player is afforded an opportunity to visually inspect the cards, the cards shall be turned face down on the table, mixed thoroughly by a "washing" or "chemmy shuffle" of the cards and stacked.

19:47-6.3 Shuffle and cut of the cards

(a) Immediately prior to commencement of play and after each shoe of cards is dealt, the dealer shall shuffle the cards so that they are randomly intermixed. A casino licensee may also shuffle the cards at the completion of any round of play.

(b) After the cards have been shuffled, the dealer shall offer the stack of cards to be cut, with the backs facing away from the dealer, to the player at the farthest point to the right of the dealer; provided, however, if the game is just beginning, the cards shall be offered to the first player at the table. If the first player offered the cards refuses the cut, the cards shall be offered to each other player moving clockwise around the table until a player accepts the cut. If no player accepts cut, the dealer shall cut the cards.

(c) The person making the cut shall place the cutting card in the stack at least 10 cards from either end. Once the cutting card has been inserted, the dealer shall take all the cards in front of the cutting card and place them on the back of the stack. The dealer shall then insert the cutting card in a position approximately one-quarter of the way from the back of the stack. The stack of cards shall then be inserted into the dealing shoe for commencement of play.

19:47-6.4 Procedures for dealing cards

(a) After each full set of cards is placed in the shoe, the dealer shall remove the first card therefrom face down and place it in the discard rack which shall be located on the table immediately in front of or to the right of the dealer. Each new dealer who comes to the table shall also discard ("burn") one card as described herein before the new dealer deals any card in a round of play. The burn card shall be disclosed if requested by a player.

(b) The dealer shall remove a card from the shoe with his or her left hand, turn it face up, and then place it on the appropriate area of the layout with his or her right hand.

19:47-6.5 Procedures for each round of play; wagers; payouts

(a) Except as otherwise provided in this section, all wagers shall be made prior to the first card being dealt for each round of play.

(b) All wagers at red dog shall be made by placing gaming chips or plaques on the appropriate area of the red dog layout except that verbal wagers accompanied by cash may be accepted provided they are confirmed by the dealer and casino supervisor at the table and such cash is expeditiously converted into gaming chips or plaques in accordance with N.J.A.C. 19:45-1.18.

(c) To begin each round of play, the dealer shall place the first card, face up, on the box farthest to the dealer's left. The dealer shall then place the second card, face up, on the box farthest to the dealer's right.

(d) Once the first card of each round has been removed from the shoe by the dealer, no participant in the game shall handle, remove or alter any wager until a decision has been rendered and implemented with respect to that wager.

(e) If the initial two cards dealt have values that are consecutive, the dealer shall announce "The cards are consecutive—tie hand," all wagers shall be void and the round of play shall be concluded.

(f) If the initial two cards dealt are of identical value, the dealer shall announce "We have a pair" and shall immediately draw a third card and place it face up in the middle box.

1. If the third card dealt is identical in value to the initial two cards, the dealer shall announce "Three of a kind," the players shall win and all wagers shall be paid at odds of 11 to one.

2. If the third card dealt is not identical in value to the initial two cards, the dealer shall announce "No three of a kind—tie hand," all wagers shall be void and the round of play shall be concluded.

(g) If the initial two cards dealt are neither consecutive nor a pair, the dealer shall announce the "spread" and place a marker on the corresponding spread on the layout. The spread for each round of play shall be a number from one to 11 inclusive and shall be determined by the number of cards whose value can fall between the values of the initial two cards dealt. Examples of this rule are as follows:

1. If the initial two cards dealt are a 4 and a 7, then the spread shall be two (that is, two cards, the 5 and 6, have a value that falls between 4 and 7);

2. If the initial two cards dealt are a 9 and a king, then the spread shall be three (that is, three cards, the 10, jack and queen, have a value that falls between the 9 and king).

(h) If there is a spread after the initial two cards are dealt, a player shall have the option to make a raise wager in support of the player's original wager by placing on the designated raise area of the layout an amount not in excess of the player's original wager. All raise wagers shall be made immediately after the initial two cards have been dealt and prior to the third card being dealt.

(i) After all raise wagers have been made and prior to dealing the third card, the dealer shall announce "Raises closed." The dealer shall then draw a third card, place it face up on the box between the initial two cards and announce the value of the third card. The dealer shall then collect all losing wagers and pay all winning wagers as follows:

1. The player shall win if the value of the third card dealt is between the value of the initial two cards dealt (a third card which has the same value as the first or second card dealt is not deemed to be between the values of the initial two cards);

2. All winning wagers and raise wagers shall be paid at payout odds determined by the spread for that round of play, as listed below:

Spread	Payout Odds
1	5 to 1
2	4 to 1
3	2 to 1
4 through 11	1 to 1

(j) At the conclusion of each round of play, all cards on the layout shall be picked up by the dealer and placed in the discard rack in order and in such a way that they can be readily arranged to reconstruct the hand in case of a question or dispute.

(k) Whenever the cutting card is reached in the deal of the cards, the dealer shall continue dealing the cards until that round of play is completed. The dealer shall then reshuffle the cards in accordance with N.J.A.C. 19:47-6.3.

17:47-6.6 Minimum wagers

(a) Each casino licensee shall submit to the Commission for review and approval, in accordance with N.J.A.C. 19:47-8.2, the minimum wagers permitted at each red dog table.

(b) Each casino licensee shall provide notice in accordance with N.J.A.C. 19:47-8.3 of the minimum and maximum wagers in effect at each red dog table

19:47-6.7 Irregularities

(a) A card found face up in the shoe shall not be used in the game and shall be placed in the discard rack.

(b) A card drawn in error without its face being exposed shall be used as though it were the next card from the shoe.

(c) If a third card is drawn and exposed to the players prior to the dealer announcing "Raises closed," the card shall be discarded and each player shall be given the option of playing out the round or voiding the round of play. Prior to dealing another third card, the dealer shall return the original wager and any raise wager to each player who has chosen to void the round of play.

19:47-6.8 A player wagering on more than one betting area

A casino licensee may permit a player to wager on more than one betting area at a red dog table.

19:47-6.9 Continuous shuffling shoe or device

In lieu of the dealing and shuffling requirements set forth in N.J.A.C. 19:47-6.3 and 6.4, a casino licensee may utilize a dealing shoe or other device designed to automatically reshuffle the cards, provided that such shoe or device and the procedures for dealing and shuffling the cards through the use of this device are approved by the Commission.

19:47-8.2 Minimum and maximum wagers

(a) (No change.)

(b) The spread between the minimum wager and the maximum wager at table games shall be as follows:

1.-6. (No change.)

7. Red dog:

i. If the minimum wager at a table is $5.00 or less, the maximum wager shall be at least $100.00.

COMMUNITY AFFAIRS

(a)

DIVISION OF HOUSING AND DEVELOPMENT

Uniform Fire Code

Fire Code Enforcement

Fees

Proposed Amendments: N.J.A.C. 5:18-2.4A, 2.4B, 2.4C, 2.4D, 2.7, 2.8; 5:18A-2.6

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

Authority: N.J.S.A. 52:27D-198 and 201.

Proposal Number: PRN 1991-396.

Submit comments by September 4, 1991 to:

Michael L. Ticktin, Esq.
Chief, Legislative Analysis
Department of Community Affairs
CN 802
Trenton, NJ 08625

The agency proposal follows:

Summary

Most life hazard use and permit fees are increased in this proposal by 20 percent, in order to cover the cost of the fire safety program, which is now fully funded by fees. Factories and other industrial uses of Use Group F; warehouses, storehouses and freight depots, used for the storage of ordinary combustibles; wrecking yards, junk yards, outdoor used tire storage facilities and waste material handling plants; liquified petroleum gas and liquified natural gas storage installations; and funeral homes and parlors and mortuaries are made distinct life hazard uses. Permits that were required for uses now classified as life hazard uses are deleted. Eating and/or drinking establishments are reclassified based solely on occupancy. Distinctions are made among covered malls of various sizes. These changes have been made to make formerly broad categories more precise, reflecting inspection costs.

The local share of the increased fee is changed from 70 percent to 65 percent. The effect of this, combined with the increase in the fees, is to raise local enforcing agency revenue by over 11 percent.

Social Impact

Persons using the added categories of life hazard uses will benefit from having these uses subject to periodic fire safety inspections. Adequate funding of the Bureau of Fire Safety will allow the Bureau to continue to carry out its mission of protecting the public.

Economic Impact

Most life hazard use and permit fees are proposed to be increased by 20 percent, the amount determined by the Department to be necessary in order to fund the fire safety program adequately. Uses not previously classified as life hazard uses will be subject to fees for the first time. Other uses may have fee changes as a result of reclassification.

Regulatory Flexibility Analysis

The proposed amendments apply to small businesses, as the term is defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. Small businesses subject to the annual registration fee requirements for life hazard uses that they own, like all other owners of such uses, will be subject to fee increases of approximately 15 percent. The amendments also include new categories of life hazard uses that must be registered. This expansion in the scope of the rules will affect any small businesses that own such uses. While most use categories distinguish between smaller and larger operations, there is no distinction based upon the nature of the owner of the use or property. These rule amendments relate to public safety and the cost of enforcing compliance in different types and sizes of facilities. The inspection that must be done, and the costs of the inspection, is the same, regardless of the form of ownership. Therefore, no differentiation based upon business size has been made in the amendments.

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

5:18-2.4A Type Aa through Aj life hazard uses

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

(c) Type Ac life hazard uses are as follows:

1.-2. (No change.)

3. Eating and/or drinking establishments with a maximum permitted occupancy of fewer than 50 persons [in which alcoholic beverages may be consumed.].

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

(f) Type Af life hazard uses are as follows:

1.-3. (No change.)

4. Rooming and boarding homes of two or three stories[.];

5. Hardware stores and home improvement centers of less than 12,000 square feet of gross floor area.

(g) Type Ag life hazard uses are as follows:

1. Eating and/or drinking establishments with a maximum permitted occupancy of 50 or more but fewer than 100 persons [in which alcoholic beverages may be consumed but which are primarily eating establishments];

2.-3. (No change.)

4. Factories and other industrial uses of Use Group F of 12,000 or more but less than 24,000 square feet in gross floor area;

5. Warehouses, storehouses and freight depots, used for the storage and handling of ordinary combustible materials, of 12,000 or more but less than 24,000 square feet in gross floor area.

(h)-(i) (No change.)

(j) Type Aj life hazard uses are as follows:

1. [Eating and/or drinking establishments with a maximum permitted occupancy of 100 or more but fewer than 200 persons in which alcoholic beverages may be consumed but which are primarily eating establishments;] **(Reserved)**

2. (No change.)

5:18-2.4B Type Ba through Bo life hazard uses

(a) (No change.)

(b) Type Bb life hazard uses are as follows:

1. [Eating and/or drinking establishments with a maximum permitted occupancy of 50 or more but fewer than 100 persons which are primarily drinking establishments;] **(Reserved)**

2. (No change.)

3. Welding or cutting operations on a regular basis not using flammable gases in buildings or structures of 10,000 or more but less than 50,000 square feet[.];

4. Transfer from one container to another of liquified petroleum gas or liquified natural gas at any location, other than motor vehicle or marine motor craft service stations, not registered for storage and use;

5. Spraying or dipping operations involving paint, varnish, lacquer, stain, or other flammable or combustible liquids in all approved areas of less than 100 square feet.

(c) Type Bc life hazard uses are as follows:

1. Recreation centers, multipurpose rooms, lecture halls without fixed seating and similar uses where persons assemble other than for religious services with a maximum permitted occupancy of 200 persons or more[.];

2. Factories and other industrial uses of Use Group F of 24,000 or more but less than 50,000 square feet in gross floor area;

3. Warehouses, storehouses and freight depots, used for the storage and handling of ordinary combustible materials, of 24,000 or more but less than 50,000 square feet in gross floor area;

4. Any installation of liquified petroleum gas or liquified natural gas utilizing storage containers of over 1,000 gallons individual water capacity or with an aggregate water capacity exceeding 2,000 gallons but not more than 4,000 gallons.

(d) Type Bd life hazard uses are as follows:

1.-3. (No change.)

4. Storage of fireworks, explosives or blasting agents in a type 4 magazine[.];

[NOTE:] **i.** Type 2 and 3 magazines are portable and intended only for the temporary storage of explosives and blasting agents, and, as such, must be covered by a permit[.];

5. Eating and/or drinking establishments with a maximum permitted occupancy of 100 or more but fewer than 200 persons;

6. Funeral homes, funeral parlors and mortuaries providing access to the public with a maximum permitted occupancy of 100 or more but fewer than 200 persons;

7. Spraying or dipping operations involving paint, varnish, lacquer, stain, or other flammable or combustible liquids in all approved areas of 100 or more but less than 250 square feet.

(e) Type Be life hazard uses are as follows:

1. [Eating and/or drinking establishments with a maximum permitted occupancy of 100 or more but fewer than 200 persons which are primarily drinking establishments;] **(Reserved)**

2. Factories and other industrial uses of Use Group F of 50,000 or more but less than 100,000 square feet in gross floor area;

3. Warehouses, storehouses and freight depots, used for the storage and handling of ordinary combustible materials, of 50,000 or more but less than 100,000 square feet in gross floor area;

4. Wrecking yards, junk yards, outdoor used tire storage, and waste handling plants where 50,000 or more but less than 100,000 cubic feet of materials is handled.

(f) Type Bf life hazard uses are as follows:

1.-5. (No change.)

6. [Spraying or dipping operations involving paint, varnish, lacquer, stain, or other flammable or combustible liquids in all approved areas of less than 250 square feet;] **(Reserved)**

7.-18. (No change.)

19. Storage of fireworks, explosives or blasting agents in a type UG magazine;

[NOTE:] **i.** Type 2 and 3 magazines are portable and intended only for the temporary storage of explosives and blasting agents, and as such, must be covered by a permit;

20. (No change.)

21. Funeral homes, funeral parlors and mortuaries providing access to the public with a maximum permitted occupancy of 200 or more persons.

(g) Type Bg life hazard uses are as follows:

1.-4. (No change.)

5. Eating and/or drinking establishments with a maximum permitted occupancy of 200 or more but fewer than 300 persons [in which alcoholic beverages may be consumed but which are primarily eating establishments];

6.-28. (No change.)

29. Factories and other industrial uses of Use Group F of 100,000 or more but less than 150,000 square feet in gross floor area;

30. Warehouses, storehouses and freight depots, used for the storage and handling of ordinary combustible materials, of 100,000 or more but less than 150,000 square feet in gross floor area;

31. Wrecking yards, junk yards, outdoor used tire storage, and waste material handling plants where 100,000 or more but less than 200,000 cubic feet of materials is handled;

32. Any installation of liquified petroleum gas or liquified natural gas utilizing storage containers of over 4,000 gallons aggregate water capacity.

(h) (No change.)

(i) Type Bi life hazard uses are as follows:

1. (No change.)

2. Factories and other industrial uses of Use Group F of 150,000 or more but less than 200,000 square feet in gross floor area;

3. Warehouses, storehouses and freight depots, used for the storage and handling of ordinary combustible materials, of 150,000 or more but less than 200,000 square feet in gross floor area;

4. Wrecking yards, junk yards, outdoor used tire storage, and waste handling plants where 200,000 or more but less than 300,000 cubic feet of materials is handled.

(j) Type Bj life hazard uses are as follows:

1.-2. (No change.)

3. [Eating and/or drinking establishments with a maximum permitted occupancy of 300 or more persons in which alcoholic beverages are consumed but which are primarily eating establishments;] **(Reserved)**

4.-21. (No change.)

(k) Type Bk life hazard uses are as follows:

1.-4. (No change.)

5. Factories and other industrial uses of Use Group F of 200,000 or more square feet in gross floor area;

6. Warehouses, storehouses and freight depots, used for the storage and handling of ordinary combustible materials, of 200,000 or more square feet in gross floor area;

7. Wrecking yards, junk yards, outdoor used tire storage, and waste material handling plants where 300,000 or more cubic feet of materials is handled;

(l)-(o) (No change.)

5:18-2.4C Type Ca through [Cg] **Ci** life hazard uses

(a) Type Ca life hazard uses are as follows:

1. (No change.)

2. [Eating and/or drinking establishments which are primarily drinking establishments, with a maximum permitted occupancy of 200 or more but fewer than 300 persons;] **(Reserved)**

(b) (No change.)

(c) Type Cc life hazard uses are as follows:

1. [Night clubs, dance halls, or discotheques with a maximum permitted occupancy of fewer than 200 persons;] **(Reserved)**

2. (No change.)

3. **Eating and/or drinking establishments with a maximum permitted occupancy of 300 or more but fewer than 500 persons.**

(d) (No change.)

(e) Type Ce life hazard uses are as follows:

1. (No change.)

2. [Eating and/or drinking establishments which are primarily drinking establishments, with a maximum permitted occupancy of 300 or more persons;] **(Reserved)**

3. (No change.)

4. [Night clubs, dance halls or discotheques with a maximum permitted occupancy of 200 or more but fewer than 300 persons;] **(Reserved)**

(f) (No change.)

(g) Type Cg life hazard uses are as follows:

1. [Night clubs, dance halls or discotheques with a maximum permitted occupancy of 300 or more persons;] **(Reserved)**

2. (No change.)

3. Eating and/or drinking establishments with a maximum permitted occupancy of 500 or more but less than 750 persons.

(h) Type Ch life hazard uses are as follows:

1. Eating and/or drinking establishments with a maximum permitted occupancy of 750 or more but fewer than 1,000 persons.

(i) Type Ci life hazard uses are as follows:

1. Eating and/or drinking establishments with a maximum permitted occupancy of 1,000 or more persons.

5:18-2.4D Type Da **through Dc** life hazard uses

(a) Type Da life hazard uses **are as follows:**

1. Covered mall buildings [which exceed] **with a mall portion of** 12,000 **or more but less than 50,000** square feet [of gross floor area].

(b) Type Db life hazard uses are as follows:

1. Covered mall buildings with a mall portion of 50,000 or more but less than 100,000 square feet.

(c) Type Dc life hazard uses are as follows:

1. Covered mall buildings with a mall portion of 100,000 or more square feet.

5:18-2.7 Permits

(a) (No change.)

(b) Permits shall be obtained from the fire official for any of the following listed activities or uses. Permits shall at all times be kept in the premises designated therein and shall at all times be subject to inspection by the fire official.

1.-4. (No change.)

5. Type 3 permit:

i. (No change.)

[ii. Any wrecking yard or junk yard;] or

[iii.]**ii.** The storage or discharging of fireworks.

6. Type 4 permit:

i.-iv. (No change.)

[v. Any installation of liquified petroleum gas or liquified natural gas utilizing storage containers of over 2,000 gallons individual water capacity or with an aggregate water capacity exceeding 4,000 gallons;]

Recodify vi.-vii. as **v.-vi.** (No change in text.)

5:18-2.8 Fees, registration and permit

(a) The annual registration fee for life hazard uses shall be as follows:

1. Type Aa—[$58.00] **$70.00** per year;
2. Type Ab—[$86.00] **$103.00** per year;
3. Type Ac—[$92.00] **$110.00** per year;
4. Type Ad—[$104.00] **$123.00** per year;
5. Type Ae—[$115.00] **$138.00** per year;
6. Type Af—[$138.00] **$166.00** per year;
7. Type Ag—[$173.00] **$208.00** per year;
8. Type Ah—[$207.00] **$248.00** per year;
9. Type Ai—[$276.00] **$331.00** per year;
10. Type Aj—[$345.00] **$414.00** per year;
11. Type Ba—[$92.00] **$110.00** per year;
12. Type Bb—[$173.00] **$208.00** per year;
13. Type Bc—[$276.00] **$331.00** per year;
14. Type Bd—[$345.00] **$414.00** per year;
15. Type Be—[$403.00] **$484.00** per year;
16. Type Bf—[$518.00] **$622.00** per year;
17. Type Bg—[$552.00] **$662.00** per year;
18. Type Bh—[$690.00] **$828.00** per year;
19. Type Bi—[$828.00] **$997.00** per year;
20. Type Bj—[$863.00] **$1,036.00** per year;
21. Type Bk—[$1,035.00] **$1,242.00** per year;
22. Type Bl—[$1,208.00] **$1,450.00** per year;
23. Type Bm—[$1,380.00] **$1,656.00** per year;
24. Type Bn—[$1,725.00] **$2,070.00** per year;
25. Type Bo—[$2,070.00] **$2,484.00** per year;
26. Type Ca—[$690.00] **$828.00** per year;
27. Type Cb—[$828.00] **$994.00** per year;
28. Type Cc—[$897.00] **$1,076.00** per year;
29. Type Cd—[$966.00] **$1,159.00** per year;
30. Type Ce—[$1,104.00] **$1,325.00** per year;
31. Type Cf—[$1,208.00] **$1,450.00** per year;
32. Type Cg—[$1,380.00] **$1,656.00** per year;
33. Type Ch—$1,300.00 per year;
34. Type Ci—$2,500.00 per year;
[33.]**35.** Type Da—[$2,070.00] **$1,650.00** per year[.];
36. Type Db—$2,500.00 per year;
37. Type Dc—$3,250.00 per year.

(b) Where more than one life hazard use exists under one ownership at a given location, the highest life hazard use shall be registered at full fee and subsequent life hazard uses at one-half the scheduled fee; provided, however, that no public or private K-12 educational building shall pay more than one [$115.00] **$138.00** life hazard use registration fee, regardless of the number or type of life hazard uses contained within the building.

1. (No change.)

(c) The application fee for a permit shall be as follows:

1. Type 1—[$29.00] **$35.00**;
2. Type 2—[$115.00] **$138.00**;
3. Type 3—[$230.00] **$276.00**;
4. Type 4—[$345.00] **$414.00**;
5. Type 5—[$1,150.00] **$1,380.00**.

(d) (No change.)

5:18A-2.6 Collection of and accounting for fees and penalties

(a) State collection of registration fees[.] **shall be as follows:**

1. (No change.)

2. The Bureau of Fire Safety shall remit [70] **65** percent of the amount collected to the local enforcing agency established for the inspection of life safety uses. This payment shall be disbursed by the end of the quarter next succeeding the one in which the fees were collected.

3. The [70] **65** percent local share shall not be considered State funds but rather local funds held in trust by the State.

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

(a)

DIVISION OF HOUSING AND DEVELOPMENT

Uniform Construction Code
Minor Work; Certificates of Occupancy
Proposed Amendments: N.J.A.C. 5:23-2.8, 2.17A, 2.24 and 2.32

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

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

Proposal Number: PRN 1991-402.

Submit comments by September 4, 1991 to:

Michael L. Ticktin, Esq.
Chief, Legislative Analysis
Department of Community Affairs
CN 802
Trenton, NJ 08625

The agency proposal follows:

Summary

The completion of work done under the Uniform Construction Code is evidenced by the issuance of a certificate of occupancy, a certificate of approval or a certificate of compliance. These proposed amendments make this clear in various rules in which approval by the construction official is either indicated or implied but no specific document evidencing approval is mentioned.

In accordance with the recent adoption of the elevator safety subcode, the certificate of occupancy requirements are amended to specify that the requirements of the subcode and related rules must be met.

The only substantive amendment to N.J.A.C. 5:23-2.32 is the express requirement of a certificate of occupancy as evidence that the building is safe to occupy. Otherwise, the changes correct terminology. For example, it is a misnomer to refer to an "unsafe notice," even though that is what code officials might call it, because it is the building that is unsafe, not the notice.

Social Impact

These changes are technical in nature and should not have any social impact.

Economic Impact

These changes are technical in nature and should not have any economic impact.

Regulatory Flexibility Statement

The proposed amendments impose no new reporting, recordkeeping or other compliance requirements on small businesses, as the term is defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The amendments clarify terminology and the procedures for evidencing compliance with existing requirements, or, at N.J.A.C. 5:23-2.24, conform the rules to current Code requirements, without increasing requirements upon the regulated public.

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

5:23-2.8 Installation of equipment

When the installation, extension, alteration or repair of an elevator, moving stairway, mechanical equipment, refrigeration, air conditioning or ventilating apparatus, plumbing, gas piping, electric wiring, heating system or any other equipment is specifically controlled by the provisions of [the regulations] **this chapter**, it shall be unlawful to use such equipment until [an approval] **a certificate of occupancy, certificate of approval or certificate of compliance, as the case may be**, has been issued therefor[,] by the construction official [or other agency] having jurisdiction.

5:23-2.17A Minor work

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

(d) Inspection of minor work:

1. (No change.)

2. Upon written request from the owner and within 10 days of the completion of said minor work, the construction official shall [provide a release] **issue a certificate of occupancy, certificate of approval or certificate of compliance, as the case may be,** stating that the work performed under a Minor Work Permit substantially complies with the UCC. The inspection [will] **shall** be based upon what is visible at the time of said inspection and the [release will] **certificate of occupancy, certificate of approval or certificate of compliance shall** so indicate.

5:23-2.24 Conditions of certificate of occupancy

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

(f) No certificate of occupancy shall be issued for any building containing one or more elevators unless:

1. Compliance certificates for all the elevators installed in the building have been issued in accordance with N.J.A.C. 5:23-2.23; and

2. All of the elevators in the building have been registered with the Department in accordance with N.J.A.C. 5:23-12.3.

Recodify (f) as (g) (No change in text.)

5:23-2.32 Unsafe structures

(a) All buildings or structures that shall become unsafe, or unsanitary, or [which] **that** contain deficient or blocked exitway facilities, or [which] **that** constitute a fire hazard or are otherwise dangerous to human life or the public welfare, or [which] **that** by reason of illegal or improper use or occupancy shall be deemed unsafe buildings or structures, shall be taken down and removed or made safe and secure. A vacant building **that is** unguarded or open at door or window shall be deemed a fire hazard and unsafe within the meaning of [the regulations] **this chapter**.

1.-2. (No change.)

3. Restoration of unsafe structure: A building or structure condemned by the construction official may be restored to safe condition provided change of use or occupancy is not contemplated or compelled by reason of such reconstruction or restoration; except that if the damage or cost [or] **of** reconstruction or restoration is in excess of 50 percent of its physical value, as defined and computed in accordance with this subchapter, exclusive of foundations, such structure shall be made to comply in all respects with the requirements for [materials and methods of construction hereafter erected] **new construction. A certificate of occupancy shall be obtained prior to reoccupancy of the building or structure.**

4. Posting **notice of** unsafe [notice] **structure**: If the person addressed with [an unsafe] **a** notice **of unsafe structure** cannot be found within the [city] **municipality** after diligent search, then **such** notice shall be sent by registered or certified mail to the last known address of such person, as on file with the office of the tax collector, and a copy of the [unsafe] notice **of unsafe structure** shall be posted in a conspicuous place on the premises; and such procedures shall be deemed the equivalent of personal notice.

5. Upon refusal or neglect of the person served with [an unsafe] **a** notice **of unsafe structure** to comply with the requirements of the order to abate the unsafe condition, the construction official shall, in addition to any other remedies herein provided, forward the matter to the legal counsel of the jurisdiction for an action to compel compliance.

(b) (No change.)

ENVIRONMENTAL PROTECTION

(a)

OFFICE OF LOCAL ENVIRONMENTAL MANAGEMENT

Invitation for Input for Amendments to County Environmental Health Standards of Administrative Procedure and Performance (N.J.A.C. 7:1H)

Introduction

Take notice that the New Jersey Department of Environmental Protection intends to revise N.J.A.C. 7:1H to incorporate the requirements of the amendments made to the County Environmental Health Act, N.J.S.A. 26:3A2-21 et seq. (P.L. 1977, c.443 and P.L. 1991, c.99) (the "Act").

The purpose of this notice is to solicit comments from interested parties regarding the issues described in this notice and any other issues related to the amendments to the Act.

Scope of the Act

The Act provides for the administration of environmental health services by certified local health agencies consistent with performance standards adopted by the Department.

The certification process involves the development and submission of a work program to the Department by a local health agency designated by a county board of chosen freeholders. The work program describes the nature and extent of the environmental needs in the county, the agencies and resources to address the needs and an implementation schedule. Department approval of the work program makes the local health agency with overall work program responsibility eligible for 50 percent matching grant to carry out the work program. Grants are awarded on an annual basis.

The original Act empowered the Commissioner of the Department to promulgate performance standards; to delegate one or more aspects of environmental laws to certified local health agencies; to develop model ordinances; and to make 50 percent matching grants to certified local health agencies.

The original Act also set forth the powers and duties of certified local health agencies to monitor and enforce environmental health standards in air pollution, solid waste, noise, and water pollution; to operate a technical resource center; and to enact environmental health ordinances.

Act Amendments

The amendments to the Act were signed into law by Governor Florio on April 15, 1991. The amendments expand the duties and powers of both the Commissioner and certified local health agencies.

The Commissioner's authority to delegate is extended to include additional environmental health laws related to hazardous waste, pesticides,

radiation, protection of workers and the public from hazardous substances and toxic catastrophes and such other health and environmental laws so designated by him.

More specific health agency delegation evaluation criteria must be considered by the Commissioner including consistency with Federal and State laws; program administration effectiveness, efficiency, and uniformity; and technical and staffing resources of health agencies.

The process to develop and approve model ordinances was amended to provide more time for both submission and review. The Department is required to develop model ordinances. Approval of model ordinances adopted in full and without alteration are no longer required to be approved by the Department.

The Act enhances the Department's ability to administer and offer grants to assist certified local health agencies in meeting performance standards in two ways. First, it authorizes the establishment of a non-lapsing fund to provide non-matching grants for new or expanded programs and to provide technical training and equipment support to grantees. Secondly, it gives the Commissioner discretion to allocate fees, fines and penalties to the fund.

Certified local health agency revenue capabilities are also enhanced by their authority to charge reasonable fees for services and to dedicate penalties from local enforcement action for use by the agency to support environmental health program activities.

The amendments to the Act will require revisions to the regulation which are administrative, programmatic and regulatory in nature. The issues for which the Department is soliciting input are described below.

Administrative Issues

To implement the amendments to the Act, the Department is seeking comments on the local health agency certification process and the administration of grants.

A. Certification

1. What changes, if any, should be made in the certification process consistent with the criteria for efficient, effective and uniform program administration?

2. What changes, if any, should be made to the current procedure of separate work programs, interagency agreements and grant scopes of work?

3. What factors should be considered in defining a complete program of environmental health services for purposes of certification and grant awards?

4. What personnel qualification, skills and competencies should be required of personnel engaged in CEHA functions?

B. Grant Administration

1. What factors should be considered in the allocation of grant funds?

2. To what degree should availability and types of local funding sources, e.g. local permits, fee schedules, cost recovery and dedicated surcharges be considered in the award of grant funds?

Programmatic Issues

The effective and efficient delivery of environmental health services dictate the re-examination of current delivery systems and the examination of alternatives including the feasibility of increased delegations. The County and Municipal Government Study Commission's recent report entitled *State and Local Government Codes: Strategies for Local Enforcement* recommends such an evaluation. The Department is seeking comments on the degree of delegation; interlocal agency relationships; training and technical support needs; and funding.

A. Delegation

1. Should there be any changes in the current program area delegation? Where and why?

2. To what degree should new program areas, for example hazardous waste, pesticides, radiation, right to know, toxic catastrophe prevention, be delegated and what criteria should be considered? Are there any functions which should not be delegated? Why?

3. Should new program areas be phased in over time? Over what time span? In what order?

B. Interlocal Agency Relationships

1. How should the increasing role of other agencies, for example emergency management, utility authorities, prosecutors and sheriffs, be incorporated into the CEHA work program?

2. What coordination problems have been encountered? How have they been addressed?

C. Training and Technical Support

1. Do current training programs meet the demands to develop and maintain staff skills and competencies?

2. What regulatory requirements, if any, should be established for technical support functions at the local level, for example computers, laboratories, geographic information system?

D. Funding

1. What criteria should be used in allocating available grant funds, both matching and non-matching?

2. To what degree should regulations address the establishment and operation of the local Environmental Quality Enforcement Fund and the use of local revenue generation, for example dedicated penalties, cost recovery procedures, fees for service?

3. What criteria could be used to determine appropriated sharing of state permit fees to support permit related functions carried out by local agencies?

Enforcement Issues

The increased number of environmental laws coupled with the call for aggressive enforcement, the increased role of other enforcement agencies, the increasing emphasis on small source compliance and increased administrative appeals call for an enforcement strategy which makes better use of municipal courts to handle the high volume, less complex violations of environmental laws and regulations. The Department is seeking comments on issues including municipal jurisdiction and municipal ordinances and case management protocols.

A. Municipal Jurisdiction and Ordinances

1. What regulatory changes are needed, if any, to address issues raised in local enforcement actions, for example right of entry, pre-emption, exemption, penalty settlement offers, penalty limits and litigation procedure?

2. What regulatory provisions are needed to enhance the effectiveness of the statutorily mandated model of ordinances with reference to issues of ordinance content and adoption?

B. Case Management Protocols

What regulatory changes are required to ensure adequate case management protocols between and among the various enforcement agencies?

Comment Period

Submit written comments by September 4, 1991 to:

Samuel A. Wolfe, Administrative Practice Officer
Office of Legal Affairs
New Jersey Department of Environmental Protection
CN 402
Trenton, New Jersey 08625-0402

(a)

DIVISION OF WATER RESOURCES

Water Pollution Control Act
Civil Administrative Penalties and Reporting Requirements

Proposed Amendments: N.J.A.C. 7:14-8.2 and 8.5; 7:14A-1.9 and 3.10

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

Authority: N.J.S.A. 13:1D-9, 58:1A-1 et seq., 58:10A-1 et seq., 58:10A-21, 58:11-49 et seq., 58:11-64 et seq., P.L. 1990, c.28.

DEP Docket Number: 027-91-07.

Proposal Number: PRN 1991-418.

A public hearing concerning this proposal will be held on:

Wednesday, August 21, 1991 at 10:00 A.M.
25 Scotch Road
Training Room A
Trenton, New Jersey

Submit written comments by September 4, 1991 to:

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

The agency proposal follows:

Summary

The Clean Water Enforcement Act, P.L.1990, c.28, modified the Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq. This new legislation requires the Department to impose mandatory minimum penalties for certain violations and requires stricter accountability on the part of both public and private permit holders. On April 15, 1991, the Department proposed rules which reflected these legislative requirements concerning the Department's assessment of civil administrative penalties for violations of the Water Pollution Control Act, as amended by the Clean Water Enforcement Act (see 23 N.J.R. 1089(a)). The Department is adopting the rules proposed on April 15, 1991 elsewhere in this issue of the New Jersey Register. However, based on comments received during the comment period on that proposal, the Department did not adopt portions of the rules and recognized the need for additional amendments to the rules. The Department is now making those changes.

The Department, in this proposal, is amending the definition of "seriousness violation" at N.J.A.C. 7:26-8.2 to include an exceedance standard for pH and the seriousness penalty ranges at N.J.A.C. 7:26-8.5(g) to include pH.

The Department is also proposing to amend the definitions of "discharge," "discharge monitoring report," and "significant noncomplier," and creating new definitions for the terms "No Measurable Acute Toxicity" and "lawful entry" at N.J.A.C. 7:26-8.2 and 7:14A-1.9. The Department is also proposing an amendment to the reporting requirements at N.J.A.C. 7:14A-310(d). Amendments to reporting requirements and definitions in some instances required a corresponding amendment to the New Jersey Pollution Discharge Elimination System regulations (NJPDES) at N.J.A.C. 7:14A. The proposed amendments are more extensively outlined below.

The Department is amending the definition of "discharge" in N.J.A.C. 7:14-8.2 and 7:14A-1.9 to exclude "leaks" into a secondary containment system for the purpose of determining penalties for violations of the Underground Storage of Hazardous Substances Act, N.J.S.A. 58:11-49 et seq. and the rules adopted pursuant thereto, N.J.A.C. 7:14B. The Underground Storage of Hazardous Substances Act rules at N.J.A.C. 7:14B-1.6 distinguish between the definitions of "leaks" and "discharges." Under those rules, leaks, unlike discharges, do not involve a release into the environment. Therefore, this proposed amendment is designed to be consistent with the Underground Storage of Hazardous Substances Act and rules adopted pursuant thereto.

The Department is amending the definition of "discharge monitoring report" in N.J.A.C. 7:14-8.2 and 7:14A-1.9 to include self monitoring results by permittees for all discharge point sources. The proposed amendment deletes Baseline Monitoring Reports from the definition, because Baseline Monitoring Reports unlike Discharge Monitoring Reports are not utilized to determine the status of compliance.

The Department is also proposing to amend N.J.A.C. 7:14A-3.10(d) to require any permittee who discharges any nonhazardous pollutant without a permit for that discharge to mail or deliver to the Department a written report of the discharge within 24 hours after the permittee knew or should have known that a discharge occurred. The Department has determined that this time period is a reasonable time for the regulated community to report a violation without hindering the Department's response to these types of violations.

The Department is also proposing to amend N.J.A.C. 7.14-8.2 and 7:14A-1.9 to include a definition for "lawful entry." The proposed amendment will merely serve to codify the Department's existing legal authority.

The Department is also proposing to amend N.J.A.C. 7.14-8.2 and 7:14A-1.9 to include a definition for "No Measurable Acute Toxicity" (NMAT). NMAT is a type of water quality based acute whole effluent toxicity limit specified by N.J.A.C. 7:9-4.6(c)5i(2), which requires that no mortality occur in any acute toxicity test concentration above normal background mortality levels for the particular test organism population. This amendment will serve to clarify the rules.

The Department has proposed to amend the definitions of "serious violation" and "significant noncomplier" for pH at N.J.A.C. 7:14-8.2 and 7:14A-1.9 and the penalty seriousness determinations at N.J.A.C. 7:26-8.5(g) to include an alternative equivalent exceedance factor for pH. The Water Pollution Control Act, in pertinent part, defines a serious violation as an exceedance of an effluent limitation for a discharge point source set forth in a permit, administrative order, consent agreement, including interim enforcement limits, by 40 percent or more for a nonhazardous pollutant, calculated on the basis of the monthly average for a pollutant for which the effluent limitation is expressed as a monthly average and without a monthly average, on the basis of the monthly average of all maximum daily test results for that pollutant in a month. The Act further provides that for an effluent limitation for a pollutant not measured in mass or concentration, the department shall prescribe an equivalent exceedance factor.

pH is a nonhazardous pollutant which is not measured by mass or concentration. pH is defined as the negative log of the hydrogen ion concentration. In addition, pH is expressed as a range within which pH is to be controlled, not as a maximum concentration which cannot be exceeded. Therefore, unlike permit limits expressed as a maximum concentration, exceedances of pH greater than the top of the prescribed range or lower than the bottom of the prescribed range may cause environmental concerns, pH is also measured as an instantaneous value not as a monthly average.

In developing the alternative equivalent exceedance factor, the Department had to consider both that the Clean Water Enforcement Act defines a "serious violation" for nonhazardous pollutants as an exceedance of at least 40 percent of the effluent limitation and that a pH limitation is expressed as a range within which pH is to be controlled. Therefore, the Department is proposing to amend the definition for "serious violation" to state that a serious violation for pH effluent occurs when the greatest violation of a pH effluent range in any one calendar day deviates from the midpoint of the range by more than 40 percent of the midpoint of the range. For example, assuming that a permittee's effluent limitation range for pH is 6.0 to 9.0, the midpoint would be 7.5. If five separate readings of pH during a given day were 4.3, 5.8, 6.5, 6.0 and 6.5, the reading of 4.3 would be a serious violation as follows:

$$\frac{7.5 \text{ (midpoint)} - 4.3 \text{ (greatest exceedance)}}{7.5 \text{ (midpoint)}} \times 100 = 42.6\%$$

Since 42.6 percent is greater than 40 percent, there is a "serious violation" for pH. To restate the above example in more general terms, 40 percent of 7.5 is 3; therefore, if the greatest violation of a pH effluent range for any calendar day has a pH of less than 4.5 or greater than 10.5, the violation would be a "serious violation."

It should be noted, however, that the Department proposes to exclude pH excursions specifically excepted by a NJPDES permit with continuous pH monitoring.

Lastly, the Department is amending the definition for significant noncomplier at N.J.A.C. 7:14A-1.9 and 7:26-8.2 to include violations of pH. The proposed amendment provides that any person who exceeds their effluent limitation for pH by any amount at the same discharge point source in any four months of any consecutive six month period is a significant noncomplier. The proposed amendment clarifies that permittees required to continuously monitor for pH are excluded as long as they comply with the requirements of their permit.

Social Impact

The Department's proposal to implement the Clean Water Enforcement Act will have a positive social impact by further discouraging noncompliance. As the Legislature declared in the Water Pollution Control Act, "[i]t 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." N.J.S.A. 58:10A-2. The Legislature reemphasized this declaration by recently mandating that the Department assess certain mandatory minimum penalties for violations of the Water Pollution Control Act.

Economic Impact

For those who comply with the Water Pollution Control Act, no economic impact will occur; the economic impact of this chapter will only be felt by violators. The extent of the economic impact on the violators will depend on a variety of factors including the conduct of the violator, the particular provision violated, and the extent of the environmental damage. The Legislature, in amending the penalty provisions of the Water Pollution Control Act, has mandated the violators be subject to certain minimum mandatory penalties. This removal of the Department's discretion in assessing civil administrative penalties was intended as a greater deterrence of illegal activity.

Environmental Impact

This rulemaking is intended to serve as a strong deterrent to those who would violate the Water Pollution Control Act. The Department anticipates that the proposed amendments will provide the regulated community with a stronger incentive to conduct their activities in conformance with the Department's rules, thereby protecting public health and the natural resources of this State.

Regulatory Flexibility Analysis

In accordance with the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., the Department does not expect that the proposed amendments will require small businesses to obtain any additional professional services. There are not initial capital costs of compliance with the additional requirements for the discharge monitoring reports, and any annual costs should be minimal. These minimal costs cannot be reduced for small businesses without risk to public health, safety, welfare and the environment.

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

SUBCHAPTER 8. CIVIL ADMINISTRATIVE PENALTIES AND RQUESTS FOR ADJUDICATORY HEARINGS

7:14-8.2 Definitions

As used in this subchapter, the following words and terms shall, in addition to those provided in N.J.A.C. 7:14A-1.9, have the following meanings unless the context clearly indicates otherwise:

...

"Discharge" means an intentional or unintentional action or omission resulting in the releasing, spilling, leaking, pumping, pouring, emitting, emptying, or dumping of a pollutant into the waters of this State, onto land or into wells from which it might flow or drain into such waters, or into waters or onto lands outside the jurisdiction of the State which pollutant enters the waters of this State, and shall include the release of any pollutant into a municipal treatment works. **A leak into a secondary containment system which does not involve a release into the waters or lands of this State is not a "discharge" for purposes of applying the rules under this chapter to violations of the Underground Storage of Hazardous Substances Act, N.J.S.A. 58:11-49 et seq., and the rules promulgated pursuant thereto, N.J.A.C. 7:14B.**

...

"Discharge Monitoring Report" or "DMR" means the Environmental Protection Agency's current uniform national form, including any subsequent additions, revisions, modifications and replacements, for the reporting of self-monitoring results by permittees [and includes Baseline Monitoring Reports and BMRs] **for discharge point sources.**

...

"Lawful entry" means an entry by the Commissioner into any building, place, or premise pursuant to N.J.S.A. 13:1D, 58:10A and as otherwise provided by law, ordinance, regulation, order, permit or agreement.

...

"No Measurable Acute Toxicity" or "NMAT" means a type of water quality based acute whole effluent toxicity limit imposed in accordance with N.J.A.C. 7:9-4.6(c)5i(2), which requires that no mortality occur in any acute toxicity test concentration, including 100 percent effluent, above normal background mortality levels for the test organism population. The normal background mortality level is the acceptable level of control mortality for a valid test specific in N.J.A.C. 7:18-6.6(v).

...

"Serious violation" means an exceedance, at a discharge point source, of an effluent limitation, except color, set forth in a permit, administrative order, or administrative consent agreement, including interim enforcement limits, as follows:

1.-2. (No change.)

3. The greatest violation of a pH effluent range in any one calendar day which violation deviates from the midpoint of the range by more than 40 percent of the midpoint of the range.

For example: Assuming that a permittee's effluent limitation range for pH is 6.0 to 9.0, the midpoint would be 7.5.

If five separate readings of pH during a given day were 4.3, 5.8, 6.5, 6.0 and 6.5, the reading of 4.3 would be a serious violation as follows:

$$\frac{\text{7.5(midpoint)} - \text{4.3 (greatest exceedance)}}{\text{7.5 (midpoint)}} \times 100 = 42.6\%$$

For example: Using the same information as above.

Forty percent of 7.5 is 3; therefore, if the greatest violation of a pH effluent range for any calendar day has a pH of less than 4.5 or greater than 10.5, the violation would be a "serious violation."

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

...

"Significant noncomplier" or "SNC" means any person, except a local agency for an exceedance of an effluent limitation for flow, who commits any of the violations described below, unless the Department uses, on a case-by-case basis, a more stringent frequency or factor of exceedance to determine a significant noncomplier and the Department states the specific reasons therefore, which may include the potential for harm to human health or the environment. Violations which cause a person to become or remain an SNC include:

1.-2. (No change.)

3. If there is not an effluent limitation for a particular pollutant expressed as a monthly average, exceedance of the monthly average of the daily maximums for the effluent limitation, for the same pollutant, at the same discharge point source, by any amount in any four months of any consecutive six month period; [or]

4. Any exceedance of an effluent limitation for pH by any amount, excluding the excursions specifically excepted by a NJPDES permit with continuous Ph monitoring, at the same discharge point source in any four months of any consecutive six month period; or

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

...

7:14-8.5 Civil administrative penalty determination

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

(g) The Department shall determine the seriousness of the violation as major, moderate or minor as set forth in (g)1 through 3 below. Nothing in the description of seriousness in one level shall prevent the Department from assigning a different level of seriousness to the violation.

1. Major shall include:

i. Any violation of an effluent limitation which is measured by concentration or mass for any discharge exceeding the effluent limitation as follows:

(1) (No change.)

(2) By more than 100 percent for a nonhazardous pollutant; [and]

ii. The greatest violation of a pH effluent range in any one calendar day which violation deviates from the midpoint of the range by more than 50% of the midpoint of the range excluding the excursions specifically excepted by a NJPDES permit with continuous pH monitoring; and

[ii.] **iii.** Any other violation not included in (g)1i **or ii above** which either:

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

2. Moderate shall include:

i. Any violation other than a violation of an effluent limitation identified in (g)2ii **or iii** below, which has caused or has the potential to cause substantial harm to human health or the environment;

ii. (No change.)

iii. The greatest violation of a pH effluent range in any one calendar day which violation deviates from the midpoint of the range by at least 40 percent but no more than 50 percent of the midpoint of the range excluding the excursions specifically excepted by a NJPDES permit with continuous pH monitoring; or

[iii.]**iv.** Any violation, other than a violation of an effluent limitation identified in (g)2**ii or iii** above, which substantially deviates from the requirements of the Water Pollution Control Act or the New Jersey Underground Storage of Hazardous Substances Act and for violations of any rule, water quality standards, effluent limitation,

administrative order or permit issued pursuant thereto; substantial deviation shall include, but not be limited to, violations which are in substantial contravention of the requirements or which substantially impair or undermine the operation or intent of the requirement.

3. Minor shall include:

i. Any violation, other than a violation of an effluent limitation identified in (g)3ii **or iii** below, not included in (g) 1 or 2 above; or

ii. Any violation of an effluent limitation which is measured by concentration or mass for any discharge exceeding the effluent limitation as follows:

(1) (No change.)

(2) By less than 40 percent for a nonhazardous pollutant [.]; **or**

iii. The greatest violation of a pH effluent range in any one calendar day which violation deviates from the midpoint of the range by less than 40 percent of the midpoint of the range excluding the excursions specifically excepted by a NJPDES permit with continuous pH monitoring.

(h)-(i) (No change.)

7:14A-1.9 Definitions

As used in this chapter, the following words and terms shall have the following meanings.

...

"Discharge" means an intentional or unintentional action or omission resulting in the releasing, spilling, leaking, pumping, pouring, emitting, emptying, or dumping of a pollutant into the waters of this State, onto land or into wells from which the pollutant might flow or drain into such waters, or into waters or onto lands outside the jurisdiction of the state which pollutant enters the waters of this State, and shall include the release of any pollutant into a municipal treatment works. **A leak into a secondary containment system which does not involve a release into the waters or lands of this State is not a "discharge" for purposes of applying the rules under this chapter to violations of the Underground Storage of Hazardous Substances Act, N.J.S.A. 58:11-49 et seq. and the rules promulgated pursuant thereto, N.J.A.C. 7:14B.**

...

"Discharge monitoring report" or "DMR" means the Environmental Protection Agency's current uniform national form, including any subsequent additions, revisions, modifications and replacements, for the reporting of self-monitoring results by permittees [and includes Baseline Monitoring Reports and BMRs] **for discharge point sources**.

...

"Lawful entry" means an entry by the Commissioner into any building, place, or premise pursuant to N.J.S.A. 13:1D, 58:10A and as otherwise provided by law, ordinance, regulation, order, permit or agreement.

...

"No Measurable Acute Toxicity" or "NMAT" means a type of water quality based acute whole effluent toxicity limit imposed in accordance with N.J.A.C. 7:9-4.6(c)5i(2), which requires that no mortality occurs in any acute toxicity test concentation, including 100 percent effluent, above normal background mortality levels for the test organism population. The normal background mortality level is the acceptable level of control mortality for a valid test specific in N.J.A.C. 7:18-6.6(v).

...

"Serious violation" means an exceedance, at a discharge point source, of an effluent limitation, except color, set forth in a permit, administrative order, or administrative consent agreement, including interim enforcement limits, as follows:

1.-2. (No change.)

3. The greatest violation of a pH effluent range in any one calendar day which violation deviates from the midpoint of the range by more than 40 percent of the midpoint of the range.

For example: Assuming that a permittee's effluent limitation range for pH is 6.0 to 9.0, the midpoint would be 7.5.

If the five separate readings of pH during a given day were 4.3, 5.8, 6.5, 6.0 and 6.5, the reading of 4.3 would be a serious violation as follows:

$$\frac{7.5 \text{ (midpoint)} - 4.3 \text{ (greatest exceedance)}}{7.5 \text{ (midpoint)}} \times 100 = 42.6\%$$

For example: Using the same information as above.

Forty percent of 7.5 is 3; therefore, if the greatest violation of a pH effluent range for any calendar day has a pH of less than 4.5 or greater than 10.5, the violation would be a "serious violation."

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

"Significant noncomplier" or "SNC" means any person, except a local agency for an exceedance of an effluent limitation for flow, who commits any of the violations described below, unless the Department uses, on a case-by-case basis, a more stringent frequency or factor of exceedance to determine a significant noncomplier and the Department states the specific reasons therefore, which may include the potential for harm to human health or the environment. Violations which cause a person to become or remain an SNC include:

1.-2. (No change.)

3. If there is not an effluent limitation for a particular pollutant expressed as a monthly average, exceedance of the monthly average of the daily maximums for the effluent limitation, for the same pollutant, at the same discharge point source, by any amount in any four months of any consecutive six month period; [or]

4. Any exceedance of an effluent limitation for pH by any amount, excluding the excursions specifically excepted by a NJPDES permit with continuous pH monitoring, at the same discharge point source in any four months of any consecutive six month period; or

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

7:14A-3.10 Additional conditions concerning reporting requirements applicable to all DSW permits

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

(d) **The permittee shall comply with the notice requirements in this subchapter.**

1. Any permittee who discharges any pollutant in violation of its maximum daily discharge limitation not otherwise covered in (b) above shall, within 24 hours after the permittee knew or should have known of the violation, verbally communicate the violation to the Department via the DEP Hotline at (609) 292-7172.

2. Any permittee who discharges any nonhazardous pollutant without a permit shall, within 24 hours after the permittee knew or should have known of the violation mail or deliver a written report of the discharge, including the information required in (c)1 and 2 above, to the Department to the attention of the person identified in (c)4 above.

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

(a)

DIVISION OF WATER RESOURCES

Notice Seeking Public Input

Water Pollution Control Act

Civil Administrative Penalties

Economic Benefit

DEP Docket Number: 028-91-07.

Take notice that the Department of Environmental Protection (Department) is seeking public input concerning N.J.A.C. 7:14-8.13, which concerns civil administrative penalties under the Water Pollution Control Act, 58:10A-1 et seq., for economic benefit.

In this issue of the New Jersey Register, the Department has promulgated amendments and new rules governing civil administrative penalties under the Water Pollution Control Act. Several persons submitted comments to the Department concerning the calculation of civil administrative penalties under those rules to include the economic benefit realized by a violator as a result of not complying or of delaying noncompliance. As stated in the adoption of those rules, the Department recognizes the importance of removing the economic benefit a violator obtains from a violation. While those rules include many of the factors relevant to an evaluation of economic benefit, the Department will be refining its methodology in the context of actual enforcement cases.

The Department also seeks from the regulated community, the environmental community and other interested parties additional specific, detailed input concerning its methodology for determining economic benefit. The Department is convening a series of workshops to evaluate and discuss revisions to the methodology. **Anyone interested** in participating in this effort should contact Ed Neafsey, Director, Office of Enforcement Policy, Department of Environmental Protection, 401 East State Street, Fourth Floor, CN 402, Trenton, New Jersey 08625. The contact should be in writing, submitted by August 19, 1991.

HEALTH

(a)

HEALTH FACILITIES RATE SETTING

Standard Hospital Accounting and Rate Evaluation (SHARE) Manual

Proposed Amendments: N.J.A.C. 8:31A-1.1, 2.6, 7.4, 7.5 and Appendix A

Proposed New Rule: N.J.A.C. 8:31A, Appendix D

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 et seq.

Proposal Number: PRN 1991-392.

Submit comments by September 4, 1991 to:
Charles O'Donnell, Director
Health Facilities Rate Setting, Room 601
New Jersey Department of Health
CN 360
Trenton, NJ 08625-0360

The agency proposal follows:

Summary

The proposed amendment to N.J.A.C. 8:31A-1.1 will provide for the establishment of a fee to be added to the per diem rate for the support of administrative costs incurred by the Department in the rate setting process. This process is reflected in amendments to N.J.A.C. 8:31A-7.4 and 7.5. A pre-determined charge per patient day for each patient day in the year of the current cost base shall be assessed each facility for the Medicaid and Blue Cross prospective per diem rates established by the Department of Health. The fee will be charged on the basis of Medicaid and Blue Cross patient days. Facilities shall be allowed to pass-through the fees as part of their reimbursement rate. This fee is the most appropriate measure of a payor's "benefit" from a cost containment system.

Additional proposed amendments to N.J.A.C. 8:31A-2.6 and Appendix A would require the use of a Non-Physician hours to measure Education and Research (EDR) costs and the use of Patient Admissions rather than Patient Days as the statistical unit of service to measure costs in the Other Physical Medicine and Psychology center. These statistical units of service more accurately reflect the resources consumed and are needed for consistency in the calculation of the interim rate and to establish a methodology for screening costs. Appendix D, as proposed, illustrates the process whereby fees covering administrative costs are remitted by the facilities to the Department.

Social Impact

These proposed amendments will insure that the SHARE rate setting system will continue to provide reasonable reimbursement rates for the consumer. This will be accomplished by insuring that all costs are evaluated for reasonableness while enabling the specialized and rehabilitation hospitals and the Department of Health to eliminate ambiguity in the rules.

Economic Impact

The implementation of a fee to be added to the per diem rate will have no direct, immediate economic impact on the consumer or the provider. The administrative costs are approximately $164,000. Blue Cross accounts for 58 percent, totalling $95,000 and Medicaid 42 percent, totalling $69,000. Medicaid is already reimbursing the Department of Health for these costs. Therefore, the only immediate economic impact is on the Blue Cross share of costs. The general public may eventually experience an economic impact as costs are passed on through insurance price increases.

The 1971 Health Care Facilities Planning Act authorizes the Commissioner of Health to establish reasonable reimbursement rates for government agencies (for example, Medicaid) and hospital service corporations (for example, Blue Cross). Therefore, the Commissioner may include a fee structure in those rates.

The inclusion of Non-Physician Hours for EDR and the revision from Patient Days to Admissions ensures that a reasonable and unambiguous Unit of Service methodology will be utilized throughout the SHARE reimbursement system. There is no economic impact on the Department or the providers. There may be an impact on the payors; however, the amount cannot be determined at this time.

Regulatory Flexibility Statement

The hospitals regulated by N.J.A.C. 8:31A are not small businesses, as the term is defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., since these hospitals employ more than 100 people. Therefore, no regulatory flexibility analysis is required.

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

8:31A-1.1 Introduction

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

(d) A charge per patient day, based on the latest available data, shall be assessed each hospital for which the Department of Health establishes prospective per diem rates.

1. The charge will be calculated by dividing the total 1992 Facilities Rate Setting program administrative expenses by the latest available Medicaid and Blue Cross inpatient days.

i. The per diem charge, as calculated, will be added to the hospital's effective rate.

2. Each hospital shall remit a check to the State Treasury covering the add-on amounts in accordance with the process illustrated in Appendix D, incorporated herein by reference. These checks may be remitted monthly, quarterly, semi-annually or annually, at the discretion of the hospital.

8:31A-2.6 Other cost center definitions

(a) (No change.)

(b) Education and Research (EDR) rules are as follows[.]:

1. (No change.)

2. Statistics: [None] **Non-Physician Hours total.**

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

8:31A-7.4 Methodology for calculating Global Rates

(a) (No change.)

(b) An administrative add-on, calculated in accordance with N.J.A.C. 8:31A-1.1(d), will be added to the reimbursement rates.

8:31A-7.5 Methodology for Alternate Rates

(a) (No change.)

(b) (No change.)

(c) An administrative add-on, calculated in accordance with 8:31A-1.1(d), will be added to the reimbursement rates.

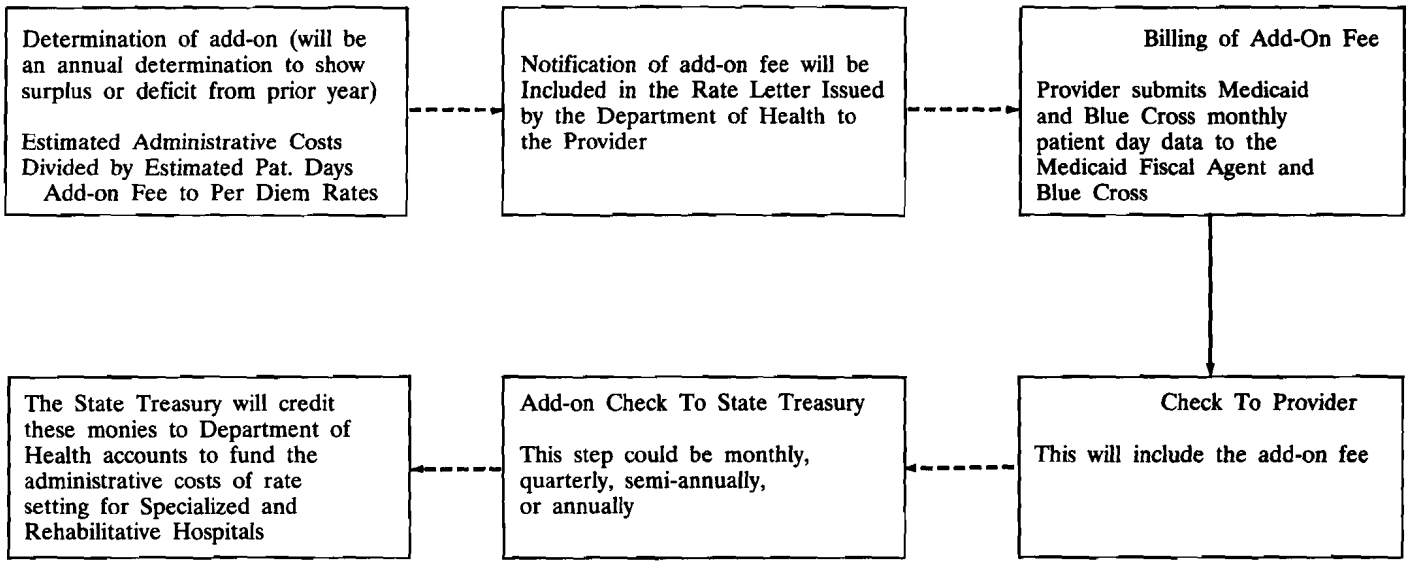
[(c)] **(d)** (No change in text.)

APPENDIX D

FEE STRUCTURE
SHARE

ASSUME:

Administrative Costs	$164,000
Patient Days	124,000
Add-On Fee	$ 1.32



(a)

HEALTH FACILITIES RATE SETTING

Residential Alcoholism Treatment Facilities (RATF) Cost Accounting and Rate Evaluation

Proposed New Rules: N.J.A.C. 8:31C-1.21 and 8:31C, Appendix A

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 et seq.

Proposal Number: PRN 1991-393.

Submit written comments by September 4, 1991 to:

Charles O'Donnell, Director
Health Facilities Rate Setting, Room 601
New Jersey State Department of Health
CN 360
Trenton, New Jersey 08625-0360

The agency proposal follows:

Summary

Proposed new rule N.J.A.C. 8:31C-1.21 provides for the establishment of a fee to be added to the per diem rate for the support of administrative costs incurred by the Department in the rate setting process. This proposed change is reflected in the diagram in Appendix A. This rule adds to subchaper 1 a fee structure to reimburse the Department of Health for the administrative costs of rate setting. A pre-determined charge per patient day for each patient day in the year of the current cost base shall be assessed each facility for the Blue Cross prospective per diem rates established by the Department of Health. The fee will be charged on the basis of Blue Cross patient days. Facilities shall be allowed to pass-through the fees as part of their reimbursement rate. This fee is the most appropriate measure of a payor's "benefit" from a cost containment system.

Social Impact

The proposed new rule will insure that the RATF rate setting system will continue to provide reasonable reimbursement rates for the consumer. This will be accomplished by insuring that all costs are evaluated for reasonableness while enabling the residential alcohol treatment facilities and the Department of Health to eliminate ambiguity in N.J.A.C. 8:31C.

Economic Impact

These changes will insure that an effective regulatory system for cost containment in residential alcohol treatment facilities will continue for the facility, the payor and consumer. The implementation of a fee to be added to the per diem rate will have no direct, immediate economic impact on the consumer or the provider hospitals. The Statewide impact on the payor is approximately $100,000. The general public may eventually bear the costs as the payor passes these costs on to the consumer through price increases. The 1971 Health Care Facilities Planning Act authorizes the Commissioner of Health to establish reimbursement rates for hospital service corporations (for example, Blue Cross). Therefore, the Commissioner may include a fee structure in those rates.

Regulatory Flexibility Analysis

The residential alcoholism treatment facilities in New Jersey are all included in the small business category, as the term is defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The proposed new rule imposes standardized reporting, recordkeeping and payment requirements in a consistent manner on all of the residential alcoholism treatment facilities, which are the minimum necessary to ensure the development of a reasonable reimbursement rate in accordance with the rules.

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

8:31C-1.21 Administrative cost add-on [(Reserved)]

(a) A charge per patient day based on the latest available data shall be assessed each facility for which the Department of Health establishes prospective per diem rates.

1. The charge will be calculated by dividing the total 1992 Facilities Rate Setting program administrative expenses by the latest available Blue Cross inpatient days.

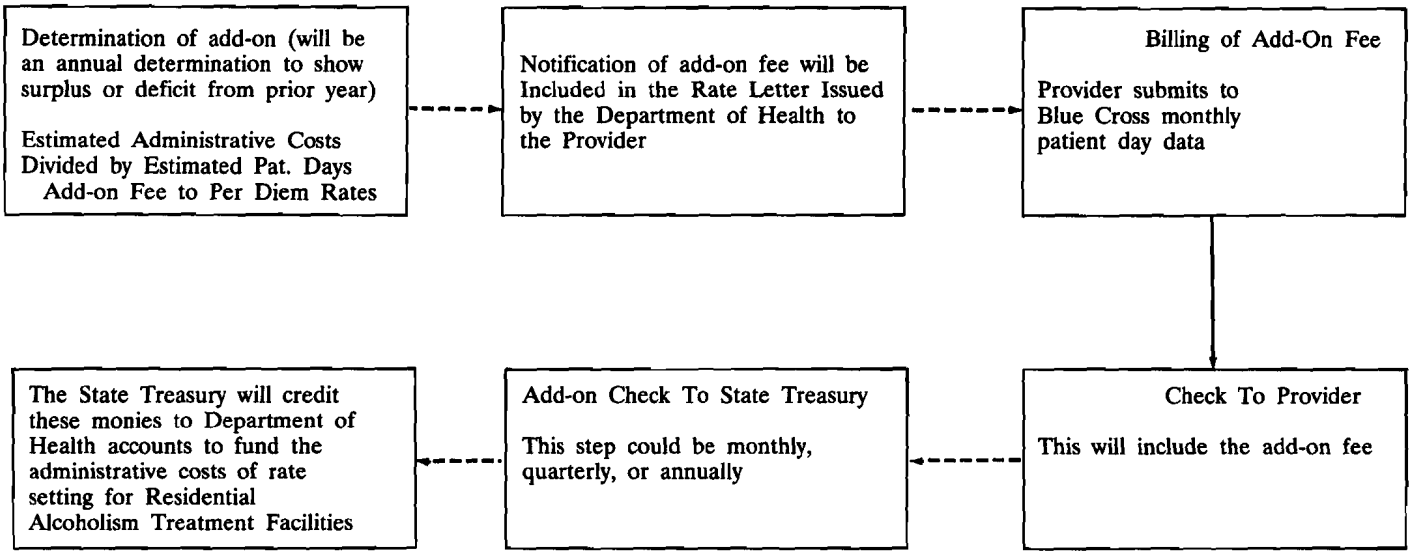
i. The per diem charge, as calculated, will be added to the facility's effective rate.

2. Each facility shall remit a check to the State Treasury covering the add-on amount. This reimbursement may be monthly, quarterly, semi-annually or annually, at the discretion of the facility, in accordance with the process illustrated by Appendix A, incorporated herein by reference.

APPENDIX A

FEE STRUCTURE
RATE

ASSUME:	Administrative Costs	$100,000
	Patient Days	$ 55,739
	Add-On Fee	$ 1.79



APPENDIX A
Cost Center Record

Function	Cost Center (Abbr.)	Level	Peer Group	Units of Service	Cost Increase Analysis: Reasonableness Limit	Variability Personnel	Factor Supplies
Inpatient Care	PCU	I	Category	PCU Patient Days	1.15	50	100
Outpatient Care	EMR	II	Character	ER Admission	1.1	50	100
Ancillary Service	ANS	III	Statewide	OR Hours & Dels.	—	50	100
	CSS	I	Category	Admissions	1.1	50	100
	DEL	I	Statewide	Del & Gyn Procedures	1.1	50	100
	DIA	III	Statewide	DIA Treatments	—	50	100
	EDG	I	Category	Admissions	1.1	50	100
	LAB	I	Category	Admissions	1.1	50	100
	ORR	I	Category	ORR Hrs. + (.241* operations)	1.1	50	100
	PHM	I	Category	Patient Days & (3.74* adm.)	1.1	50	100
	PHT	II	Category	Patient Days	1.3	50	100
	RAD	I	Category	Admissions	1.1	50	100
	RSP	I	Category	Patient Days	1.2	50	100
	CCA	III	Statewide	Procedures	—	50	100
	BBK	II	Statewide	Admissions	1.2	—	100
	OPPM	III	Statewide	[Patient Days] **Admissions**	1.3	50	—
Physician	PHY	II	Statewide	Fee & Sal. Hrs.	1.1	0	0
	RSD	II	Statewide	Fee & Sal. Hrs.	1.1	0	0

General Services	A&G	I	Category	Patient Days	1.1	0	0
	DTY	I	Statewide	Patient Days**	1.1	50	100
	FIS	I	Category	Admission	1.1	50	100
	HKP	I	Statewide	Sq. Ft.*	1.1	0	0
	MAL	III	Category	Patient Days	1.5	0	0
	MRD	I	Category	Admissions	1.1	50	100
	PCC	II	Category	Admissions	1.1	0	0
	PLT	I	Character	Sq. Ft.*	1.1	0	0
	UTC	III	Statewide	Sq. Ft.*	1.5	0	0
	OGS	II	Character	Patient Days	1.3	0	0
	L&L	I	Statewide	Patient Days	1.1	50	100
Other	EDR	III	Category	Non-Phy Hours	1.3	0	0
Fringe Benefits	LFB	—	Statewide	Hours			
	PFB	—	Statewide	Hours			
	PEN	—	Statewide	Hours			
	INT	III	Statewide	Patient Days			
	DEP	III	Statewide	Patient Days			

*Inpatient % for this cost center
**Excluding "In & Out" same day

(a)

DIVISION OF HEALTH FACILITIES EVALUATION AND LICENSING

Waiver of Executive Order No. 66(1978) Manual of Standards for Licensure of Invalid Coach and Ambulance Services

N.J.A.C. 8:40

Take notice that the Manual of Standards for Licensure of Invalid Coach and Ambulance Services, N.J.A.C. 8:40, expired May 7, 1991, pursuant to Executive Order No. 66(1978). The Division of Health Facilities Evaluation and Licensing is in the process of developing amendments to these rules and plans to request approval by the Health Care Administration Board on July 11, 1991 for publication of the proposed amendments in the New Jersey Register.

Governor James J. Florio has been advised by the Commissioner of Health that an extension of the expiration date of these rules will have no impact on any interested party. No enforcement actions have been undertaken by the Department since the date of the lapse of existing rules, nor are there any pending cases involving a provider who is contesting an enforcement action under the authority of the rules and no new licenses have been issued. All licenses to providers of invalid coach services are granted on a calendar year basis and, thus, all providers are currently operating under the rules in effect at the time that their licenses were issued. Based upon this information, it does not appear that an inequity arises from the extension of the expiration date.

Therefore, by the authority vested in him by Executive Order No. 66(1978), Governor Florio, on June 19, 1991, directed that the five-year sunset provision of Executive Order No. 66(1978) is waived for N.J.A.C. 8:40 and the expiration date for this chapter is extended from May 7, 1991 to and including January 31, 1992.

(b)

DIVISION OF AIDS PREVENTION AND CONTROL

Acquired Immunodeficiency Syndrome

Proposed Readoption with Amendments: N.J.A.C. 8:61

Authorized By: Frances J. Dunston, M.D., M.P.H., Commissioner, Department of Health.
Authority: N.J.S.A. 26:1A-15.
Proposal Number: PRN 1991-394.

Submit comments by September 4, 1991 to:
Ronald Altman, M.D.
Medical Director
Division of AIDS Prevention and Control
New Jersey Department of Health
CN 363
Trenton, NJ 08625-0363

The agency proposal follows:

Summary

Pursuant to the Executive Order No. 66(1978), N.J.A.C. 8:61 expires on October 6, 1991. The New Jersey State Department of Health has reviewed these rules and has determined them to be necessary, reasonable and proper for the purposes for which they were originally promulgated, and is proposing this readoption with amendments. Since subchapters 1 and 2 deal with issues that are substantially different from each other and require individual consideration, the subchapters are being amended separately. Subchapter 1 is being amended in this proposal; subchapter 2 in a proposal published elsewhere in this issue of the New Jersey Register.

Subchapter 1 contains rules related to school pupils and adults working in schools who are infected with human immunodeficiency virus (HIV), the virus that causes Acquired Immunodeficiency Syndrome (AIDS). The proposed amendments reflect advances in scientific knowledge, changes in New Jersey law (passage of N.J.S.A. 26:5C-5 et seq.), and technical changes.

The original rules stated that pupils could not be denied admission to school because of infection with HIV, but listed certain conditions as exceptions which might lead to exclusion of HIV-infected pupils. These conditions were lack of toilet training, incontinence, inability to control drooling, or that the pupil was usually aggressive with a documented history of biting or harming others. The rules also stated that adults with HIV infection could not be restricted from employment in schools because of their HIV infection. The rules established a Medical Advisory Panel to evaluate pupils when there is a dispute between the pupil's physician and the school medical inspector as to whether a pupil has an HIV-related excludable condition, and set up the mechanism by which the Medical Advisory Panel would report to the Commissioner of Education. The rules further stated that any pupil or adult with weeping skin lesions that could not be covered should be removed from school; that all schools and day care facilities should adopt routine procedures for handling blood and body fluids; and that it is not necessary that a school be notified that an HIV-infected individual is present.

The proposed amendments to the rules are as follows:

1. The accumulation of scientific knowledge related to transmission of HIV since the time of the original promulgation of the rules has shown that urine, feces and saliva are not significant vehicles of transmission of HIV. In addition, biting is not considered a significant method by which HIV can be transmitted. Therefore, the possible reasons for

exclusion of HIV-infected pupils from school (lack of toilet training, incontinence, inability to control drooling, and biting) in the original rules are no longer scientifically valid and have been removed. An HIV-infected pupil can no longer be excluded from school on the basis of his or her HIV infection.

2. Since there is no HIV-related reason for exclusion of an HIV-infected pupil, then there is no reason for any dispute related to HIV infection between the school medical inspector and the pupil's physician. The Medical Advisory Panel, which was established to aid in the resolution of such disputes, is therefore superfluous. The sections of the rules establishing the Medical Advisory Panel and delineating procedures for the Panel have therefore been eliminated. Any disputes that might arise in the future can be handled through the usual procedures of the Department of Education.

3. The section of the rules requiring all schools and day care centers to adopt procedures for handling blood and body fluids has been clarified to make such policies and procedures in conformance with Department of Education rules.

4. The section of the rules that states it is not necessary that the school be notified if an HIV-infected individual is a pupil registered to attend school or is an employee of the school has been expanded to provide rules of confidentiality to schools should a school learn that an HIV-infected individual is present. These rules of confidentiality bring the handling of such information by schools in conformity with N.J.S.A. 26:5C-5 et seq.

Subchapter 2, proposed for amendment elsewhere in this issue of the New Jersey Register, delineates criteria for participation in the AIDS Drug Program.

Social Impact

There is widespread fear of AIDS and of infection by HIV, the virus that causes AIDS, which often leads to actions which cause harm to individuals and which are not supported by medical and public health knowledge. In the past, there have been attempts to exclude HIV-infected children and adults from a school setting, including attempts at exclusion of members of a household where an HIV-infected person lives. These exclusionary attempts have resulted in serious and documented harm to some of the involved individuals. There is no evidence that HIV is transmitted in the school setting, and even exceptional situations where transmission was thought theoretically possible in the past are not today considered to pose any significant risk of HIV transmission.

Despite scientific evidence to the contrary, some people will continue to fear any contact with HIV-infected individuals. Since these rules prohibit any actions to prevent such contact in a school setting, these rules might add to the fear of such persons. However, there are many HIV-infected persons now in a school setting, and the fear appears to be lessening. These rules will not increase the danger of HIV transmission, and will serve the beneficial purpose of preventing unwarranted discrimination and harm to HIV-infected pupils and HIV-infected adults employed in schools.

The rules will also offer greater protection to HIV-infected pupils and adults by emphasizing the confidentiality procedures that must be observed under New Jersey law on information related to AIDS and HIV-infection. HIV-infected pupils will also benefit because the rules also provide a mechanism for sharing necessary information to enhance the educational program of the pupil.

Economic Impact

Refusal to admit an HIV-infected child to school would result in costs to the school district to provide home instruction. Thus, the cost of education of an HIV-infected pupil should be lessened by these rules. Removal of a pupil or employee could result in costly litigation. These rules may prevent such litigation. However, since the Medical Advisory Panel has been removed from the proposed rules, should a dispute arise, the cost of settlement of the dispute might increase. The overall economic impact of these rules should be very slight.

Regulatory Flexibility Analysis

Most of the proposed rules apply only to the public school system and thus do not affect small businesses, as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. Private schools and day care centers may be guided by these rules, but the rules do not have direct regulatory impact on these agencies. The one section of the rules that affects all schools and day care centers is the requirement that the school or day care center have policies concerning handling of blood and body fluids. The Department has determined that there should be no differentiation based on business size in the rules, in the interest of public health.

Full text of the proposed readoption appears in the New Jersey Administrative Code at N.J.A.C. 8:61.

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

8:61-1.1 Attendance at school by pupils or adults infected by Human Immunodeficiency Virus (HIV) [, also known as HTLV-III or LAV]

(a) (No change.)

(b) Pupils with HIV [(Human Immunodeficiency Virus)] infection shall not be excluded from attending school for reason of the **HIV** infection. [unless the following exceptional conditions are evident as determined by the pupil's physician and/or the school medical inspector:] **Exclusion of HIV-infected pupils can only be for reasons that would lead to exclusion of any other pupil.**

[1. The pupil is not toilet-trained or is incontinent, or is unable to control drooling.

2. The pupil is unusually physically aggressive, with a documented history of biting or harming others.

(c) In the event that disagreement exists between the pupil's physician and the school medical inspector as to the existence of the excluding conditions in (b) above, an evaluation of the pupil from the Medical Advisory Panel should be sought regarding the pupil's admissibility in accordance with N.J.A.C. 6:29-4.4.]

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

[(e) The New Jersey Commissioner of Health shall establish an expert Medical Advisory Panel, of no less than four members, to be comprised of persons with expertise in childhood behavior pediatrics and infectious disease.

(f) School districts, based upon advice of the school medical inspector, shall seek an evaluation from the Medical Advisory Panel of pupils with HIV infection whom a local school board deems have any of the conditions described in (b) above. This procedure shall be conducted in accordance with N.J.A.C. 6:29-4.4.

(g) The Panel shall render a report no later than four weeks from the time of referral by the Commissioner of Education.

1. The report shall be delivered by the Panel to the Commissioner of Education with a copy to the Commissioner of Health.

2. The report(s) by the Medical Advisory Panel shall be confidential except that a general summary of the conclusion shall be available.]

[(h)](**d**) No pupil or adult shall be excluded from school solely by virtue of the fact of living with or being related to an **HIV**-infected individual.

Recodify (i) as (e) (No change in text.)

[(j)](**f**) All schools and day care facilities, regardless of whether pupils or adults with HIV are present, [should] **shall** adopt routine procedures for handling blood and body fluids. **District boards of education shall develop written policies and procedures for sanitation and hygiene when handling body fluids and shall make available training and appropriate supplies to all school personnel, in conformance with N.J.A.C. 6:29-2.5.**

[(k)](**g**) It is not necessary that anyone in the school be **specially** notified that an HIV-infected individual is [present.] **registered to attend school or is an employee of the school. Should school officials receive notification of the presence of an HIV-infected individual, records containing identifying information regarding the HIV status of the individual must be kept confidential as required by N.J.S.A. 26:5C-5 et seq. Such information can be shared, only with the written consent of the pupil's parent or guardian, with those who need to know the status to determine the educational program for the pupil.**

(a)

DIVISION OF AIDS PREVENTION AND CONTROL

Acquired Immunodeficiency Syndrome Eligibility Criteria to Participate in Drug Program

Proposed Amendments: N.J.A.C. 8:61-2.1, 2.2, 2.3 and 2.6

Proposed New Rule: N.J.A.C. 8:61-2.6

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

Authority: N.J.S.A. 26:1A-15.

Proposal Number: PRN 1991-395.

Submit comments by September 4, 1991 to:

Steven R. Young, Director
Care and Treatment
Division of AIDS Prevention and Control
363 West State St.
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The Department is proposing amendments to N.J.A.C. 8:61-2 separate from the readoption proposal published elsewhere in this issue of the New Jersey Register, since the issues involved in these changes are specific to the administrative operation of the program and thus, separate from the need to readopt the chapter.

The Federal Supplemental Appropriations Act of 1987, Pub. L. 100-71, enacted on July 11, 1987 included $30 million to be awarded to states and territories to cover the costs of drug therapy for low income individuals who need drugs which have been determined by the Food and Drug Administration (FDA) to prolong the life of persons with Acquired Immunodefiency Syndrome (AIDS).

Funds for the AIDS Drug Reimbursement Program were initially appropriated as a one-time only emergency appropriation. Recognizing the high cost of drugs used to treat AIDS, additional funds have been made available in subsequent fiscal years. The current Federal allocation is contained in Pub. L. 101-381, the Ryan White Comprehensive AIDS Resources Emergency Act of 1990—Title II HIV Care Grants. The funds are allotted to the states and territories under a formula based on the number of persons with AIDS residing in each state or territory, as reported to the Centers for Disease Control (CDC).

Over 10,000 New Jerseyans have been diagnosed with AIDS, with an estimated 20,000 to 40,000 additional residents infected with the Human Immunodeficiency Virus (HIV). New Jersey ranks fifth nationally in cumulative number of AIDS cases reported to the CDC. Although the rate of increase has slowed somewhat, the absolute number of people with AIDS (PWA's) will continue to grow.

Although there is no cure or vaccine for AIDS, the FDA has recently approved a number of drugs for use in the treatment and prevention of HIV related opportunistic infections. Low income individuals meeting certain eligibility requirements can be reimbursed for these drugs by the State Medicaid Program or by the State's Pharmaceutical Assistance to the Aged and Disabled (PAAD).

Given the availability of the two aforementioned programs, the AIDS Drug Distribution Program has been established to allow individuals who are not aged or disabled and who have higher income levels to have access to these life prolonging and life sustaining medications.

Through the proposed amendments and new rule, provision is made for renaming the program to reflect the significant increase in FDA-approved drugs eligible to be included on the program. In addition, provision is made for drugs that not only prolong, but also enhance, the quality of life, and the administrative mechanism by which drugs are included on the program. This administrative authority is necessary given the rapidly evolving nature of pharmacological treatment of AIDS and HIV infection. An amendment is also included to clarify the exclusion of individuals who are eligible for such benefits from other reimbursement programs.

Social Impact

The proposed amendments and new rule will have a positive social impact by increasing the numbers of people with AIDS and HIV disease who will receive drugs which have been determined by the FDA to either prolong or enhance life. It is expected that many individuals who manifest HIV disease will be able to continue with normal, productive lives.

Economic Impact

The proposed amendments and new rule will have a beneficial impact on those individuals with AIDS and HIV who are ineligible for Medicaid or PAAD but who meet the income criteria set herein. In addition, since $1,698,728 for this program was appropriated to the State from the Federal government, there is no expected adverse economic impact on the State.

Regulatory Flexibility Statement

The proposed amendments apply only to individuals suffering from AIDS and HIV infection, as documented by a physician, and will have no impact on small businesses as the term is defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. Therefore, a regulatory flexibility analysis is not required.

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

SUBCHAPTER 2. ELIGIBILITY CRITERIA TO PARTICIPATE IN [RETROVIR] **THE AIDS DRUG DISTRIBUTION PROGRAM**

8:61-2.11 Purpose; **scope**

The purpose of this subchapter is to describe the clinical and financial criteria which individuals must meet in order to become enrolled in the [RETROVIR] **AIDS** Drug **Distribution** Program.

8:61-2.2 Definitions

The following term, as used in this subchapter, shall have the following meaning:

["AIDS Drug Program" means the program by which eligible individuals will be reimbursed for the cost of purchasing Retrovir (Azidothymidine-AZT), or any other drug approved by the Federal Food and Drug Administration which has been recognized as prolonging the life of individuals with AIDS from funds appropriated to the State from the Federal government.]

"AIDS Drug Distribution Program" means the program by which eligible individuals will receive designated medications approved by the Federal Food and Drug Administration which have been recognized as either prolonging or enhancing the life of individuals with HIV infection from funds appropriated to the State from the Federal government.

1. The medications designated for coverage will be determined administratively within the Division of AIDS Prevention and Control based on considerations of cost, efficacy and frequency of use.

8:61-2.3 Clinical eligibility

To be considered clinically eligible to participate in the AIDS Drug **Distribution** Program [(Program)], an individual must meet the clinical criteria established by the manufacturer of the drug, as determined by a physician.

8:61-2.6 Third party coverage

Individuals who are eligible to receive the covered medications from entitlement programs or third party payors are not eligible to receive benefits under this program.

8:61-[2.6]**2.7** Application process

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

(c) If approved for participation in the Program, the Department **or its designee** will notify the individual, his or her physician, and the pharmacy from which the prescription [for Retrovir] will be filled.

LAW AND PUBLIC SAFETY

(a)

BOARD OF MEDICAL EXAMINERS

Prescribing of Amphetamines and Sympathomimetic Amine Drugs

Reproposed Amendment: N.J.A.C. 13:35-6.7

Authorized By: New Jersey State Board of Medical Examiners, Michael B. Grossman, D.O., President.
Authority: N.J.S.A. 45:9-2 and 45:1-13.
Proposal Number: PRN 1991-382.

Submit written comments by September 4, 1991 to:
Charles A. Janousek, Executive Director
Board of Medical Examiners
28 West State Street
Trenton, New Jersey 08608

The agency proposal follows:

Summary

The Board of Medical Examiners is reproposing an amendment to N.J.A.C. 13:35-6.7, its rule regarding restrictions on the prescribing of amphetamines and sympathomimetic amine drugs. Originally proposed on October 5, 1987 at 19 N.J.R. 1786(a), this amendment was held in abeyance pending Board consideration of further revisions to the rule. The Board has determined to make some limited revisions to the rule at this time and accordingly is reproposing the amendment with revisions.

The proposed amendment expands the named medical conditions for which prescribing of amphetamines and sympathomimetic amines is permissible to include attention deficit disorder (A.D.D.). It appears that amphetamines are a legitimate treatment for A.D.D. which may allow a number of patients to function in non-institutional settings. The amendment also deletes hyperkinesis from the list of conditions for which amphetamines may be prescribed because hyperkinesis is included in the broader terminology added, that is, attention deficit disorder. The rule is also being amended to codify the already existing responsibility of physicians to document that sufficient testing and consultation have been performed prior to the prescribing of amphetamines and sypathomimetic amines where testing and/or consulation are appropriate.

Social Impact

It is anticipated that the social impact will be significantly positive. The Board is aware that the proposed use for amphetamines has been espoused by reputable practitioners and journal articles and does not wish to bar physicians from utilizing an apparently legitimate treatment. There is concern that expanding the conditions for which amphetamines may be prescribed may lead to expanded opportunity for drug abuse with its concomitant adverse social impact, especially since A.D.D. is sometimes diagnosed by patient history. This concern should be allayed by the requirement that narcolepsy or A.D.D. must be diagnosed by established diagnostic criteria in order to justify treatment with amphetamines, and that prescribing for any of the specified conditions requires documentation of testing and consultation where appropriate.

Economic Impact

The anticipated economic impact is the decreased cost of care for individuals (borne by both individuals and the public) who will be able to function and may no longer need institutional care. Any increased cost due to the requirement of a consultation or testing as appropriate for the conditions specified is justified by the need to deter drug abuse.

Regulatory Flexibility Analysis

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

The number of physician licensees in the State is approximately 30,000. Although potentially any of these licensees could be affected by the rule proposed to be amended, it is expected that principally those physicians practicing psychiatry will treat A.D.D. It is also expected that as it is an uncommon ailment only a small number of licensees are likely to be affected by this aspect of the rule proposed to be amended. It is anticipated that a larger number of licensees will be affected by the amendment requiring documentation of appropriate testing or consultation with respect to the specified disorders; however, the proposed amendment merely codifies an existing obligation.

The proposed amendment expands the patient population for whom a physician may legitimately prescribe amphetamines. As with any other treatment or prescription, physicians will be obligated to keep appropriate patient records including justification for the treatment and prescription. In addition, this proposed amendment requires establishment of the diagnosis of narcolepsy or A.D.D. by recognized diagnostic criteria. This compliance requirement is considered necessary to safeguard against inappropriate amphetamine prescribing and abuse. As for the requirement of documentation of testing or consultation regarding the specified disorders, physicians already have a responsibility to keep appropriate records and this proposed amendment imposes no additional obligation in that regard.

There should be no initial capital costs. Since a recordkeeping system is already required for all medical treatment, the only additional cost would be that entailed in testing or independent consultation which would be borne by the patient. The costs should not be substantial, but the Board is unable to estimate them as they may vary from case to case. The costs should be the same regardless of the size or type of practice of the physician licensee.

There is no adverse economic impact anticipated on the physician's practice, as the proposed amendment merely expands the class of patients for whom a physician may prescribe a particular class of drug and confirms the already existing recordkeeping obligations of physicians. In addition, the cost of independent consultation or testing will be borne by the patient.

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

13:35-6.7 Prescribing of amphetamines and sympathomimetic amine drugs

(a) No physician shall prescribe, order, dispense, administer, sell or transfer any amphetamine or sympathomimetic amine drug or compound designated as a Schedule II Controlled Dangerous Substance pursuant to the laws of New Jersey, to or from any person except:

1. For the treatment of[:] **the following conditions. A patient's records shall contain documentation to justify the prescribing including the use of appropriate testing, and with respect to those conditions which are not readily diagnosed by objective testing, documentation that appropriate consultation has been secured.**

i. Narcolepsy **established by recognized diagnostic criteria**;

ii. [Hyperkinesis] **Attention Deficit Disorder established by recognized diagnostic criteria**;

iii.-vi. (No change.)

2.-4. (No change.)

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

(b)

ATTORNEY GENERAL

Chemical Breath Testing

Proposed Readoption with Amendments: N.J.A.C. 13:51

Authorized By: Robert J. Del Tuto, Attorney General.
Authority: N.J.S.A. 39:4-50.3, 39:3-10.25 and 12:7-56.
Proposal Number: PRN 1991-404.

Submit written comments by 5:00 P.M., Wednesday, September 4, 1991 to:

Robert J. Del Tufo, Attorney General
c/o Division of Criminal Justice
Police Legal Advisory Section
Chemical Breath Testing Regulations Comments
Richard J. Hughes Justice Complex
CN 085
Trenton, N.J. 08625-0085

The agency proposal follows:

Summary

Pursuant to Executive Order No. 66(1978), the provisions of N.J.A.C. 13:51, Chemical Breath Testing, will expire on April 27, 1992. The Attorney General has reviewed these rules and has determined that they are necessary, reasonable and proper for the purpose for which they were originally promulgated. Accordingly, the Attorney General proposes to readopt N.J.A.C. 13:51 in its entirety with certain amendments in conformance with Chapter 103 of the Public Laws of 1990 (N.J.S.A. 39:3-10.9 et seq.) relating to the operation of a commercial motor vehicle by a person with an alcohol concentraion of 0.04 percent or more or while under the influence of a controlled substance (see definitions at N.J.S.A. 39:3-10.11). The proposed readoption with amendments will continue these rules in full force and effect, thereby complying with the provisions of N.J.S.A. 39:4-50.3, 39:3-10.25 and 12:7-56, imposing upon the Attorney General the obligation to approve methods of chemical analysis of an arrested person's breath and establish a system by which persons can be certified for the purposes of administering chemical analysis of an arrested person's breath. Should these rules not be readopted, the prosecution of persons charged with: (1) operating a vehicle or a vessel while under the influence of intoxicating liquor or with a blood alcohol concentration of 0.10 percent or more; or (2) operating a commercial motor vehicle with an alcohol concentration of 0.04 percent or more or while under the influence of a controlled substance would have to rely upon evidence other than that relating to the administration of, and results of, chemcial breath tests.

The origin of these rules predates the Administrative Procedures Act. In 1966, in response to the enactment of Chapter 142, Section 3 of the Public Laws of 1966 (N.J.S.A. 39:4-50.3), the Attorney General transmitted to the Secretary of State a certification in compliance with the aforementioned statute. In 1969, the aforementioned certification was codified in the New Jersey Administrative Code at N.J.A.C. 13:51. Throughout the history of these rules, all changes have been filed and submitted to the Secretary of State, and subsequent thereto, the Office of Administrative Law, in compliance with the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. In that time period, only minor amendatory changes have been made to the original rules. Most of the changes dealt with the addition or deletion of methods of chemical breath testing as reflected in subchapter 3. In 1982, the entire chapter was amended and clarified. Thereafter, the only substantive changes to the rules was the deletion of the Breathalyzer Model 1000 as an approved method of chemical breath testing in 1985 and the readoption of these rules with amendments to incorporate the provisions of N.J.S.A. 12:7-56 in 1987.

The present regulatory scheme is reflected in three subchapters. Subchapter 1 deals with the certification of persons to conduct chemical analysis of an arrested person's breath and establishes the definitions of terms for use throughout the entire chapter. Subchapter 2 establishes the qualifications, eligibility and training requirements of Breath Test Coordinator/Instructors who are members of the Division of State Police. Subchapter 3 concerns the instruments and methods approved by the Attorney General for the chemical analysis of an arrested person's breath and the means by which instruments and methods are approved.

The proposed amendments to N.J.A.C. 13:51 reflect the passage of new legislation pertaining to the operation of a commercial motor vehicle by persons who are suspected of having an alcohol concentration of 0.04 percent or more or of being under the influence of a controlled substance. Specifically, Section 17 of Chapter 103 of the Public Laws of 1990 (N.J.S.A. 39:3-10.25) requires the Attorney General to (1) approve methods of chemical breath testing and (2) procedures to certify individuals to test the breath of persons arrested for operating a commercial motor vehicle (a) with an alcohol concentration of 0.04 percent or more or (b) while under the influence of a controlled substance. The provisions of N.J.S.A. 39:3-10.25 are substantially identical to those of N.J.S.A. 39:4-50.3 and specifically incorporate that statute.

The amendment also corrects an editorial error in the existing rules at N.J.A.C. 13:51-1.2, Definitions, "Approved methods," where the reference of N.J.S.A. 12:7-46 is incorrectly shown as N.J.S.A. 12:7-6. There are also minor editorial corrections of punctuation at N.J.A.C. 13:51-1.1, 1.2, 3.1 and 3.5, and citation form revisions to current Code standard at N.J.A.C. 13:51-1.1, 3.1 and 3.5.

The Attorney General has reviewed these rules. The Attorney General now finds that these rules are necessary in order to comply with a statutory scheme which "reflects the dominant legislative purpose to eliminate intoxicated drivers from the roadways of this State." *State v. Tischio,* 107 *N.J.* 504, 514 (1987), *app. dism.* 484 U.S. 1038 (1987). "To this end, the Legislature, working in tandem with the courts, has consistently sought to streamline the implementation of these laws and to remove obstacles impeding the efficient and successful prosecution of those who drink and drive." *Id.*

Readoption of these rules facilitates the realization of the Legislature's intent. The laws pertaining to drunk driving, whether in an automobile, commercial motor vehicle, vessel, moped or other forms of vehicles, "expressly contemplates the administration of a [B]reathalyzer test to determine blood-alcohol concentration. Indeed, the determination of blood-alcohol levels through chemical or [B]reathalyzer tests is the linchpin of New Jersey's drunk-driving statutes." *State v. Tischio, supra* at 510.

The Attorney General has determined that the rules as proposed and amended should continue in full force and effect, subject to such future modification as deemed necessary.

Social Impact

The certification by the Attorney General of the methods of chemical breath testing and of chemical breath test operators has an obvious social impact. The apprehension, prosecution and conviction of individuals operating vehicles or vessels while under the influence of intoxicating liquor or drugs, or with an alcohol concentration in the blood or breath at or above a specific level serves the overall public good. The use of chemical breath testing has long been accepted by the courts as a scientifically reliable means of establishing levels of intoxication through the analysis of breath alcohol. See *State v. Johnson,* 42 *N.J.* 146 (1964), *Romano v. Kimmelman,* 96 *N.J.* 66 (1984) and *Sate v. Downie,* 117 *N.J.* 450 (1990), *cert. den.* ____ *U.S.* ____ (1990).

The administrative rules governing the methods of chemical breath testing and the certification of chemical breath test operators must be continued without interruption in order to avoid disruption of the State's ability to prosecute offenses prohibiting the operation of vehicles or vessels while under the influence of intoxicating liquor or drugs, or with an alcohol concentration in the blood or breath at or above a specific level. Furthermore, by readoption of these regulations with the proposed amendments, the Attorney General will continue to satisfy his statutory requirements under the provisions of N.J.S.A. 39:4-50.3, 39:3-10.25 and 12:7-56.

These rules most directly affect police officers and police departments in that they provide both the mechanisms by which police officers become certified chemical breath test operators and identify the instruments which incorporate approved methods of chemical breath testing. The Division of State Police is an affected agency, in that the rules delegate to that Division responsibility for administration of the chemical breath test program, including: (1) training of breath test operators; (2) the evaluation and recommendation of instruments, methods or operational functions to the Attorney General for approval; and (3) the periodic inspection, testing and certification of approved instruments as approved methods of chemical breath testing. In addition, the approval of methods of chemical breath testing by the identification of approved instruments affects municipal and county police departments and other law enforcement agencies in the course of their enforcement of the relevant statutes.

Economic Impact

The readoption with amendments of the Chemical Breath Testing rules will have no direct economic impact upon the general public. Nor is it anticipated that this readoption with amendments will have any economic impact upon the government entities directly effected by its provisions. Inasmuch as there are no substantive changes to the existing rules by the readoption, the procedures already in place for the approval of methods of chemical breath testing and the certification of chemical breath test operators will continue without interruption and without additional cost.

Regulatory Flexibility Statement

The Attorney General finds that a regulatory flexibility analysis is not required under the provisions of the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The Chemical Breath Testing rules do not impose reporting, recordkeeping or other compliance requirements on small businesses. The regulations impose duties and responsibilities upon the Attorney General, law enforcement agencies and the Division of State Police pursuant to N.J.S.A. 39:4-50.3, 39:3-10.25 and 12:7-56.

Full text of the proposed readoption may be found in the New Jersey Administrative Code at N.J.A.C. 13:51.

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

SUBCHAPTER 1. BREATH TESTING OPERATORS

13:51-1.1 Purpose of subchapter

This subchapter prescribes the requirements for certification of a person to conduct chemical analysis of the breath of a person arrested pursuant to N.J.S.A. 39:4-50 et seq., **N.J.S.A. 39:3-10.13, N.J.S.A. 30:3-10.20, N.J.S.A. 39:3-10.24, N.J.S.A. 39:3-10.25,** N.J.S.A. 12:7-34.19, N.J.S.A. 12:7-46, N.J.S.A. 24:4A-23[,] or N.J.S.A. 12:7-54 et seq., the conditions under which certification can occur and the general rules for holders of certificates, pursuant to the statutory requirements of **P.L.** 1966, c.142, Sec. 3, as amended by **P.L.** 1971, c.273, Sec. 1 ([C.] **N.J.S.A.** 39:4-50.3[:;], hereinafter denoted as N.J.S.A. 39:4-50.3; **or P.L. 1990, c.103, Sec. 17 (N.J.S.A. 39:3-10.25), hereinafater denoted as N.J.S.A. 39:3-10.25;** or **P.L.** 1986, c.39, Sec. 8 ([C.] **N.J.S.A.** 12:7-56)[;], hereinafter denoted as N.J.S.A. 12:7-56.

13:51-1.2 Definitions

For the purpose of this chapter, and subchapters 1, 2[,] and 3 thereof, the terms set forth herein are defined as follows:

"Approved instrument" shall mean a device or instrument approved by the Attorney General at N.J.A.C. 13:51-3.5 for use in the chemical analysis of the breath of a person arrested pursuant to the provisions of N.J.S.A. 39:4-50 et seq., **N.J.S.A. 39:3-10.13, N.J.S.A. 39:3-10.20, N.J.S.A. 39:10.24,** N.J.S.A. 12:7-34.19, N.J.S.A. [12:7-6] **12:7-46** or N.J.S.A. 2A:4A-23.

"Approved methods" shall mean those steps or operations approved by the Attorney General at N.J.A.C. 13:51-3.6 for use in the chemical analysis of the breath of a person arrested pursuant to the provisions of N.J.S.A. 39:4-50 et seq., **N.J.S.A. 39:3-10.13, N.J.S.A. 39:3-10.20, N.J.S.A. 39:3-10.24,** N.J.S.A. 12:7-34.19, N.J.S.A. 12:7-46 or N.J.S.A. 2A:4A-23 on an approved instrument.

...

"Certification" shall mean the approval by the Attorney General of a person as an operator, as herein defined, and shall mean said person is qualified and competent to perform chemical breath test analysis utilizing an approved method and an approved instrument as defined in this subchapter and as set forth at N.J.A.C. 13:51-3 as authorized by N.J.S.A. 39:4-50.3, **N.J.S.A. 39:3-10.25** or N.J.S.A. 12:7-56.

...

"Operator" shall mean a person who is certified as a Chemical Breath Test Operator to perform analysis of an arrested person's breath utilizing an approved method and an approved instrument, as defined in this subchapter and as set forth at N.J.A.C. 13:51-3 and pursuant to the provisions of N.J.S.A. 39:4-50.3, **N.J.S.A. 39:3-10.25** or N.J.S.A. 12:7-56.

...

13:5-1.3 Certification

(a) For the purpose of prosecution, no operator may conduct a valid analysis of an arrested person's breath under the provisions of N.J.S.A. 39:4-50.3, **N.J.S.A. 39:3-10.25** or N.J.S.A. 12:7-56, unless such operator has been issued a valid operator's certificate which is current at the time of the analysis of an arrested person's breath and which attests that such operator is then qualified and competent to conduct such analysis utilizing an approved method and an approved instrument as set forth at N.J.A.C. 13:51-3.

(b) (No change.)

SUBCHAPTER 3. APPROVED INSTRUMENTS AS METHODS OF CHEMICAL BREATH TESTING

13:51-3.1 Purpose of subchapter

Pursuant to the provisions of **P.L.** 1966, c.142, Sec. 3, as amended by **P.L.** 1971, c.273, Sec. 1 ([C.] **N.J.S.A.** 39:4-50.3), **P.L. 1990, c.103, Sec. 17 (N.J.S.A. 39:3-10.25)** and P.L. 1986, c.39, Sec. 8 ([C.] **N.J.S.A.** 12:7-56); hereinafter denoted N.J.S.A. 39:4-50.3, **N.J.S.A. 39:3-10.25** or N.J.S.A. 12:7-56, respectively, the provisions of this subchapter set forth the instruments and methods approved by the Attorney General for the chemical analysis of the breath of a person arrested pursuant to the provisions of N.J.S.A. 39:4-50, et seq., **N.J.S.A. 39:3-10.13, N.J.S.A. 39:3-10.20, N.J.S.A. 39:3-10.24,** N.J.S.A. 12:7-34.19, N.J.S.A. 12:7-46 or N.J.S.A. 2A:4A-23.

13:51-3.2 Application for approval

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

(d) Upon completion of evaluation of an instrument, method and/or operational function, the Superintendent shall recommend approval or rejection of the same to the Attorney General. The Attorney General, upon review of the recommendations, shall approve or reject the instrument, method and/or operational function pursuant to law (N.J.S.A. 39:4-50.3, **N.J.S.A. 39:3-10.25** or N.J.S.A. 12:7-56).

13:51-3.4 Periodic inspection of approved instruments

Periodic inspection of all approved instruments used in this State in connection with the prosecution of a person pursuant to the provisions of N.J.S.A. 39:4-50 et seq., **N.J.S.A. 39:3-10.13, N.J.S.A. 39:3-10.20, N.J.S.A. 39:3-10.24,** N.J.S.A. 12:7-34.19, N.J.S.A. 12:7-46 or N.J.S.A. 2A:4A-23 shall be made by a Breath Test Coordinator/Instructor. The results of such periodic inspections shall be recorded on forms provided by the Superintendent of State Police and the originals thereof shall be maintained by the Division of State Police.

13:51-3.5 Approved instruments for performing chemical analysis of a person's breath

(a) The Breathalyzer, Model 900, is an instrument approved by the Attorney General pursuant to **P.L.** 1966, c.142, Sec. 3, as amended by **P.L.** 1971, c.273, Sec. 1 ([C.] **N.J.S.A.** 39:4-50.3), **P.L. 1990, c.103, Sec. 17 N.J.S.A. 39:3-10.25)** and **P.L.** 1986, c.39, Sec. 8 ([C.] **N.J.S.A.** 12:7-56) and this subchapter, for the testing of a person's breath by chemical analysis.

(b) The Breathalyzer, Model 900A, is an instrument approved by the Attorney General pursuant to **P.L.** 1966, c.142, Sec.3, as amended by **P.L.** 1971, c.273, Sec. 1 ([C.] **N.J.S.A.** 39:4-50.3), **P.L. 1990, c.103, Sec. 17 (N.J.S.A. 39:3-10.25)** and **P.L.** 1986,c.39, Sec. 8 ([C.] **N.J.S.A.** 12:7-56) and this subchapter, for the testing of a person's breath by chemical analysis.

(c) The Dominator Albreath is an instrument approved by the Attorney General pursuant to **P.L.** 1966, c.142, Sec. 3 as amended by **P.L.** 1971, c.273, Sec. 1 ([C.] **N.J.S.A.** 39:4-50.3), **P.L. 1990, c.103, Sec. 17 (N.J.S.A. 39:3-10.25)** and **P.L.** 1986, c.39, Sec. 8 ([C.] **N.J.S.A.** 12:7-56) and this subchapter, for the testing of a person's breath by chemical analysis.

(d) The Alco-Tector is an instrument approved by the Attorney General pursuant to **P.L.** 1966, c.142, Sec. 3, as amended by **P.L.** 1971, c.273, Sec. 1 ([C] **N.J.S.A.** 39:4-50.3), **P.L. 1990, c.103 Sec. 17 (N.J.S.A. 39:3-10.25)** and **P.L.** 1986, c.39 Sec. 8 ([C.] **N.J.S.A.** 12:7-56) and this subchapter, for the testing of a person's breath by chemical analysis.

(a)

DIVISION OF STATE POLICE

Licensing and Registration of Dealers and Manufacturers; Sale, Purchase, Acquisition and Transfer of Firearms by Dealers to Eligible Persons; Investigation of Applications and Qualifications for Permits to Carry Handguns; Security Systems

Proposed Readoption with Amendments: N.J.A.C. 13:54

Authorized By: Colonel Justin J. Dintino, Superintendent, Division of State Police.

Authority: N.J.S.A. 2C:39-1 et seq. and 2C:58-1 et seq.

Proposal Number: PRN 1991-405.

Submit comments by September 4, 1991 to:
Colonel Justin J. Dintino, Superintendent
c/o Firearms Investigation Unit
New Jersey State Police
P.O. Box 7068
West Trenton, New Jersey 08625

The agency proposal follows:

Summary

Chapter 54 of Title 13 became effective on October 5, 1986. Pursuant to Executive Order No. 66(1978), N.J.A.C. 13:54 expires on October 5, 1991. As required by that Executive Order, the Division of State Police, Department of Law and Public Safety has reviewed the rules and, with the exceptions noted below, has determined them to be necessary, reasonable and proper for the purpose for which they were originally adopted. Accordingly, the Superintendent of the Division of State Police proposes to readopt with amendments, N.J.A.C. 13:54.

Pursuant to N.J.S.A. 2C:58-1 et seq., the Superintendent is authorized to prescribe rules governing firearms. More particularly, the Superintendent's functions in this area are to prescribe regulations in accordance with law governing: (1) the procedures and conditions for the licensing and registering of retail and wholesale dealers and manufacturers, (2) the procedures and conditions for the sale, purchase, acquisition and transfer of firearms by dealers to eligible persons, and (3) the application of uniform Statewide standards for the issuance of permits, licenses, registrations and firearms purchaser identification cards.

The provisions of N.J.A.C. 13:54, as proposed for readoption, are intended to serve as a single source of reference for retailers, purchasers and holders of licenses and permits and for law enforcement agencies who must administer the laws. Amendments incorporating and more clearly integrating the regulatory provisions of Chapters 39 and 58 of the Code of Criminal Justice with N.J.A.C. 13:54 are included. Additional amendments are included to update and clarify the responsibilities applicable to the superintendent, law enforcement agencies and dealers in the administration of the statutory and regulatory provisions governing the acquisition and sale of firearms. The following is a summary of the proposed substantive amendments to N.J.A.C. 13:54. The numerous amendments which are grammatical or technical in nature are omitted from the summary.

Subchapter 1 of N.J.A.C. 13:54 provides definitions of terms employed throughout the chapter. The definitions have been revised to more accurately reflect relevant statutory definitions and to provide definitions of terms that have been statutorily defined since October 6, 1986.

Subchapter 1 also prescribes the requirements and procedures for application, investigation, issuance, and expiration of firearms purchaser identification cards and permits to purchase handguns and the conditions and procedures for revocation of firearms purchaser identification cards.

The provisions of subchapter 1 dealing with the issuance of firearm purchaser identification cards and permits to purchase handguns have been reorganized and reworded for purposes of ease of reference. These procedures have been integrated to the extent possible for the purposes of clarity and uniformity. Various provisions contained in the Code of Criminal Justice relating to the regulatory process also have been integrated into subchapter 1. The same is true with respect to the eligibility criteria for obtaining a firearm purchaser identification card or a permit to purchase a handgun.

N.J.A.C. 13:54-1.2 sets forth the criteria for the acquisition or sale of firearms to persons with permits or firearms purchaser identification cards. That section also recognizes that firearm purchaser identification cards or permits to purchase handguns are not necessary in the case of the Armed Forces of the United States, the National Guard or law enforcement agencies, provided that such transactions are officially authorized and consummated in the manner specified in subchapter 3.

N.J.A.C. 13:54-1.3 permits the superintendent or chief of police to issue firearms purchaser identification cards and permits to purchase handguns after being satisfied that such issuance is in conformity with this subchapter.

N.J.A.C. 13:54-1.4 provides for the investigation of applications for firearms purchaser identification cards and permits to purchase handguns.

N.J.A.C. 13:54-1.5 and 1.6 describe the eligibility criteria which must be considered by the Superintendent and chief of police prior to the issuance of a firearms purchaser identification card or permit to purchase a pistol.

N.J.A.C. 13:54-1.8 requires a written certification from any person acquiring a firearm by means of a firearms purchaser identification card. This certification must indicate that the person presently complies with all of the requirements for obtaining an identification card and does not suffer from any of the disabilities set forth in the subchapter. The seller is to maintain a copy of the certification for his records. That provision also provides for the procedures to be followed where the purchaser exhibits a permit to purchase a handgun.

N.J.A.C. 13:54-1.10 provides that any person having knowledge that a person is subject to the disabilities set forth in the subchapter for the acquisition of a permit to purchase a handgun or a firearms purchaser identification card may notify the chief of police or Superintendent who will take such action as may be deemed appropriate.

N.J.A.C. 13:54-1.13 is amended to include provisions for the passing of firearms, other than assault firearms or machine guns, to heirs or legatees. When an heir or legatee does not possess the necessary qualifications for a permit to purchase a handgun or a firearms purchaser identification card, the firearm must be placed in the custody of the chief of police or Superintendent until its proper disposition.

N.J.A.C. 13:54-1.14 makes clear that no fees, other than those established by the regulations or law, may be assessed by any person or governmental entity of this State for processing applications or for the proper investigation of applicants for licenses, permits, I.D. cards and registrations. The Code's specification of fees to be charged to applicants preempt any governmental authority from requiring the payment of additional fees for the proper investigation of applicants or the issuance of permits and licenses. This provision applies to the entire chapter.

N.J.A.C. 13:54-1.15 makes clear that background investigations conducted by chiefs of police or the Superintendent for licenses, permits, firearms purchaser identification cards or registrations are not public records, and should not be disclosed to any person, including the applicant, except upon order of a court of competent jurisdiction. Such background investigations contain sensitive information, often revealed to law enforcement authorities on the condition that it not be disseminated. The privacy rights of the applicant should be protected since background investigations include such subjects as prior convictions, medical and mental disabilities, alcoholism, drug addiction and other matters which ought not to be disclosed in a public forum absent a compelling need.

Subchapter 2 governs the issuance of permits to carry handguns. Like subchapter 1, these provisions have been reworded and reorganized for purposes of ease of reference. Various Code provisions have also been integrated where appropriate.

N.J.A.C. 13:54-2.2 is amended to delete unnecessary and potentially confusing language.

N.J.A.C. 13:54-2.3 reiterates the statutory criteria which must be satisfied in order to obtain the issuance of a permit to carry a handgun. This and other amendments in subchapter 2 reflect the standards enunciated by the Supreme Court decision in *In re Preis*, 118 *N.J.* 564 (1990).

N.J.A.C. 13:54-2.4 provides for the procedures to be followed in applying for a permit to carry a handgun. It adds the Penal Code requirement that the application be under oath and that it be endorsed by three reputable persons who have personally known the applicant for at least three years, and who must certify that the applicant is a person of good moral character and behavior.

In addition, N.J.A.C. 13:54-2.4 requires that the application form provide the applicant with a comprehensive means of demonstrating thorough familiarity with the safe handling and use of handguns. The applicant will respond to questions of such significance as: the applicant's ability to safely handle a handgun, the applicant's most recent qualification scores in the firing of a handgun, and the applicant's knowledge of this State's laws governing the lawful use of force.

Pursuant to N.J.A.C. 13:54-2.4, the application form shall also be accompanied by a written certification of need which also shall be under oath. A private citizen shall specify at length the urgent necessity for self-protection as evidenced by specific threats or previous attacks which demonstrate a special danger to the applicant's life that cannot be avoided by means other than the issuance of a permit to carry. When possible, the applicant shall corroborate the existence of specific threats or previous attacks by referring to reports to such incidents made to the appropriate law enforcement authority. In the case of employees of private detective agencies, armored car companies and private security companies, the applicant must demonstrate need by showing: (1) that in the course of performing statutorily authorized duties he is subject

to a substantial threat of serious bodily harm, and (2) that carrying a handgun is necessary to reduce the threat of unjustifiable serious bodily harm to any person.

N.J.A.C. 13:54-2.5 requires that the chief of police or Superintendent, in investigating the application, shall consider all of the information required to be included on the application, including need and thorough familiarity with the safe handling and use of handguns.

N.J.A.C. 13:54-2.6 provides for the additional information and verification necessary to issue a permit to carry to employees of armored car companies.

N.J.A.C. 13:54-2.7 adds a new provision requiring that the Superintendent be furnished with copies of all carrying permits issued by the Superior Court.

N.J.A.C. 13:54-2.9 has been amended to make clear that the renewal process for obtaining a carrying permit requires satisfaction of all of the application criteria for obtaining an initial permit, including submission, when available, of contemporaneous requalification scores in the firing of a handgun certified by a firearms instructor.

N.J.A.C. 13:54-2.10 provides that all permits shall be void at such time as the holder becomes subject to any of the disabilities provided by this chapter or law. Any person may apply to the Superior Court for revocation of any permit issued pursuant to this chapter. Moreover, as with the issuance of firearms purchaser identification cards and permits to purchase handguns, information may be received by law enforcement agencies from any person regarding the continued qualification of a person to carry a handgun. Such information may be acted upon in a manner deemed appropriate by the agency.

Subchapter 3 deals with the licensing of retail dealers. Like the previous subchapters, it has been reorganized and rewritten for purposes of ease of reference. Various Code provisions have also been incorporated where appropriate.

N.J.A.C. 13:54-3.3 has been amended to require that all corporate dealers furnish the State Police with a copy of the most recent certificate of incorporation in applying for a license.

N.J.A.C. 13:54-3.4 has been amended to provide that the Superintendent must be notified in writing that a dealer has satisfied local zoning requirements before being licensed.

N.J.A.C. 13:54-3.7, dealing with the licensing of retail dealers and employees, and N.J.A.C. 13:54-3.9, concerning conditions of issuance of license and revocation, have been reworded and clarified to incorporate all of the relevant provisions contained in N.J.S.A. 2C:58-2.

N.J.A.C. 13:54-3.14 has been amended to make clear that a dealer must not only record the distinguished characteristics of firearms purchased by such dealer, but also must record the same characteristics of each firearm sold.

N.J.A.C. 13:54-3.15 clarifies the responsibilities of retail dealers in selling firearms to the Armed Forces of the United States, the National Guard and to law enforcement agencies. That section provides that when retail dealers sell firearms to the above referenced governmental agencies appropriate records of sale must be maintained. The records shall include the name of the entity or agency, a written authorization on the agency's letterhead for the purchase of firearms, the name of the individual designated by the head of the agency to make the actual purchase, including the date of and time of the sale. The records shall also specify the type and identity of each firearm purchased. The section also provides that retail dealers may sell assault firearms or machine guns only to those law enforcement agencies or military organizations whose employees may carry such weapons. In the case of the sale of assault firearms and machine guns, the records of such sales shall be forwarded to the superintendent within 48 hours of the transaction. In all other cases, the dealer shall maintain his records in a manner consistent with the provisions governing the sale of rifles, shotguns and handguns.

Subchapter 4 deals with the licensing of wholesale dealers, manufacturers and their employees. The substantive amendments to this subchapter closely mirror the amendments to subchapter 3 governing the regulation of retail dealers. As with the prior subchapters, subchapter 4 has been rewritten for purposes of clarity and provisions of the Code have been integrated where appropriate.

A new subchapter 5 is added which regulates the purchase, sale and disposition of assault firearms and machine guns. This subchapter is necessary in view of the recent enactment of the Assault Firearms Act, P.L.1990, c.32.

N.J.A.C. 13:54-5.1 provides that no person may purchase a machine gun or assault firearm without: (1) being licensed as a dealer, (2) being licensed to purchase, possess or carry such a firearm, or (3) being an exempt law enforcement agency or military organization as defined. The section also requires wholesale and retail dealers to keep and maintain separate ledgers for the acquisition, receipt, sale and disposition of machine guns and assault firearms.

N.J.A.C. 13:54-5.2 provides that licenses to purchase, possess or carry machine guns or assault firearms are to be issued by a judge of the Superior Court in accordance with N.J.S.A. 2C:58-5. The county prosecutor, in his or her investigation of applications for such licenses, must serve the Superintendent and appropriate chief of police with the final report of the prosecutor. This section provides that the Superintendent and/or chief of police, or their designees, may personally appear and oppose the issuance of any license to acquire a machine gun or assault firearm. In the event that a license is granted, the chief of police or Superintendent may appeal that decision. Copies of all licenses issued by a court must be filed with the Superintendent and appropriate chief of police. The Superintendent, chief of police or any law enforcement officer or citizen may apply to the court which issued the license for its revocation at any time premised upon the holder's failure to continuously satisfy the statutory requirements.

N.J.A.C. 13:54-5.3 provides for the disposition of machine guns or assault firearms upon the death of a licensee or registered holder.

N.J.A.C. 13:54-5.4 provides that any person having knowledge that a person in possession of an assault firearm or machine gun is not legally qualified for such possession may notify the appropriate chief of police or the Superintendent who may take such action as deemed appropriate.

N.J.A.C. 13:54-5.5 provides for the sale by licensed dealers of large capacity magazines to the Armed Forces or to law enforcement agencies, provided that the seller maintains records of such sales or dispositions. These records shall include the name of the purchasing agency, together with written authorization on official stationery of a ranking officer of that law enforcement agency or military organization, as well as the name and rank of the person authorized to make the purchase on behalf of the entity. A copy of this record shall be forwarded by the seller to the Superintendent within 48 hours of the sale.

N.J.A.C. 13:54-5.6 provides that no licensed retail or wholesale dealer shall offer to sell a machine gun, semiautomatic rifle or assault firearm by means of an advertisement circulating in a newspaper in this State which does not state that the purchaser must have a valid license to purchase and possess a machine run or assault firearm, or in the case of a semiautomatic rifle that is not an assault firearm, a valid firearms purchaser identification card.

N.J.A.C. 13:54-5.7 provides that the chief of police of every municipality having a full time police department or the State Police station servicing a municipality shall on a monthly basis provide to the Superintendent the number and types of criminal offenses involving assault firearms. The report shall also include the type of assault firearm used in the commission of the crime. This report is necessary in order to fulfill the statutory obligation on the part of the Attorney General to periodically report to the Legislature regarding the nature and number of offenses committed with assault firearms. Such reports must be received no later than five business days from the end of the prior month.

Former subchapter 5, dealing with security requirements for firearms dealers, has been codified as subchapter 6. There are no substantive amendments to this subchapter.

Social Impact

The readoption of this chapter will permit the Division of State Police to continue to regulate the licensing and registration of retail and wholesale dealers and manufacturers, as well as the sale, purchase, acquisition and transfer of firearms by dealers to eligible persons. The Superintendent will also continue to administer uniform statewide standards for the investigation of applications and the issuance of permits, licenses, firearms purchaser identification cards and permits to carry firearms. The proposed readoption will also benefit consumers and dealers in firearms by clarifying the course of conduct which such persons must follow in order to comply with existing law and regulation. The public at large will benefit from the readoption of this chapter through the continued regulation by the Superintendent of those persons and entities licensed to sell or acquire firearms.

Economic Impact

The proposed readoption imposes no new costs for either consumers or dealers in firearms. In large measure, the economic impact of this chapter is dictated by fixed statutory fees. Indeed, all of the fees established by the chapter for the issuance of permits, licenses, registrations and firearms identification cards are provided for by law. The

chapter also adds a new section N.J.A.C. 13:54-1.14, which specifically proscribes the assessment of fees not authorized by either this chapter or by law in connection with applications for permits, licenses and registrations, as well as for the investigation thereof by law enforcement authorities.

The chapter provides that applicants for permits to purchase rifles, shotguns and handguns, or applicants for permits to carry handguns, are required to pay only those fees established by statute. See N.J.S.A. 2C:58-3, 2C:58-4 and 53:1-20.5. Fees for licenses to possess or carry machine guns or assault firearms are omitted from this chapter since these monies are not paid to the Superintendent or chief of police.

The chapter likewise provides that applicants to retail dealer licenses or wholesale dealer or manufacturer registrations are required to pay only those fees established by statute. See N.J.S.A. 2C:58-1, 2C:58-2 and 53:1-20.5. Similarly, employees of dealers or manufacturers applying for licenses are only assessed the fees established by the afore-mentioned statutes.

The readoption requires retail and wholesale dealers and manufacturers to incur expenses by maintaining for inspection records of the acquisition and sale of all firearms. The maintenance of these records are generally required by statute. See N.J.S.A. 2C:58-1, 2C:58-2 and 2C:58-3. In specific instances, dealers must also incur costs by collecting and submitting to the Superintendent records of the acquisition or sale of machine guns, assault firearms, body armor penetrating bullets and large capacity magazines. With the exception of body armor penetrating bullets, these are new requirements imposed as a result of the passage of the Assault Firearms Law, P.L. 1990, c.32. With regard to body armor pentrating bullets, N.J.S.A. 2C:39-3g(3) provides the underlying statutory requirement. It is impossible to state with any precision the actual costs associated with dealers' compliance with the afore-mentioned record keeping and reporting requirements. The costs will vary depending upon the volume of a dealer's business and the size of his inventory. Dealers have traditionally associated the record keeping and reporting requirements as routine and in the normal course of business in dealing with firearms. This is especially so since Federal law also requires dealers who are Federally licensed to maintain identical records. Most all of New Jersey's dealers are Federally licensed.

The readoption continues to require dealers to install and maintain security systems approved by the Superintendent. These systems must be in place prior to the dealers' maintenance of any inventory of firearms or ammunition. This is necessary to insure against theft and vandalism. The cost of security systems must be borne by the dealer. Dealers already licensed at the time of this readoption will, in all likelihood, not be subject to additional costs for the installation of security systems, other than those costs ordinarily associated with routine maintenance and repair. However, new security systems will have to be installed by dealers licensed subsequent to this readoption. Subchapter 6 of the readoption provides a list of approved security systems which, depending upon their complexity and the size of the business, will vary in cost. Therefore, it is impossible to predict with any certainty the actual economic impact of the readoption of the security provisions on newly licensed dealers.

The readoption also requires that the State Police and municipal police departments continue to incur costs for statutorily mandated investigations of applicants for firearms identification cards, permits to purchase handguns and permits to carry handguns. Both the State Police and the municipal police departments share this function, depending upon the residence of the applicant or the place where the applicant intends to carry a firearm. Since the statutorily required investigations of applicants is randomly disbursed throughout the State's municipalities, it is impossible to approximate the costs associated therewith. Nevertheless, as noted above, N.J.A.C. 13:54-1.14 precludes any person or governmental entity from assessing any fees upon either the municipal or State Police in the conduct of background investigations.

The State Police are solely responsible for background investigations of applicants for retail dealer licenses and wholesale dealer and manufacturer registrations. The costs incurred by the State Police for these statutorily mandated investigations are not possible to calculate with reasonable certainty. The budget appropriation for the Firearms Investigation Unit of the New Jersey State Police for Fiscal Year 1992 is $27,339. This figure is exclusive of salaries, since the salary account is centrally administered and State Police officials are re-assigned on a periodic basis. These monies are used to purchase supplies and equipment and, when necessary, for the printing of forms. Moreover, the Firearms Investigation Unit not only enforces the regulations which are the subject of this readoption, but is also responsible for the general enforcement of the provisions of the statutes dealing with firearms and, in particular, N.J.S.A. 2C:39-1 et seq. and 2C:58-1 et seq. The Unit also routinely dispenses advice to members of the public and those engaged in the commerce of firearms.

Regulatory Flexibility Analysis

The rules proposed for readoption regulate the commercial dealings of retail and wholesale dealers of firearms and manufacturers of firearms. These persons or entities qualify as small businesses under the terms of the Regulatory Flexibility Act, N.J.S.A. 52:14B-17. The readoption imposes reporting, recordkeeping and other compliance requirements on the afore-mentioned persons or entities. The readoption minimizes compliance requirements by primarily incorporating those regulatory provisions which are statutorily required. Moreover, all retail dealers, wholesale dealers and manufacturers are subject to identical reporting, recordkeeping and other compliance requirements, regardless of the size of the business.

As of the date of publication, there are approximately 766 licensed retail dealers and 46 registered wholesale dealers and manufacturers in the State. These persons or entities will all be subject to the following reporting, recordkeeping and other compliance requirements.

N.J.A.C. 13:54-3.2 and 3.3 and N.J.A.C. 13:54-4.2 and 4.3 provide that retail dealers must be licensed and wholesale dealers and manufacturers must be registered. The procedure for licensing and registration is also provided. These provisions also provide for the licensing of employees and agents of dealers. The fees associated with such licensing and registration are statutorily mandated. See N.J.S.A. 2C:58-1 and 2C:58-2. Likewise, license and registration provisions, N.J.A.C. 13:54-3.8 and 3.10 and N.J.A.C. 13:54-4.8 and 4.9(a), require that retail dealers and wholesale dealers must renew their licenses and registrations every three years. These provisions are also statutorily mandated. See N.J.S.A. 2C:58-1 and 2C:58-2. The renewal provisions for employees of retail and wholesale dealers are also governed by the above-cited statutes. See N.J.A.C. 13:54-3.10(b) and 13:54-4.9(b).

Retail dealers, wholesale dealers and manufacturers must maintain permanent records of the receipt and/or disposition of firearms and ammunition. See N.J.A.C. 13:54-3.14(a) and (b) and 13:54-4.12(a) and (b). By statute retail dealers are required to maintain records of the sales or dispositions of rifles, shotguns and handguns. N.J.S.A. 2C:58-2(a)4, 5, 6 and (b). The statute does not require that retail dealers maintain records of firearms acquired. The same is true with respect to wholesale dealers and manufacturers. See N.J.S.A. 2C:58-1e. All dealers and manufacturers, regardless of the size of their business, must maintain these records. They are deemed necessary for purposes of the proper enforcement of the rules. In particular, they facilitate the ability of regulators and law enforcement personnel to effectively monitor and track the commerce in firearms. This information is invaluable in the handling of criminal and/or regulatory violations. However, in order to minimize these compliance requirements, both N.J.A.C. 13:54-3.14c and 13:54-4.12c permit retail and wholesale dealers to forego compliance with the record keeping requirements of those sections if the retail or wholesale dealer maintains an updated Federal firearms record listing firearms purchased, acquired, manufactured or sold, in the manner prescribed by Title 26, Internal Revenue, Chapter 1 "Commerce in Firearms and Ammunition." These Federal firearms laws require dealers that are Federally licensed to maintain the same records provided for by the readoption. Therefore, duplication is avoided. While the precise number is not available, the agency believes that well over 90 percent of New Jersey's retail and wholesale dealers are Federally licensed.

N.J.A.C. 13:54-3.14(d) requires that retail dealers must submit records of all sales of body armor ammunition to the Superintendent. This provision is statutorily required. See N.J.S.A. 2C:39-3g(3).

N.J.A.C. 13:54-3.16 and 13:54-4.13 require retail dealers, wholesale dealers and manufacturers to make their records available to law enforcement officers at reasonable hours. These compliance requirements are consistent with statute. See N.J.S.A. 2C:58-1 and 2C:58-2.

N.J.A.C. 13:54-3.4(c) and (d) and 13:54-4.4(d) and (e) provide that when employees are transferred to other locations or terminated, the retail dealer, wholesale dealer or manufacturer shall surrender their licenses to the Superintendent. While these provisions are not contained in the statutes, they are deemed necessary in order to insure that licenses are not possessed by individuals who are no longer engaged in the business for which they were licensed. These requirements apply to businesses of all sizes.

N.J.A.C. 13:54-3.17 and N.J.A.C. 13:54-4.14 provide that upon termination, revocation or expiration of a retail dealer's license or wholesale

dealer's or manufacturer's certificate of registration, all licenses or registrations shall be forwarded to the Superintendent within five days. This is consistent with insuring that individuals who are no longer licensed to engage in the firearm business do not possess licenses. These provision applies to businesses of all sizes. Moreover, the readoption minimizes these provisions as they are currently written to delete the requirement that all records of acqusition or disposition by dealers or manufacturers be forwarded to the Superintendent.

N.J.A.C. 13:54-3.4(f) provides that no retail dealer shall be licensed unless he demonstrates to the Superintendent that his business is in conformity with the zoning laws of the applicable municipality. While not statutorily required, this compliance provision applies to all businesses regardless of size, and is required to insure that the Superintendent does not license businesses in conflict with the zoning regulations of the various municipalities.

N.J.A.C. 13:54-3.12 requires that retail dealers maintain records of certifications of eligibility for those who purchase rifles or shotguns by use of a firearms identification card. This provision is consistent with the applicable statute. See N.J.S.A. 2C:58-3.

N.J.A.C. 13:54-3.13 and 13:54-1.8(b) requires sellers of handguns to forward copies of permits to purchase handguns to the Superintendent and chief of police within five days of the sale. The dealer is also required to retain a copy. This provisions are consistent with statute. See N.J.S.A. 2C:58-3.

N.J.A.C. 13:54-3.15 provides that dealers shall maintain records of sale or disposition of firearms to the United States Armed Forces, the National Guard and to law enforcement agencies. These records are to be maintained separately from the records ordinarily maintained for the sale of firearms to civilian consumers. This rule also provides that sales of assault firearms and machine guns to the military and law enforcement agencies shall be reported to the Superintendent within 48 hours of their sale. These provisions are necessary in order to effectively monitor the commerce of firearms in this State. They also insure that military and law enforcement agencies follow uniform procedures for procuring firearms in this State. These regulations apply to businesses of all sizes. The reporting requirement for assault firearms is consistent with the statutory reporting requirement for the sale of large capacity magazines to the military or law enforcement agencies. See N.J.S.A. 2C:39-3g(3).

N.J.A.C. 13:54-5.1(b) requires dealers to maintain a separate ledger for the recordation of sales of assault firearms and machine guns. This provision is consistent with the purpose of the Assault Firearms Act (P.L.1990, c.32), which is to closely regulate and monitor the sale of assault firearms. This regulation is applicable to businesses of all sizes, and should be easily implemented since dealers must maintain records of all sales of firearms.

N.J.A.C. 13:54-5.5 requires that records of sale of large capacity magazines be reported to the Superintendent. This is consistent with the statutory requirement of N.J.S.A. 2C:39-3g(3).

Subchapter 6 of the readoption requires dealers to install and maintain security systems as a condition of procuring inventory and doing business. While this subchapter is not specifically statutorily required, it is applicable to businesses of all sizes. The statute does require the superintendent to establish standards to protect the public health, and welfare. N.J.S.A. 2C:58-2a. The readoption of subchapter 6 will have little impact on those dealers who are already in operation since the initial expense of installation of security systems will have already been borne. Thus, the readoption applies only to those new dealers licensed subsequent to the effective date or to those dealers who move their places of business.

Subchapter 6 provides a list of approved security systems which vary in cost, depending upon the intricacy of the system and the size and design of the areas required to be protected. See N.J.A.C. 13:54-6.2 and 6.3. This flexibility allows each dealer to individually address his security needs in relation to his compliance costs. The security systems required by this Subchapter are necessary for the protection of the public at large since they minimize the risk of the theft of dangerous instrumentalities.

It is impossible to estimate the initial or annual compliance costs with respect to the maintenance of the records required by this chapter. These costs will vary depending upon the size of the business' inventory and the volume of business. The same is true with respect to the installation and maintenance of security systems. The compliance costs with regard to the fees for renewal of licenses are statutorily mandated and have not been altered by the readoption. It is not expected that any of the afore-mentioned reporting, recordkeeping and compliance requirements will require professional services other than for the installation and maintenance of security systems.

The readoption is designed to minimize to the extent possible any adverse economic impact on small businesses by relying principally upon incorporation of the requirements of N.J.S.A. 2C:58-1 et seq. and 2C:39-1 et seq. Where additional requirements are added, they are deemed necessary in order to promote the general public health, safety and welfare. Moreover, they apply equally to businesses of all sizes.

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

CHAPTER 54
FIREARMS AND WEAPONS

SUBCHAPTER 1. FIREARMS [PERMIT AND] IDENTIFICATION CARD **AND PERMIT TO PURCHASE A HANDGUN**

13:54-1.1 Firearms [permit and] **purchaser** identification cards **and permits to purchase handguns**

This subchapter prescribes **the** requirements **and procedures** for **the** issuance of firearms purchaser identification cards, [a] permits to purchase [a] handguns and the general rules for holders of such permits and identification cards.

[13:54-1.2 Permit or identification card required

No person shall receive, purchase or otherwise acquire a rifle, shotgun, antique cannon, or handgun, except antique rifles and shotguns, unless he has first obtained a firearms purchaser identification card or a permit to purchase a handgun as issued under this Chapter.]

13:54-[1.3]**1.2** Definitions

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

"Ammunition" means various projectiles, **including bullets, missiles, slugs or balls** together with [their] fuses, propelling charges and primers that [are] **may be** fired, **ejected, projected, released, or emitted** from firearms or weapons.

"Antique cannon" means any weapon which satisfies the definition of an antique firearm and which is also capable of firing a projectile of a caliber greater than .60 caliber, except a shotgun or shotgun ammunition generally recognized as suitable for sporting purposes.

"Antique firearm" means any firearm which is incapable of being fired or discharged, or which does not fire fixed ammunition regardless of data of manufacture, or was manufactured before 1898 for which cartridge ammunition is not commercially available, and is possessed as a curiosity or ornament or for its historical significance or value.

"Assault firearms" means:

1. The following firearms:

Algimec AGM1 type

Any shotgun with a revolving cylinder such as the "Street Sweeper" or "Striker 12"

Armalite AR-180 type

Australian Automatic Arms SAR

Avtomat Kalashnikov type semi-automatic firearms

Beretta AR-70 and BM59 semi-automatic firearms

Bushmaster Assault Rifle

Calico M-900 Assault carbine and M-900

CETME G3

Chartered Industries of Singapore SR-88 type

Colt AR-15 and CAR-15 series

Daewoo K-1, K-2, Max 1 and Max 2, AR 100 types

Demro TAC-1 carbine type

Encom MP-9 and MP-45 carbine types

FAMAS MAS223 types

FN-FAL, FN-LAR, or FN-FNC type semi-automatic firearms

Franchi SPAS 12 and LAW 12 shotguns

G3SA type

Galil type

Heckler and Koch HK91, HK93, HK94, MP5, PSG-1
Intratec TEC 9 and 22 semi-automatic firearms
M1 carbine type
M14S type
MAC 10, MAC 11, MAC 11-9 mm carbine type firearms
PJK M-68 carbine type
Plainfield Machine Company Carbine
Ruger K-Mini-14/5F and Mini-14/5RF
SIG AMT, SIG 550SP, SIG 551SP, SIG PE-57 types
SKS with detachable magazine type
Spectre Auto carbine type
Springfield Armory BM59 and SAR-48 type
Sterling MK-6, MK-7 and SAR types
Steyr A.U.G. semi-automatic firearms
USAS 12 semi-automatic type shotgun
Uzi type semi-automatic firearms
Valmet M62, M71S, M76, or M78 type semi-automatic firearms
Weaver Arm Nighthawk

2. Any firearm manufactured under any designation which is substantially identical to any of the firearms listed in paragraph (1) above;

3. A semi-automatic shotgun with either a magazine capacity exceeding six rounds, a folding stock or a pistol grip; or a semi-automatic rifle with a fixed magazine capacity exceeding 15 rounds. For purposes of this paragraph, "semi-automatic" means a firearm which fires a single projectile for each pull of the trigger and is self-reloading or automatically chambers a round, cartridge or bullet. For purposes of this paragraph "pistol grip" means a well defined handle, similar to that found on a handgun, that protrudes conspicuously beneath the action of the weapon, and which permits the shotgun to be held and fired with one hand;

4. A part or combination of parts designed or intended to convert a firearm into an assault firearm, or any combination of parts from which an assault firearm may be readily assembled if those parts are in the possession or under the control of the same person.

"Body armor penetrating bullets" means any bullet designed for **use in** handguns and whose core **or jacket, if the jacket is thicker than .025 of an inch,** is of tungsten carbide or hard bronze [or with a jacket thicker than .025 of an inch] or is made of other material which is harder than a rating of 72 or greater on the Rockwell B. Hardness Scale and is capable of breaching or penetrating body armor.

"Chief of police" or "chief police officer" means the highest ranking member of a municipal police department.

"Firearm or firearms" means any handgun, rifle, shotgun, machine gun, **assault firearm,** automatic or semi-automatic rifle, or any gun, device or instrument in the nature of a weapon from which may be fired or ejected any solid projectile, ball, slug, pellet, missile or bullet, or any gas, vapor or other noxious thing, by means of a cartridge or shell or by the action of an explosive or the igniting of flammable or explosive substances. It shall also include, without limitation, any firearm which is in the nature of an air gun, **spring gun or pistol** or other weapon of a similar nature in which the propelling force is a spring, elastic band, carbon dioxide, compressed or other gas, or vapor, air or compressed air, or is ignited by compressed air, and ejecting a bullet or missile smaller than three-eighths of an inch in diameter, with sufficient force to injure a person.

"Gunsmith" means a person who is in the business of repairing or servicing firearms.

"Handgun" means any pistol, revolver, or other firearm originally designed or manufactured to be fired by the use of a single hand.

"Large capacity ammunition magazine" means a box, drum, tube or other container which is capable of holding more than 15 rounds of ammunition to be fed continuously and directly therefrom into a semi-automatic firearm.

"Machine gun" means any firearm, mechanism or instrument not requiring that the trigger be pressed for each shot and having a reservoir, belt or other means of storing and carrying ammunition which can be loaded into the firearm, mechanism or instrument and fired therefrom.

"Manufacturer" means any person[(s)] who receives[(s)] or obtains[(s)] raw materials or parts and processes them into firearms or finished parts of firearms, except a person who exclusively processes grips, stocks, and other nonmetal parts of firearms. The term does not include a person who repairs existing firearms or receives new and raw materials or parts solely for the repair of existing firearms.

"Person" means any individual, corporation, partnership, firm or association of any kind or nature whatsoever; any public entity of any kind or nature; the plural as well as the singular and any gender.

"Retail dealer" means any person, including a gunsmith, except a manufacturer or a wholesale dealer, who sells, transfers, or assigns for a fee or profit any firearm or parts of firearms or ammunition which he has purchased or obtained with the intention, or for the purpose of reselling or reassigning to persons who are reasonably understood to be the ultimate consumers, and includes any person who is engaged in the business of repairing firearms or who sells any firearm to satisfy a debt secured by the pledge of a firearm.

"Rifle" means any firearm designed to be fired from the shoulder and using the energy of the explosive in a fixed metallic cartridge to fire a single projectile through a rifled bore for each single pull of the trigger.

"Sawed-off shotgun" means any shotgun having a barrel or barrels of less than 18 inches in length measured from the breach to the muzzle, or a rifle having a barrel or barrels of less than 16 inches in length measured from the breach to the muzzle, or any firearm made from a rifle or a shotgun, whether by alteration, or otherwise, if such firearm as modified has an overall length of less than 26 inches.

"Shotgun" means any firearm designed to be fired from the shoulder and using the energy of the explosive in a fixed shotgun shell to fire through a smooth bore either a number of ball shots or a single projectile for each pull of the trigger, or any firearm designed to be fired from the shoulder which does not fire fixed ammunition.

"Superintendent" means **the** Superintendent of **the New Jersey** State Police.

"Weapon" means anything readily capable of lethal use or of inflicting serious bodily injury. The term includes, but is not limited to, all:

1. Firearms, even though not loaded or lacking a clip or other component to render them immediately operable;

2. Components which can be readily assembled into a weapon; [and]

3. Gravity knives, switch-blades, knives, daggers, dirks, stilettos, or other dangerous knives, billies, blackjacks, bludgeons, metal knuckles, sandclubs, slingshots, cestus or similar leather bands studded with metal filings or razor blades imbedded in wood; and

4. Stun guns and any other weapon[s] or other device which projects, releases or emits tear gas or any other substance intended to produce temporary physical discomfort or permanent injury through being vaporized or otherwise dispensed in the air.

"Wholesale dealer" means any person, except a manufacturer, who sells, transfers, or assigns firearms, or parts of firearms, to persons who are reasonably understood not to be the ultimate consumers, and includes persons who receive finished parts of firearms and assemble them into completed or partially completed firearms, in furtherance of such purpose, except that it shall not include those persons dealing exclusively in grips, stocks and other nonmetal parts of firearms.

13:54-1.3 Firearm identification card or permit to purchase required

(a) No person, other than a licensed or registered retail or wholesale dealer, shall receive, purchase or otherwise acquire a rifle, shotgun or antique cannon, other than an antique rifle or shotgun, unless that person possesses and exhibits a valid firearms purchaser identification card. No person shall sell, give, transfer, assign or otherwise dispose of a rifle, shotgun or antique cannon to a person other than a licensed or registered retail or wholesale dealer unless the buyer or receiver possesses and exhibits a valid firearms

purchaser identification card. No person shall sell or acquire a sawed-off shotgun.

(b) No person, other than a licensed or registered retail or wholesale dealer shall receive, purchase or otherwise acquire a handgun unless that person possesss and exhibits a permit to purchase a handgun. No person shall sell, give, transfer or assign or otherwise dispose of a handgun to a person other than a licensed or registered retail or wholesale dealer unless the buyer or receiver possesses and exhibits a valid permit to purchase.

(c) The provisions of (a) and (b) above shall not apply to the Armed Forces of the United States, the National Guard or to a law enforcement agency; provided that such transactions are authorized in writing by the appropriate governmental entity as provided by this chapter.

13:54-1.4 Applications for a firearms purchaser identification card [(rifles, shotguns and antique Cannons only)] **and for a permit to purchase a handgun**

(a) Every person applying for a firearms purchaser identification card **or for a permit to purchase a handgun** shall furnish such information and particulars as are set forth in the application form designated STS-33, **in the case of an identification card, or STS 33A, in the case of a permit to purchase.** Forms can be obtained from **municipal** police departments, [and] State Police stations[,] and licensed retail firearms dealers.

(b) The applicant shall waive any statutory or other right of confidentiality relating to institutional confinement.

(c) The applicant shall provide the names and addresses of two reputable citizens personally acquainted with him as references.

[(b)](**d**) The **application shall be signed by the applicant and the** completed application, together with two sets of the applicant's fingerprints and [fingerprint] fees as established by N.J.A.C. 13:59 in accordance with N.J.S.A. 53:1-20.5 et seq. (P.L. 1985, c. 69), a consent for mental health records search form designated STS-1 and a nonrefundable application fee of $5.00 **for a firearms identification card and $2.00 for a permit to purchase a handgun,** shall be submitted to the chief of police of an organized full time police department in the municipality in which the applicant resides. If the municipality does not have an organized full time police department, application shall be made to the [state police] **State Police** station servicing the municipality in which the applicant resides, **or to any State Police station in the case of a non-resident.**

(e) The chief of police of an organized full time police department of the municipality where the applicant resides, or the Superintendent, when the applicant is a non-resident of this State or when the municipality does not have a full time department, shall accept and investigate applications for firearms purchaser identification cards and permits to purchase handguns.

(f) The fingerprints of any applicant shall be compared with any fingerprints maintained by the State Bureau of Identification and the Federal Bureau of Identification for the purpose of ascertaining the existence of any criminal record. The fingerprints shall be obtained and submitted for such comparison by the chief of police or the State Police, as the case may be.

(g) An applicant for a handgun purchase permit who possesses a valid firearms purchaser identification card, or who has previously obtained a handgun purchase permit from the same licensing authority for which he or she was previously fingerprinted, and who provides other reasonable satisfactory proof of his or her identity, in the discretion of the chief of police or Superintendent, need not be fingerprinted again. In such case, the chief of police or superintendent shall otherwise fully investigate the application in accordance with this subchapter.

(h) Applicants for a permit to purchase a handgun may apply for more than one permit per application. The number of permits requested, and each permit number shall be entered in the spaces provided on the application.

(i) The chief of police or the Superintendent, as the case may be, shall either approve or disapprove the applications. Permits and cards shall be issued by the chief of police or the Superintendent to persons who are found to be qualified and who are not subject to any of the disabilities set forth by this subchapter.

13:54-1.5 Prerequisites for **a** permit **to purchase handgun** or **a firearms purchaser** identification card

(a) Every person issued a permit to purchase **a handgun**, or [an] **a firearms purchaser** identification card, shall be 18 years of age and of good repute in the community in which he lives.

[13:54-1.6 Limitations on issuance]

[(a)](**b**) A permit to purchase **a handgun**, or [an] **a firearm purchaser** identification card, shall not be issued to any person [who is subject to any of the following disabilities]:

1. [Convicted of any crime] **Who has been convicted of any crime;**

2. [A drug dependent person] **Who is drug dependent as defined by N.J.S.A. 24:21-2;**

3. [Confined or treated for a mental disorder or psychiatric condition] **Who has been or is then confined for a mental disorder in any institution;**

4. [A habitual drunkard or alcoholic] **Who is a habitual drunkard or an alcoholic;**

5. [Suffering] **Who suffers** from a physical defect or disease which would make it unsafe for him **or her** to handle firearms;

[6. Where the issuance would not be in the interest of the public health, safety and welfare;]

[7.]**6. Who** [Knowingly] **knowingly** falsifies any information on the application form for a permit to purchase a handgun or firearms purchaser identification card[.];

[8.]**7. Who** [Refuses] **refuses** to waive statutory or other rights of confidentiality relating to institutional confinement [.]; **or**

8. Where the issuance would otherwise not be in the interest of the public health, safety and welfare.

13:54-[1.7]**1.6** Exception for physical disability, [or] mental disorder **or alcoholism**

A permit or identification card [shall] **may** be issued to a person who **had previously** [suffers] **suffered** from a physical defect or disease, or mental disorder, or [is] **was** an alcoholic if **the applicant provides** a certificate of a medical doctor or psychiatrist licensed in New Jersey, or other satisfactory proof that he **or she** is no longer suffering from that particular disability in such a manner that it would interfere with or handicap him **or her** in the handling of firearms [is provided by the applicant].

[13:54-1.8 Limitations in the interest of public safety or welfare

A permit or identification card shall not be issued to any person where issuance would not be in the interest of the public health, safety, and welfare.

13:54-1.9 A non-resident application

Any person who is not a resident of this State shall make application at a state police station.

13:54-1.10 Issuance of identification card

(a) The chief of police or the Superintendent of State Police, as the case may be, shall cause the applicant to be investigated and either approve or disapprove the application upon completion of the investigation.

(b) If the application is approved, the chief of police or the superintendent shall issue a firearms purchaser identification card.]

13:54-[1.11]**1.7** [Duration] **Validity of firearms identification card and permit to purchase a handgun**

[The] **(a) A firearms** purhaser identification card shall be valid [permanently or] until such time as the holder becomes subject to any of the disabilities set forth [in] **by law and** this subchapter **pertaining to an applicant's eligibility. Upon becoming subject to any of the disabilities set forth in this subchapter, the card shall be void and shall be returned to the Superintendent within five days.**

(b) A permit to purchase a handgun shall be valid for a period of 90 days from date of issuance and may be renewed by the issuing authority for an additional 90 days, for a total of 180 consecutive days.

[13:54-1.12 Return of identification card

Upon becoming subject to any of the disabilities set forth in this subchapter, the card shall be void and shall be returned to the Superintendent within five days.]

13:54-1.8 Written certification; delivery of permit to purchase

(a) Any person receiving, purchasing or otherwise acquiring a firearm by exhibiting a firearms purchaser identification card shall sign a written certification on form NJSP 634 which shall indicate that he or she presently complies with all of the requirements for obtaining an identification card and does not suffer from any of the disabilities set forth in this subchapter. The certification shall contain his or her name, address and firearms purchaser identification number. If the seller is not a licensed dealer, the certification may be filed with the chief of police of the municipality in which he resides or, in all other cases, with the Superintendent. The seller shall retain the certification if he is a licensed dealer.

(b) A permit to purchase a handgun shall be issued to the applicant in quadruplicate. Prior to receiving a handgun from the seller, the purchaser must deliver all copies of the permit to the seller, who shall complete all of the information on the required form. Within five days of the sale the seller shall forward the original copy to the Superintendent and the second copy to the chief of police of the municipality where the purchaser resides; provided that in a municipality having no chief of police, the second copy shall be forwarded to the Superintendent. The third copy shall be returned to the purchaser, and the fourth shall be kept by the seller as a permanent record.

13:4-1.9 Number of firearms that may be purchased

(a) Only one handgun may be purchased or delivered on each permit to purchase.

(b) There shall be no restriction on the number of rifles, shotguns and antique cannons that may be purchased or acquired, provided the receiver possesses a valid firearms purchaser identification card and otherwise complies with all of the provisions of this subchapter.

13:54-[1.13]**1.10** Revocation **of a firearms purchaser identification card**

(a) A firearms purchaser identification card may be revoked by [the] **a** judge of the Superior Court of the county wherein the card was issued, **after a hearing, and upon a finding that the holder no longer qualifies for the issuance of such a card.**

(b) The county prosecutor, any law enforcement officer or any citizen may request a hearing for revocation by applying to the Superior Court [having jurisdiction] **of the county in which the card was issued.**

(c) Any person having knowledge that a person is subject to any of the disabilities set forth in this subchapter to obtain or possess a permit to purchase a handgun or a firearms purchaser identification card may notify the chief of police, the Superintendent or any other law enforcement officer who may take such action as may be deemed appropriate.

13:54-[1.14]**1.11** Duplicate firearms purchaser identification card

(a) Persons shall apply for a duplicate firearms purchaser identification card to replace a lost, stolen or mutilated card, or **in the case of** a change of residence by the holder, within 30 days of such loss, theft, mutilation, or change of residence.

(b) The applicant [will] **shall** complete an application for a duplicate firearms purchaser identification card designated as form STS-3 and a consent for mental health records search designated as form STS-1 and present [them] **same** to the **chief of** police [department where] **in the municipality where** the applicant resides or **to** the [State Police] **Superintendent** in all other cases.

(c) It shall be the responsibility of the chief of police of the municipality wherein the applicant currently resides or the Superintendent [of State Police] in all other cases, to [make] **conduct** a criminal history records check [with the State Bureau of Identification] **and** to determine if the applicant is subject to any of the disabilities as provided by law **and this subchapter** and to issue the duplicate card, should the applicant qualify. The applicant shall pay the appropriate fee for [the] **a** Criminal History Record Check as established by N.J.A.C. 13:59 in accordance with N.J.S.A. 53:1-20.5 et seq. (P.L. 1985, c.69).

[13:54-1.15 Application for permit to purchase a handgun

(a) Every person applying for a permit to purchase a handgun shall furnish such information and particulars as set forth in the application form designated STS-33A attached as amended and supplemented. Forms can be obtained from police departments and state police stations, and licensed retail firearms dealers.

(b) The completed application together with two sets of the applicant's fingerprints and fingerprint fees as established by N.J.A.C. 13:59 in accordance with N.J.S.A. 53:1-20.5 et seq. (L. 1959 c.69), a consent for mental health records search form designated STS-1 and a nonrefundable fee of $2.00 for each permit requested, shall be submitted to the chief of police on an organized full time police department in the municipality in which the applicant resides or the State Police in all other cases.

(c) Applicants are not limited to one permit per application.

(d) The number of permits requested and each permit number shall be entered in the spaces provided on the application.

13:54-1.16 Issuance of a permit

(a) The chief of police or the superintendent, as the case may be, shall cause the applicant to be investigated to determine whether the application should be approved or disapproved.

(b) If the application is approved, the chief of police or the superintendent shall issue a permit to purchase a handgun.

13:54-1.17 Duration

(a) A permit to purchase a handgun shall be valid for a period of 30 days from the date of issuance and may be renewed by the issuing authority for an additional 90 days for a total of 180 consecutive days.

(b) Only one handgun can be purchased with each permit.]

13:54-[1.18]**1.12** Appeal

(a) Any person denied a firearms purchaser identification card or a permit to purchase a handgun may request a hearing in the Superior Court of the county in which he **or she** resides or in the Superior Court of the county in which his **or her** application for a firearms purchaser identification card was [filed] **denied** if he **or she** is a nonresident.

(b) Any person denied a firearm purchaser identification card or a permit to purchase a handgun shall be notified in writing by the issuing authority of the reasons for the denial.

(c) The request for a hearing shall be made in writing within 30 days of the denial, **and such request shall also be served upon the chief of police or the Superintendent.**

13:54-1.13 Firearms passing to heirs or legatees

(a) Notwithstanding the provisions of this subchapter concerning the acquisition of a firearm, a permit to purchase a handgun or a firearms purchaser identification card shall not be required of an heir or legatee for the passing of a firearm, upon the death of its owner. A person so acquiring ownership may retain the firearm if he or she meets the requirements of N.J.A.C. 13:54-1.5 and 1.6.

(b) If an heir or legatee is not qualified to acquire a firearm, he or she may retain ownership of the firearm for the purpose of sale for a period of 180 days, which period may be extended by the chief of police or the Superintendent. During such period the firearm must be placed in the custody of the chief of police or Superintendent.

(c) In the case of assault firearms or machine guns disposition shall be in accordance with N.J.A.C. 13:54-5.

13:54-1.14 Limitation on fees

No fees, other than those established by this chapter or law, shall be assessed or charged to any person by any governmental entity of this State for the processing of applications, or for the proper investigation of applicants for licenses, permits, cards and registrations in accordance with the provisions of this chapter.

13:54-1.15 Confidentiality of background investigation

Any background investigation conducted by the chief of police, the Superintendent or county prosecutor of any applicant for a license, permit, card or registration in accordance with the requirements of this chapter, shall not be disclosed to any person, not authorized by law or this chapter to have access to such investigation, including the applicant, except upon order of a court of competent jurisdiction.

SUBCHAPTER 2. HANDGUNS

13:54-2.1 Permit to carry a handgun

This subchapter prescribes requirements **and procedures for the** issuance, **renewal and revocation** of [a] permits to carry [a] handguns [and the general rules for holders of such permits].

13:54-2.2 Permit required

No person, [not otherwise permitted by law] **except as provided in N.J.S.A. 2C:39-6,** shall carry, hold or possess a handgun [in any automobile or other vehicle, or on or about his clothes or person, or otherwise in his possession or under his control in any public place or public area] without first having obtained a permit to carry the same in accordance with the provisions of this chapter.

13:54-2.3 Criteria for the issuance of a permit to carry a handgun

(a) No application for a permit to carry a handgun shall be approved by a police chief of a municipality, the Superintendent or the Superior Court, unless the applicant:

1. Is a person of good character who is not subject to any of the disabilities which would prevent him or her from obtaining a permit to purchase a handgun or a firearms purchaser identification card as provided in this chapter;

2. Has demonstrated that at the time of the application for the permit he or she is thoroughly familiar with the safe handling and use of handguns; and

3. Has demonstrated a justifiable need to carry a handgun.

13:54-[2.3]**2.4** Application for a permit to carry a handgun

(a) Every person applying for a permit to carry a handgun shall furnish such information and particulars as set forth in the application form designated SP 642. **The application shall be signed by the applicant under oath and shall be endorsed by three reputable persons who have known the applicant for at least three years preceding the date of application, and who shall also certify thereon that the applicant is a person of good moral character and behavior.** Applications can be obtained at police departments and State Police stations.

(b) Each applicant shall demonstrate a thorough familiarity with the safe handling and use of handguns by indicating in the space provided therefor on the application form, and on any sworn attachments thereto, any relevant information. Thorough familiarity with the safe handling and use of handguns may be evidenced by:

1. Completion of a firearms training course substantially equivalent to the firearms training approved by the Police Training Commission as described by N.J.S.A. 2C:39-6j;

2. Submission of an applicant's most recent handgun qualification scores utilizing the handgun(s) he or she intends to carry as evidenced by test firings administered by a certified firearms instructor of a police academy, a certified firearms instructor of the National Rifle Association, or any other recognized certified firearms instructor;

3. Completion of a course or test in the safe handling of a handgun administered by a certified firearms instructor of a police academy, a certified firearms instructor of the National Rifle Association, or any other recognized certified firearms instructor; or

4. Passage of any test in this State's laws governing the use of force administered by a certified instructor of a police academy, a certified instructor of the National Rifle Association, or any other recognized certified instructor.

(c) Where available, the information in (b) above shall be accompanied and validated by certifications of the appropriate instructor(s). In the absence of, or in addition to (b)1 through 4 above, the applicant shall provide any other available and accurate information which may evidence his or her proficiency in the safe handling and use of firearms, including most recent handgun qualification scores and whether he or she utilized the handgun(s) he or she intends to carry, courses attended in the safe handling and use of firearms, and extent of knowledge, however gained, of this State's laws pertaining to the use of force in the defense of person and property.

(d) Each application form shall also be accompanied by a written certification of need which shall be under oath and which:

1. In the case of a private citizen shall specify in detail the urgent necessity for self-protection, as evidenced by specific threats or previous attacks which demonstrate a special danger to the applicant's life that cannot be avoided by means other than by issuance of a permit to carry a handgun. Where possible the applicant shall corroborate the existence of any specific threats or previous attacks by reference to reports of such incidents to the appropriate law enforcement agencies; or

2. In the case of employees of private detective agencies, armored car companies and private security companies, that:

i. In the course of performing statutorily authorized duties, the applicant is subject to a substantial threat of serious bodily harm; and

ii. That carrying a handgun by the applicant is necessary to reduce the threat of unjustifiable serious bodily harm to any person.

[(b)](**e**) The completed application together with two sets of the applicant's fingerprints and [fingerprint] fees as established by N.J.A.C. 13:59 in accordance with N.J.S.A. 53:1-20.5 et seq. (P.L. 1985, c.69), four photographs (1 1/2 x 1 1/2 square), a consent for mental health records search form designated STS-1, and a permit fee of $20.00 payable to the County Clerk where the permit is to be issued shall be submitted to the chief of police of the municipality in which the applicant resides, or the [State Police] **Superintendent:**

1. If there is no full time police department in the municipality where the applicant resides; or

2. [if]**If** the applicant is a non-resident **of this State** or **if the applicant is** an employee of an armored car company [and in all other cases].

[13:54-2.4 Proof of familiarity and need required

(a) All persons issued a permit to carry shall demonstrate that he is thoroughly familiar with the safe handling and use of handguns and that he has a justifiable need to carry such handgun.

(b) In addition to the requirements of N.J.S. 2C:58-4 any application to carry a handgun by an employee of an armored car company shall be accompanied by a letter from the chief executive officer of the armored car company verifying employment of the applicant; endorsing approval of the application; and agreeing to notify the superintendent within five days of the termination of the employee of any person to whom a permit is issued and to obtain from the employee the permit which shall thereupon be surrendered to the superintendent.

13:54-2.5 Limitations on issuance

A permit to carry a handgun shall not be issued to any person who is subject to any of the disabilities which would prevent his obtaining a permit to purchase a handgun or a firearms purchaser identification card as provided in this chapter.]

13:54-[2.6]**2.5** Approval of application

The chief of police or the Superintendent, as the case may be, shall cause the applicant to be thoroughly investigated. **The investigation shall include, but not be limited to, ascertaining that the applicant satisfies all of the requirements contained in this chapter for obtaining a permit to purchase a handgun or a firearms purchaser identification card, that the applicant has or has not demonstrated a thorough familiarity with the safe handling and use of handguns as evidenced by the application and accompanying materials, and that the applicant has or has not factually demonstrated a justifiable need to carry a handgun.** [and either] **The chief of police or the Superintendent shall** approve or disapprove the application after completion of the investigation. If the application is approved, it shall be forwarded to the county clerk for presentation to a judge of the Superior Court **of the county** where

the applicant resides, or if a nonresident **or an employee of an armored car company,** to [the] **a** county where he **or she** intends to carry the handgun.

13:54-2.6 Application of employees of armored car companies

Any application to carry a handgun by an employee of an armored car company shall be accompanied by a letter from the chief executive officer of the armored car company verifying employment of the applicant, endorsing approval of the application and agreeing to notify the Superintendent within five days of the termination of an employee to whom any permit is issued, and agreeing to obtain from that employee the permit, which shall be immediately surrendered to the Superintendent.

13:54-2.7 Issuance of a permit to carry a handgun

(a) Upon being satisfied of the sufficiency of the application and the fulfillment of the provisions of Chapter 58, Laws of 1979, the judge shall issue a permit.

(b) The court may, at its discretion, issue a limited type permit which would restrict the applicant as to the types of handguns he **or she** may carry and where and for what purposes such handguns may be carried.

(c) The Superintendent shall be provided with copies of all permits to carry handguns issued or re-issued by the Superior Court.

13:54-2.8 Appeal

(a) Any person making application for a permit to carry a handgun who is denied approval by the chief of police or the [superintendent], **Superintendent** may request a hearing in the Superior Court of the county [wherein the application was made] **in which he or she resides, or a county in which he or she intends to carry a handgun, in the case of a non-resident or an employee of an armored car company.** Such request shall be made in writing within 30 days of denial [of approval] of the application. **Copies of the request shall be served on the Superintendent, the county prosecutor and the chief of police of the municipality where the applicant resides, if he or she is a resident of this State.**

(b) If the application is denied by the judge of the Superior Court the appeal shall be made in accordance with law.

13:54-2.9 Duration **and renewal**

(a) All permits to carry a handgun shall expire two years from the date of issuance or, in the case of an employee [for] **of** an armored car company, upon termination of his **or her** employment by the company occurring prior thereto, whichever is earlier in time.

(b) Permits [may] **must** be renewed in the same manner and subject to the [same provisions] **identical procedures** by which the original permit was obtained. **The chief of police, the Superintendent and the Superior Court shall process a renewal for a permit to carry a handgun utilizing the same criteria established by this chapter for the issuance of an initial permit. This includes, but is not limited to, a renewed showing by the applicant of need, a renewed demonstration of thorough familarity with the safe handling and use of handguns, as may be evidenced by recitation of all of the information requested on the initial application, including, but not limited to, the applicant's most recent qualification scores in the firing of a handgun.**

13:54-2.10 Revocation of permits

(a) Any permit issued pursuant to this chapter shall be void at such time as the holder no longer meets the requirements of N.J.A.C. 13:54-1.5 and 1.6, and the holder of such a void permit shall immediately surrender it to the superintendent who shall give notice to the licensing authority.

(b) Any permit may be revoked by the Superior Court, after hearing, upon notice to the holder of the permit, if the Court finds that the holder no longer satisfies the requirements of N.J.A.C. 13:54-2.3.

(c) The county prosecutor of any county, the chief police officer of any municipality, the Superintendent or any citizen may apply to the Court at any time for revocation of any permit issued pursuant to this chapter.

(d) Any person having knowledge that a person is subject to any of the disabilities set forth in this chapter and no longer qualifies to carry a handgun may so notify the chief of police, the Superintendent or any other law enforcement officer who may take such action as may be deemed appropriate.

[13:54-2.10 Return of permit

Upon becoming subject to any disability set forth in this chapter, or should the applicant need requirement no longer exist, the permit to carry a handgun shall be void and shall be returned to the superintendent within five days.]

SUBCHAPTER 3. RETAIL DEALERS

13:54-3.1 Licensing of retail dealers; general

This subchapter prescribes requirements for issuance of [a] licenses **to retail dealers** for the retail sale of firearms, retail sale of ammunition, gunsmithing and the [general rules for holders of such licenses] **requirements for issuance of licenses to employees of such dealers.**

13:54-3.2 Retail license required

No retail dealer **of firearms nor any employee of a retail dealer** shall sell or expose for sale or possess with intent to sell, any firearm, parts of firearms, ammunition, or engage in gunsmithing, unless [he] **such person** has first obtained a retail dealers license [as issued under] **issued pursuant to** this chapter.

13:54-3.3 Application for license

(a) Every person, partnership or corporation applying for a **retail dealer** license shall furnish such information and particulars as [set forth in] **required by** the application form designated SP-649, and in the case of partnerships and corporations, [also] the application form designated SP-649A **shall also be completed.** Such forms may be obtained from the Firearms Investigation Unit, Division of State Police, Box 7068, West Trenton, New Jersey 08625. **All corporations applying for such a license, in addition to the application, shall submit a valid copy of the most recent certificate of incorporation, or such other documentation establishing the corporation as a legal entity.**

(b) The completed application, together with two sets of the applicant's fingerprints, a consent for mental health records search form designated STS-1, and a nonrefundable fee of $50.00 **payable to the Superintendent** [for three years], in addition to the [fingerprint] fees as established by N.J.A.C. 13:59 in accordance with N.J.S.A. 53:1-20.5 et seq. **(P.L. 1985,** c.69), shall be submitted to the [superintendent] **Superintendent.**

(c) Any person who possesses an actual or equitable controlling interest in an applicant corporation shall complete the necessary application form and be fingerprinted.

(d) No retail dealer, shall permit any employee or other person to engage in the purchase, sale or offering for sale of any firearms, ammunition or engage in gunsmithing, unless such employee or person has been licensed by the Superintendent. Every employee applying for such a license must submit a completed application form designated NJSP 641, accompanied with two sets of fingerprints and a consent for mental health records search form STS-1. An employee who possesses a firearms purchaser identification card need not be fingerprinted, provided that the number of the firearms purchaser identification card is included in block number 29 of the application, and provided that the employee continues to be eligible to retain such card in acccordance with the provisions of this chapter. A nonrefundable fee of $5.00 shall be paid by the retail dealer to the Superintendent for each employee in addition to the fingerprint fees as established by N.J.A.C. 13:59 in accordance with N.J.S.A. 53:1-20.5 et seq. (P.L. 1985 c.69).

13:54-3.4 Standards and qualifications

(a) Every individual proprietor, every member of a partnership, and every officer and director of a corporation, making application for a retail dealer license **shall be over the age of 21 in the case of a dealer, and over the age of 18 in the case of an employee of such dealer, and** shall possess the qualifications required to obtain a **permit to purchase a handgun and a** firearms purchaser identification card as provided in this chapter.

[(b) In the conduct of a retail business, no retail dealer, as provided in this Subchapter, shall permit any employee or other person to engage in the purchase for sale or offering for sale of firearms, ammunition or engage in gunsmithing, unless such employee or person submits a completed application form NJSP 641, two sets of fingerprints, consent for mental health records search form STS-1, and would qualify to posses a firearms purchaser identification card as provided in this Chapter and has been issued an employee license to sell firearms by the Superintendent of State Police. An employee who possesses a firearms purchaser identification card which was issued within two years previous to the employee application need not be fingerprinted, provided he includes the number of his firearms purchaser identification card in block #29 of the application. A nonrefundable fee of $5.00 shall be paid by the Retail Dealer to the Superintendent for each employee in addition to the fingerprint fees as established by N.J.A.C. 13:59 in accordance with N.J.S.A. 53:1-20.5 et seq. (L. 1985, c.69).]

[(c)](b) An employee who is licensed **by the Superintendent** to engage in the purchase or sale of firearms, ammunition or **to** engage in gunsmithing is [permanently licensed until such time as he terminates his employment] **licensed for so long as the employee remains in the employ of the retail dealer** or becomes disabled as provided in this chapter.

[(d)](c) Should an employee be transferred from his **or her** licensed location to another location, [within] **by** the same **licensed** employer, that employee shall apply for a transfer of his **or her** employee license by submitting application form NJSP-641, consent for mental health records search form STS-1, and **shall** surrender his **or her** current employee license to the Superintendent [of State Police].

[(e)](d) [The] A retail dealer shall, within five days, return any employees' license [for] **of** an employee who has been terminated, transferred, or has become disqualified as provided in this chapter, to the Superintendent [of State Police].

[(f)](e) No retail dealer shall conduct a retail business in a mobile or temporary facility([mobile] **"Mobile"** meaning **a facility** easily moved from one location to another[; temporary]. **"Temporary"** meaning a facility not having **indicia of** permanency [to it]). **A** [Temporary] **temporary facility** includes, but is not limited to, **places for** garage sales, flea markets, gun shows and exhibits.

[(g)](f) No retail dealer shall conduct a retail firearms business unless local zoning requirements [are] **have been** satisfied for the operation of such a business[.], **and the Superintendent has been notified in writing that such requirements have been satisfied. The Superintendent may, in his or her discretion, decline to process or investigate an application for a retail dealer license until such time as the applicant demonstrates compliance with local zoning requirements.**

13:54-3.5 Exemptions for physical handicap

A physical handicap shall not disqualify an applicant **for a license** unless such handicap would **make it unsafe for the applicant to handle firearms or would** interfere with the activities of the applicant or employee to the extent that it would endanger the public health, safety or welfare.

13:54-3.6 Exceptions for corporations

(a) A public corporation whose stock is listed on a major stock exchange at the time of filing of an application for a retail dealer license shall not be required to furnish the personal data as set forth in the application form for officers or directors of such corporation or for the stockholders of such corporation unless such officers, directors or stockholders directly engage in the sale or purchase of firearms for the corporation.

(b) A certification shall be filed by the member or members holding an actual or equitable controlling interest in each corporation or partnership certifying that such member(s) shall take the appropriate action to inform all employees directly engaged in the sale, purchase or manufacture of firearms or ammunition of the pertinent laws and regulations governing the sale, purchase and manufacture of such firearms or ammunition.

13:54-3.7 Licensing **of retail dealers and employees**

(a) The Superintendent shall cause the applicant **for a retail dealer license** to be investigated **for purposes of providing the judge of the Superior Court with such information as the Superintendent deems appropriate with respect to the applicant's qualifications and disabilities.**

(b) [The] **Upon completion of the investigation, the** application shall then be forwarded by the [superintendent] **Superintendent, accompanied by such other documentation as he or she deems appropriate,** to a judge of the Superior Court in the County wherein the retail dealer [has his place of business] **intends to conduct business.**

(c) The judge shall issue a license to an applicant:

1. [who] **Who** conforms to the standards and qualifications prescribed by the Superintendent[.];

2. Who may engage in business as a retail dealer without any danger to the public safety, health or welfare; and

3. Who is not subject to any of the disabilities which would prevent him from obtaining a permit to purchase a handgun or a firearms purchaser identification card as provided by this chapter.

(d) The Superintendent shall maintain a copy of every license issued by the Superior Court to a retail dealer.

[(d) A retail dealer license shall not be issued to any person who is subject to any of the disabilities which would prevent obtaining a permit to purchase a handgun or a firearms purchaser identification card as provided by the chapter.]

(e) An employee of a retail dealer shall be licensed by the Superintendent provided that such person:

1. Qualifies for the issuance of a permit to purchase a handgun or a firearms purchaser identification card as provided by this chapter; and

2. Would not pose a danger to the public health, safety or welfare.

13:54-3.8 Duration **of retail dealer license**

A retail dealer license shall be effective for three years from the date of issuance. **If a retail dealer license is renewed, it shall be effective for three years from the date of the expiration of the initial or most recent license.**

13:54-3.9 Conditions of issuance of license; revocation

(a) **All licenses issued pursuant to this subchapter shall be subject to the following conditions, the breach of which may result in license revocation by the court, after notice, upon the application of the Superintendent.**

1. The business shall be carried on only in the building or buildings designated in the license, provided that repairs may be made by the dealer or his employees outside of such premises.

2. The license or a copy certified by the issuing authority shall be displayed at all times in a conspicuous place on the business premises where it can be easily read.

3. No firearm, ammunition or imitation thereof shall be placed in any window or in any other part of the premises where it can be readily seen from the outside.

4. No rifle or shotgun, except antique rifles or shotguns, shall be delivered to any person, other than a licensed or registered retail or wholesale dealer or manufacturer, or a law enforcement agency as provided in this chapter, unless such person possesses and exhibits a valid firearms purchaser identification card and furnishes to the seller, on form NJSP 634, a certification signed by him setting forth his name, permanent address, firearms purchaser identification card number and such other information as the Superintendent may require. The certification shall be retained by the dealer and shall be made available for inspection by any law enforcement officer at any reasonable time.

5. No handgun shall be delivered to any person, other than a licensed or registered retail or wholesale dealer or manufacturer, or a law enforcement agency as provided by this chapter, unless:

i. Such person possesses and exhibits a valid permit to purchase a handgun and at least seven days have elapsed since the date of application for the permit;

ii. The person is personally known to the seller or presents evidence of his identity; and

iii. The handgun is unloaded and securely wrapped.

6. The dealer shall keep a true record of every firearm sold, given or otherwise delivered or disposed of, in accordance with the provisions of this chapter.

7. The license holder no longer qualifies for the issuance of a permit to purchase a handgun or firearms purchaser identification card or poses a danger to the public health, safety or welfare.

8. The dealer shall comply with any other conditions regulating retail dealers as provided in this chapter.

9. Any person having knowledge that a person licensed pursuant to this chapter has violated any of the foregoing conditions or is otherwise unqualified to hold a license pursuant to the requirements of this chapter, may notify any law enforcement officer, who shall in turn notify the Superintendent, who may take such action as may be deemed appropriate.

13:54-[3.9]**3.10** Renewal **of retail dealers and employees licenses**

(a) An applicant for renewal of a retail dealer['s] license shall follow **all of** the same procedures [as] required for the [issue] **issuance** of [the] **an** initial license, **including completion of form NJSP 641 and submission of a consent for mental health records form STS 1.** Such applications shall be accompanied by a nonrefundable fee of $50.00 payable to the Superintendent [of State Police.] **and the fee established by N.J.A.C. 13:59 in accordance with N.J.S.A. 53:1-20.5 et seq. (P.L. 1985, c. 69).**

(b) In addition to the licensee, all licensed employees who engage in the purchase or sale of firearms, ammunition or engage in gunsmithing, [are required to] **must also** submit renewal applications to continue transacting business [for] **on behalf of** the licensee, **including completion of form NJSP 641 and submission of a consent for mental health records form STS 1.** [The fee for a criminal history record check shall be paid for each renewal employee application as] **Such applications shall be accompanied by a nonrefundable fee of $5.00 payable to the Superintendent and the fee** established by N.J.A.C. 13:59 in accordance with N.J.S.A. 53:1-[20.6,]**20.5** et seq. (P.L. 1985, c. 69).

(c) Retail dealers and employees of dealers applying for license renewal, at the time of such renewal, shall:

1. Continue to be qualified for the issuance of a permit to purchase a handgun or a firearms purchaser identification card as provided by this chapter;

2. Meet the standards and qualifications of the Superintendent; and

3. Not pose a danger to the public health, safety or welfare.

[13:54-3.10 Revocation

(a) Any retail license may be revoked for breach of any of the conditions under which it was granted or provided for in this Chapter, after a hearing by the issuing court.

(b) Any law enforcement officer may make application for such revocation to the Superior Court having jurisdiction.

(c) Any employee license may be revoked for breach of any conditions under which it was granted, or provided for in this Chapter, by the Superintendent of State Police.]

13:54-3.11 [Location of business;] [security] **Security** required

[(a) The business shall be carried on only in the building or buildings designated in the license.] [(b)] Each retail dealer shall install a system for the prevention and detection of the theft of firearms or ammunition from the business premises **in accordance with N.J.A.C. 13:54-6.**

[(c) The proposed security system shall be subject to approval by the Superintendent of State Police, and plans for such proposed security system shall be submitted to the Superintendent prior to the installation thereof.

(d) The Superintendent shall prepare and furnish dealers a list of approved security systems.

13:54-3.12 Window display prohibited

No firearm, ammunition, or imitation thereof shall be placed in any window or in any part of the premises where it can readily be seen from the outside.]

13:54-[3.13]**3.12** Requirements for sale of rifle, [or] shotgun, **antique cannon** or receiver

Every purchaser, **other than a licensed or registered retail or wholesale dealer or manufacturer, or law enforcement agency as provided by this chapter,** must present a **valid** firearms purchaser identification card to the dealer who is required to confirm the identity of the purchaser. The purchaser must also sign a certificate of eligibility **(NJSP 634)**, filled out by the dealer or his licensed employee, for each rifle, [or] shotgun, **antique cannon** or receiver purchased. **The certificate shall indicate that the purchaser presently complies with all of the requirements for obtaining an identification card, and shall set forth the purchaser's name, address and identification card number.** The certificate shall be retained by the dealer.

13:54-[3.14]**3.13** Requirements for sale of a handgun or frame

(a) Every purchaser, **other than a licensed or registered retail or wholesale dealer or manufacturer, or law enforcement agency as provided by this chapter,** must present a valid permit to purchase a handgun to the dealer who is required to confirm the identity of the purchaser. A permit is valid for the purchase of one handgun or receiver. The dealer is also required to [execute] **adhere to** the following procedures:

1. Complete **and keep** a form of register, which is part of the permit to purchase a handgun[,] (designated SP-671) for each handgun sold and obtain **the information sought by the form of register and obtain** the signature and address of the purchaser in the purchaser's own handwriting;

2. Complete **in a legible manner** the permit to purchase a handgun in the space provided on the form;

3. Deliver the handgun unloaded and securely wrapped;

4. Forward the permit to purchase a handgun and form of register copies to the respective individuals, as noted on the [left center of the] forms, within five days of the date of sale. If the issuing authority is the State Police, both the original and the second copy of the permit to purchase and the form of register are to be forwarded to the State Police[.]; **and**

5. Retain the form of register and make it available for inspection by any law enforcement officer at reasonable hours.

13:54-[3.15]**3.14** Permanent record [or] **of** receipt and disposition **of firearms and ammunition**

(a) Every retail dealer of firearms or gunsmith shall maintain a permanent record of each firearm acquisition and disposition, including firearm frames and receivers. The record shall be maintained in a bound form and shall be kept at the location where the business is being conducted. The purchase or other acquisition of a firearm by the licensed dealer must be recorded no later than at the close of the next business day following the date of such purchase or other acquisition. The record shall show the date each firearm was purchased or otherwise acquired, the type, manufacturer, importer, caliber or gauge, model, name and address of the person from whom received, and the serial number of the firearm. The sale or other disposition of a firearm must be recorded by the licensed dealer not later than the close of the next business day following the date of such sale or disposition. The record shall show the date of sale or other disposition of each firearm, [and] the name and address of the person to whom the firearm was transferred, **and the type, manufacturer, importer, caliber or gauge, model and the serial number of the firearm.** The information prescribed for the record required by this subchapter shall be in addition to the [maintaining] **maintenance** of the form of register [(]SP 671[)] and the certificate of eligibility NJSP-634.

(b) Every retail dealer of ammunition shall maintain a permanent record of ammunition acquisition and disposition. The record of purchase or acquisition shall consist of invoices or other commercial records which shall be filed in an orderly manner separate from other commercial records [he maintains] **maintained**. Such record shall show the name of the manufacturer, the type, caliber or gauge, quantity of the ammunition acquired in the transaction, the date of each acquisition and from whom received. The record of sale or disposition shall be maintained in a bound form and shall contain

the date of the transaction, name of manufacturer, caliber or gauge, quantity of ammunition sold, name, address and date of birth of purchaser, and identification used to establish the identity of purchaser. **The dealer shall confirm the age of the purchaser of rifle and shotgun ammunition as 18, and handgun ammunition as 21.** No record need be maintained for the sale or disposition of shotgun or rifle ammunition. However, sales or other dispositions of ammunition **intended for use in any other firearm and** which [are] **may be** interchangeable between rifles and handguns, as well as hollow-nosed or dum-dum ammunition, must be recorded. The records shall be maintained in chronological order by date of acquisition and disposition and shall be kept at the location the business is being conducted.

(c) The firearms and ammunition acquisition and disposition record as prescribed under this section need not be required, provid[ing]**ed** the dealer maintains an updated [federal] **Federal** firearms and ammunition record on firearms or ammunition purchased or acquired and sold as prescribed in Title 26, Internal Revenue, Chapter 1 "Commerce in Firearms and Ammunition[.]", **and to the extent that the information required by this section is included on such records. If not included, then the Federal records are to be supplemented so as to include all information required by this section.**

(d) Body armor penetrating bullets shall only be sold to a [federally] **Federally** licensed collector of firearms and ammunition **who possesses a valid Collector of Curios and Relics License as defined in Title 18 U.S.C. sec. 921(a)(13) or to**[, military,] **the Armed Forces of the United States or the National Guard,** law enforcement agencies and licensed firearms dealers.

1. Collectors will be limited to **the purchase or acquisition of not more than** three rounds of each [different] **distinctive variation of** cartridges. **Distinctive variation includes a different head stamp, composition, design or color.**

2. The seller shall record all sales of such ammunition including the name of the purchaser, the agency represented, the authorizing chief of police or **other authorized law enforcement officer, or the** highest ranking **authorized military** officer, the date, time and amount of ammunition.

3. All of the above information shall be forwarded to the Superintendent of the State Police within [24] **48** hours of the sale or disposition.

13:54-3.15 Sale of firearms to the military and to law enforcement officers

Retail dealers licensed by this chapter may sell firearms to the Armed Forces of the United States, the National Guard and to law enforcement agencies. Retail dealers must maintain records of sale or disposition of firearms to any of the aforementioned entities or agencies. The records shall include the name of the entity or agency, and a written authorization of purchase on the official letterhead of the Superintendent, chief of police or the law enforcement officer or military officer officially authorized to make such purchases on behalf of the agency or governmental entity. The records shall specify the type, manufacturer, importer, caliber or gauge, model and serial number of each firearm purchased. The records shall also indicate the name and rank of the law enforcement or military officer authorized to make the purchase, including the date and time of the sale or disposition. The dealers shall maintain such records for inspection by law enforcement officers at reasonable hours. Sales of assault firearms and machine guns shall be in accordance with N.J.A.C. 13:54-5.1 and copies of records of such sales shall be forwarded to the Superintendent within 48 hours of the sale.

13:54-3.16 Records available to Division of State Police

Records are to be retained by the dealer and shall, for **administrative and** law enforcement purposes, be made available for inspection during reasonable hours to any member of the Division of State Police.

13:54-3.17 Records to Superintendent

Upon discontinuance, [or] termination, **expiration or revocation** of **a** retail dealer license [all firearm acquisition and disposition records and ammunition disposition records maintained as provided for in this Chapter shall, within five days, be forwarded to the Superintendent of State Police. In addition], the retail dealer license and any employee licenses shall [also] be forwarded **to the Superintendent within five business days.**

13:54-3.18 Appeal

Any person making application for a retail dealer license, who is denied approval by a Superior Court judge of the county wherein the application was made, may file an appeal in accordance with law.

SUBCHAPTER 4. WHOLESALE DEALERS [AND], MANUFACTURERS AND WHOLESALE DEALERS AGENTS AND EMPLOYEES

13:54-4.1 General provisions

This subchapter prescribes standards and qualifications for registration of wholesale dealers and[/or] manufacturers of firearms and the [general] rules for holders of registration certificates to conduct [such] business. **This subchapter also provides for the licensing of wholesale dealers' agents and employees.**

13:54-4.2 Registration required

No person shall manufacture or sell at wholesale any firearm or part of a firearm unless he has **been** registered **by the Superintendent** under the provisions of this chapter.

13:54-4.3 Application for a certificate of registration

(a) Every person, partnership or corporation applying for a certificate of registration shall furnish such information and particulars [as set forth in] **required by** the applications forms designated STS 280 and 280A. The forms may be obtained from the Firearms Investigation Unit, Division of State Police, Box 7068, West Trenton, New Jersey 08625. **All corporations applying for registration shall, in addition to the applications, submit a valid copy of the most recent certificate of incorporation, or such other documentation establishing the corporation as a legal entity.**

(b) Any person who possesses an actual or equitable controlling interest in the applicant shall complete the necessary application form and **shall** be fingerprinted.

(c) The completed application together with two sets of the applicant's fingerprints, a consent for mental health records search form STS-1, and a nonrefundable fee of $150.00 **payable to the Superintendent** [for three years], in addition to the [fingerprint] fees as established by N.J.A.C. 13:59 in accordance with N.J.S.A. 53:1-[20.6]**20.5** et seq. (**P.L.** 1985, c. 69), shall be submitted to the Superintendent [of State Police].

13:54-4.4 Standards and qualifications

(a) Every individual proprietor, every member of a partnership and every officer and director of a corporation, registered as a wholesale dealer and/or manufacturer of firearms shall **be over the age of 21 and shall** possess the qualifications required to obtain **a permit to purchase a handgun or** a firearms purchaser identification card as provided in this chapter.

(b) [In the conduct of a business to wholesale or manufacture firearms, no] **No** wholesale dealer or firearms manufacturer registered as provided in this subchapter shall permit any **wholesale dealer's agents,** employees or other persons to engage in the purchase or sale or offering for sale of firearms or finished parts of firearms, unless such **agents,** employees or persons **are over the age of 18 and are licensed by the Superintendent. Such persons must** submit[s] **to the Superintendent** completed application form NJSP 641, two sets of fingerprints[,] **and** consent for mental health records search form STS-1[,]. [and would] **The Superintendent shall issue licenses to such persons if they** qualify to **obtain a permit to purchase a handgun or to** possess a firearms purchaser identification card as provided in **this chapter, and would not pose a danger to the public health, safety or welfare** [this Chapter and has been issued an employee license to sell firearms by the Superintendent of State Police]. A nonrefundable fee of $5.00 shall be paid by the employer to the Superintendent for each **agent,** employee **or person** in addition to the [fingerprint] fees [as] established by N.J.A.C. 13:59 in accordance with N.J.S.A. 53:1-[20.6]**20.5** et seq. (**P.L.** 1985, c. 69).

(c) An employee who is licensed **by the Superintendent** to engage in the purchase, sale or manufacture[r] of firearms is [permanently] licensed until such time as he **or she** terminates his **or her** employment **with the wholesale dealer or manufacturer** or becomes disabled as provided in this chapter.

(d) Should an employee be transferred from his **or her** licensed location to another location, [within] **by** the same **registered** employer, that employee shall apply for a transfer of his **or her** employee license by submitting application form NJSP 641, consent for mental health records search form STS-1, and **shall** surrender his **or her** current employee license to the Superintendent [of State Police].

(e) [The] **A** wholesale dealer and/or manufacturer shall, within five days, return **to the Superintendent** any employee license for an employee who has been terminated, transferred or has become disqualified as provided by this chapter[, to the Superintendent of State Police].

(f) No wholesale dealer and/or manufacturer shall conduct a business in a mobile or temporary facility ([mobile] **"Mobile"** meaning **a facility** easily moved from one location to another[; temporary]. **"Temporary"** meaning not having **indicia of** permanency [to it]). A [Temporary] **temporary facility** includes, but is not limited to, **places for** garage sales, flea markets, gun shows and exhibits.

13:54-4.5 Exemptions for physical handicap

A physical handicap shall not disqualify an [application] **applicant** to be registered as a wholesale dealer or manufacturer of firearms **or an applicant to be licensed as an employee** unless such handicap would **make it unsafe for the applicant to handle firearms or would** interfere with the activities of the applicant or employee to the extent that it would endanger the public health, safety and welfare.

13:54-4.6 Exceptions for corporations

(a) A public corporation whose stock is listed on a major stock exchange at the time of the filing **of** an application for registration as a wholesale dealer and/or manufacturer of firearms, shall not be required to furnish the personal data as set forth in the application form STS-280, for officers or directors of such corporation or for the stockholders of such corporation, unless such officers, directors or stockholders directly engage in the sale or purchase of firearms for the corporation.

(b) A certification shall be filed by the member or members holding an actual or equitable controlling interest in each corporation or partnership certifying that such member(s) shall take the appropriate action to inform all employees directly engaged in the sale, purchase or manufacture of firearms or ammunition of the pertinent laws and regulations governing the sale, purchase and manufacture of such firearms or ammunition.

13:54-4.7 Certification; security required

(a) The Superintendent of State Police shall cause the applicant **for registration** to be investigated and either approve or deny the application. **The application shall be approved if the Superintendent is satisfied that the applicant can be permitted to engage in business as a wholesale dealer of firearms without any danger to the public safety, health or welfare, and if the applicant would qualify for the issuance of a permit to purchase a pistol or a firearms purchaser identification card.** If the application is approved, the [superintendent] **Superintendent** shall issue a certificate of registration to wholesale and/or manufacture firearms or parts of firearms.

(b) Each registrant as a wholesale dealer and/or manufacturer shall install a system for the prevention and detection of the theft of firearms from the business premises **in accordance with the provisions of N.J.A.C. 13:54-6.**

[(c) The proposed security system shall be subject to approval by the Superintendent of State Police and plans for such proposed system shall be submitted to the superintendent prior to installation thereof.

(d) The Superintendent shall prepare and furnish wholesale dealers and/or manufacturers a list of approved security systems.

(e) A certificate of registration for a wholesale dealer and/or manufacturer shall not be issued to any person who would not qualify for a firearms purchaser identification card as provided by this chapter.]

13:54-4.8 Duration **of certificate of registration**

[The] **A** certificate of registration shall expire three years from the date of issuance. **If a certificate of registration is renewed, it shall be effective for three years from the date of the expiration of the initial or most recent application.**

13:54-4.9 Renewal **of certificate of registration and agents' and employees' licenses**

(a) An applicant for renewal of a certificate of registration shall follow the same procedures **as** required for the **issuance of** initial registration, **including completion of forms STS 280 and 280A and a consent for mental health records form STS 1.** Renewal application(s) shall be accompanied with a nonrefundable fee of $150.00 payable to the Superintendent [of State Police] **and the fee established by N.J.A.C. 13:59 in accordance with N.J.S.A. 53:1-20.5 et seq. (P.L.1985, c.69).**

(b) In addition to the registrant, all licensed employees who engage in the purchase or sale [or] **of** firearms or parts of firearms [are required to] **must also** submit renewal applications **on form NJSP 641 and a consent for mental health records form STS 1** in order to transact business [for] **on behalf of** the registrant. [An appropriate fee for a Criminal History Record Check shall be paid by the employer for each Renewal Employee Application.] **Such applications shall be accompanied by a nonrefundable fee of $5.00 payable to the Superintendent and the fee established by N.J.A.C. 13:59 in accordance with N.J.S.A. 3:1-20.5 et seq. (P.L.1985, c.69).**

(c) Wholesale dealers and manufacturers and employees of such persons applying for renewal of a certificate of registration or license renewal, at the time of such renewal shall:

1. Continue to be qualified for the issuance of a permit to purchase a handgun or a firearms purchaser identification card;

2. Meet the standards and qualifications of the Superintendent; and

3. Not pose a danger to the public health, safety or welfare.

13:54-4.10 Revocation **of certificate of registration**

(a) Any certificate of registration may be revoked for breach of any of the conditions under which it was granted, or **any conditions** provided for in this chapter by the Superintendent [of State Police].

(b) Any employee license may be revoked for breach of any conditions under which it was granted, or **any conditions** provided for in this chapter, by the Superintendent [of State Police].

(c) Any certificate of registration or employee license shall be revoked if the holder no longer qualifies for the issuance of a permit to purchase a handgun or a firearms purchaser identification card, or if the person poses a danger to the public health, safety or welfare.

(d) Any person having knowledge that a person registered or licensed pursuant to this subchapter has violated any of the foregoing conditions or is otherwise unqualified to hold a registration or license may notify any law enforcement officer, who shall in turn notify the Superintendent, who may take such action as may be deemed appropriate.

13:54-4.11 Appeals

Any person who has been refused registration as a manufacturer or wholesale dealer[,] **or** any person whose name has been removed from registration by the [superintendent] **Superintendent or any person who has been denied an employee's license**, may appeal to the Superintendent within 30 days. If the appeal is denied by the Superintendent, [he] **such person** may appeal to the Appellate Division of the Superior Court.

13:54-4.12 Permanent record of receipt and disposition **of firearms**

(a) Each manufacturer and/or wholesale dealer of firearms shall record the type, model, caliber or gauge, and serial number of each complete firearm, frame or receiver he manufactures or otherwise acquires, and the date of manufacture or acquisition of such firearm, frame or receiver. This information shall be recorded no later than the close of the next business day following the date of manufacture or acquisition.

(b) A record of sale or other disposition of a firearm, frame or receiver must be recorded no later than the close of the next business day following the date of such sale or disposition. The record shall indicate the date of the sale or disposition of each firearm, frame or receiver, **the type, model, caliber or gauge, and serial number of each firearm,** and the name and address of the dealer to whom the firearm, frame or receiver was transferred.

(c) The firearms records as prescribed under this section need not be required providing the dealer maintains an updated federal firearms record on firearms manufactured, purchased or acquired and sold as prescribed in Title 26, Internal Revenue, Chapter I "Commerce in Firearms and Ammunition[.]" **to the extent that the information required by this section is included on such records. If not included, then the Federal records shall be supplemented so as to include all information required by this section.**

13:54-4.13 Records available to law enforcement agencies

Records are to be retained by wholesale dealers and/or manufacturers and shall, for **administrative and** law enforcement purposes, be made available for inspection during reasonable hours to any member of the Division of State Police.

13:54-4.14 Records to Superintendent

Upon discontinuance or termination of a wholesale dealers and/or manufacturers certificate of registration, [all firearm acquisition and disposition records maintained as provided for in this chapter shall, within five days, be forwarded to the Superintendent of State Police. In addition,] the certificate of registration and any employee licenses shall [also] be forwarded to the Superintendent **within five days.**

13:54-4.15 Identification of firearms required

Each registered manufacturer of firearms shall legibly identify each firearm manufactured by engraving, casting, stamping, or otherwise conspicuously placing or causing to be engraved, cast, stamped or placed on the frame, receiver or barrel thereof in a manner not susceptible to being readily obliterated, altered, or removed, an individual serial number not duplicating any serial number placed on any other firearm manufactured and by engraving, casting, stamping, or otherwise conspicuously placing or causing to be engraved, cast, stamped or placed on the frame, receiver, or barrel thereof in a manner not susceptible to being readily obliterated, altered or removed, the model, if such designation has been made; the caliber or gauge; the name of the manufacturer and also, the city wherein the registered manufacturer maintains his place of business. A firearm frame, receiver or barrel which is not a component part of a complete firearm at the time it is sold, shipped or otherwise disposed of by a registered manufacturer shall be identified as required by this subchapter.

SUBCHAPTER 5. MACHINE GUNS, ASSAULT FIREARMS AND LARGE CAPACITY MAGAZINES

13:54-5.1 Purchase or sale of assault firearms and machine guns

(a) No person shall sell, give, transfer, assign or otherwise dispose of, nor receive, purchase or otherwise acquire a machine gun or an assault firearm unless the purchaser, assignee, donee, receiver or holder:

1. Is licensed as a retail or wholesale dealer pursuant to this chapter;

2. Has first secured a license to purchase, possess or carry a machine gun or an assault firearm in accordance with N.J.S.A. 2C:58-5; or

3. Is the Armed Forces, the National Guard or a law enforcement agency employing persons who are authorized to possess and carry assault firearms and/or machine guns.

(b) Any retail dealer licensed pursuant to this chapter who sells or otherwise transfers a machine gun or an assault firearm shall confirm both the identity of the purchaser, and in the case of a licensee, the validity of the license. A machine gun or assault firearm shall be delivered unloaded and securely wrapped.

(c) In addition to the permanent records of receipt or disposition of firearms required by this chapter to be maintained by a wholesale or resale dealer, such dealers shall keep and maintain a separate ledger for the acquisition or receipt and sale or disposition of machine guns and assault firearms. This ledger shall be in the same form and contain the same information as provided for in N.J.A.C. 13:54-3.13, 3.14 and 3.15 and N.J.A.C. 13:54-4.12.

13:54-5.2 License to purchase, possess or carry a machine gun or assault firearm

(a) Licenses to purchase, possess or carry a machine gun or assault firearm shall be issued by a judge of the Superior Court in accordance with the provisions of N.J.S.A. 2C:58-5. The application for such license shall be referred to the county prosecutor for investigation, recommendation and preparation of a report.

(b) The report of the county prosecutor shall be served upon the Superintendent and the chief of police of every municipality in which the applicant intends to carry the machine gun or assault firearm. The Superintendent and/or the chief of police, or their designees, may personally appear and oppose the issuance of any license to acquire a machine gun or assault firearm. If the court issues a license, the Superintendent and/or chief of police, or their designees, may appeal that decision in accordance with the Rules of Court.

(c) Upon issuance of a license by a court, a true copy of such license shall be filed with the Superintendent and chief of police of the municipality where the licensee resides or has his place of business.

(d) At any time, the Superintendent, a chief of police, any law enforcement officer of this State or any other citizen may apply to the court which issued the license for revocation on the ground that the licensee is no longer qualified to possess such license by virtue of his inability to satisfy the statutory requirements of N.J.S.A. 2C:58-4 and 2C:58-5, or if revocation is necessary in order to protect the public safety and welfare.

13:54-5.3 Disposition of machine gun or assault firearm upon death of licensee or registered holder

(a) If the holder of a license to purchase, possess or carry a machine gun or assault firearm dies, or if the owner of an assault firearm which has been registered pursuant to N.J.S.A. 2C:58-12 dies, then the heirs or estate of the deceased person shall have 90 days from the date of death to transfer the firearm to a licensed dealer or person or firm lawfully entitled to own or possess such firearm; voluntarily surrender the firearm pursuant to the provisions of N.J.S.A. 2C:39-12; or, only in the case of an assault firearm, render the firearm inoperable pursuant to the provisions of N.J.S.A. 2C:58-13. In the case of a machine gun, the heir or estate shall immediately deliver it to the chief of police, or Superintendent where there is no full time police department or where the heir or estate is a non-resident, until such time as it is sold or voluntarily surrendered. In the case of an assault firearm, it shall be immediately delivered to the appropriate chief of police or the Superintendent in the event that the heir does not hold, or qualify to hold, a firearms purchaser identification card or a permit to purchase a handgun. The chief of police or the Superintendent shall hold such firearms until they are disposed of in accordance with this section.

(b) For purposes of this section, "inoperable" shall mean that the firearm is altered in such a manner that it cannot be immediately fired and that the owner or possessor of the firearm does not possess or have control over the parts necessary to make the firearm operable. In the event that the firearm is rendered inoperable, the heir or estate shall file a certification on the form prescribed by the Superintendent, indicating the date on which the firearm was rendered inoperable. The certification shall be filed with either the chief of police of the municipality in which the heir resides, or if the municipality does not have a full time police department, or if the owner resides outside of this State, with the Superintendent.

13:54-5.4 Notification of ineligibility to possess assault firearm or machine gun

Any person having knowledge that a person is subject to any of the disabilities which would render such person ineligible to procure a license to purchase, possess or carry a machine gun or assault firearm, or to continue to be registered as an owner of an assault

firearm, may notify the appropriate chief of police or the Superintendent, who may take such action as may be deemed appropriate.

13:54-5.5 Large capacity magazines

A retail or wholesale firearms dealer licensed pursuant to this chapter may maintain large capacity ammunition magazines at its licensed premises for sale or disposition to another dealer, the Armed Forces of the United States or the National Guard, or to a law enforcement agency, provided that the seller maintains a record of any sale or disposition to any of the afore-mentioned entities, including a description by make and model of the large capacity magazine. The record shall include the name of the purchasing agency, together with written authorization on the official letterhead of the Superintendent, chief of police or highest ranking officer of the agency or the appropriate ranking military officer, the name and rank of the law enforcement or military officer authorized to make the purchase, and the date and time of the sale or disposition. A copy of this record shall be forwarded by the seller to the Superintendent within 48 hours of the sale or disposition.

13:54-5.6 Advertising sale of machine gun, assault firearm or semi-automatic rifle

No retail dealer or wholesale dealer licensed pursuant to this chapter shall offer to sell a machine gun, semi-automatic rifle or assault firearm by means of an advertisement published in a newspaper circulating within this State, which advertisement does not state that the purchaser shall hold a valid license to purchase and possess a machine gun or assault firearm or, in the case of a semi-automatic rifle that is not an assault firearm, a valid firearms purchaser identification card.

13:54-5.7 Number and types of criminal offenses involving assault firearms

The chief of police of every municipality having a full time police department or, if the municipality does not have such a police department, the State Police station servicing that municipality, shall on a monthly basis provide to the Superintendent the number and types of criminal offenses involving assault firearms. The report shall also include the type of assault firearm utilized in the commission of the crime. The report shall be received by the superintendent no later than five business days from the end of the prior month.

SUBCHAPTER [5.]**6.** SECURITY SYSTEMS FOR DEALERS

13:54-[5.1]**6.1** Definition of "dealer"

The [word] **term** "dealer,"[,] when used in this subchapter, means retail dealers as well as wholesale dealers and shall also include manufacturers of firearms unless the context clearly indicates otherwise.

13:54-[5.2]**6.2** Approval of plans by Superintendent

(a) The dealer shall submit a plan of the selected security system to the Superintendent [of State Police].

(b) Upon approval of such plan by the Superintendent, the dealer shall install such system prior to maintaining any inventory of firearms, parts of firearms, or ammunition.

(c) A plan that is not approved will be returned to the applicant along with the reasons for such rejection.

(d) The applicant shall have the opportunity to submit a revised plan.

(e) All security systems shall be subject to inspections by a member of the Division of State Police at any time.

(f) If at any time the system is found to be defective, the dealer shall make the necessary repairs or adjustment **to correct the defect** within seven days [to correct the defect].

(g) Failure of a dealer to comply with any of the security standards may result in the revocation of the license or registration of such dealer.

13:54-[5.3]**6.3** Systems to detect and protect firearms and ammunition in a business premises

(a) The following [general] list of approved security systems has been formulated as a guide to the firearms dealer, any one of which may be acceptable upon investigation and approval by the Superintendent [of State Police].

1. An alarm system designated to activate a bell, gong, horn or siren located on the outside of the business premises which is audible for a minimum distance of 500 feet. The system shall be equivalent or greater to the minimum standards as outlined in N.J.A.C. 13:54-[5.4]**6.4**;

2. Silent alarm system capable of automatically transmitting an alarm to a constantly attended central station alarm company and/or to a police department **or** headquarters providing full time service. The system shall be equivalent or greater to the minimum standards as outlined in N.J.A.C. 13:54-[5.4]**6.4**;

3. A watchman or security guard on duty during nonbusiness hours;

4. A system other than those listed above proposed by a dealer which is acceptable by the Superintendent [of State Police].

13:54-[5.4]**6.4** Minimum requirements for installation of a tape, contact or invisible ray alarm system

(a) The installation of a tape, contact or invisible ray alarm system must:

1. Completely protect all accessible windows, doors, transoms, skylights and other openings leading from the premises; [or]

2. Protect with contacts only, all movable accessible openings leading from the premises, and which provides one or more invisible rays or channels of radiation, with the minimum overall length of the rays or radiation[,] equivalent to the longest dimensions of the area or areas to detect movement through the channel at a rate of one step per second; or

3. Protect with contact only, all doors leading from the premises and provide a system of invisible radiation to all sections of the enclosed area so as to detect movement. The system shall respond to the movement of a person walking not more than four consecutive steps at a rate of one step per second.

13:54-[5.5]**6.5** Internal security of firearms and ammunition

(a) In addition to the alarm system, a dealer shall provide for the internal security of firearms and ammunition.

(b) The following is a list of approved internal security methods for the safeguarding of firearms and ammunition during nonbusiness hours. A dealer shall select the method(s) which is most compatible with his [type of operation] **business**:

1. Shotguns and rifles secured in a rack equipped with a locking device such as a metal bar or a steel cable;

2. Firearms and ammunition secured in a heavy gauge metal cabinet equipped with an adequate locking device;

3. Firearms and ammunition secured in a heavy gauge mesh wire cage equipped with an adequate locking device on the door(s);

4. Firearms and ammunition secured in a safe or vault;

5. Metal bars on all windows and on glass portion of door(s);

6. Other method(s) proposed by the dealer [which is] approved by the Superintendent [of State Police].

(c) The method(s) selected by a dealer shall be included in the Security System form STS-61.

(d) Any other building(s) where firearms and/or ammunition are stored shall be subject to the same requirements as applicable to a business premise.

13:54-[5.6]**6.6** Report concerning theft of firearms

(a) Dealers are required to complete form STS-62 and such other forms as shall be required by the Superintendent [of State Police], reporting the loss of firearm(s) and/or ammunition, as a result of a burglary, robbery or any other cause, from the business premise. The dealer shall forward the completed form to the Superintendent [of State Police] within 48 hours of the loss of theft of firearm(s) and/or ammunition. The police department where the business is located shall be notified by the dealer of the theft or loss of firearm(s) and/or ammunition as soon as such loss or theft is discovered.

(b) A complete description, including the type, make, model, barrel-length, caliber and serial number of the stolen/missing firearm(s) shall be given to the investigating [police department] **law enforcement agency**.

(c) Failure of the dealer to comply with any of the above requirements may result in the revocation of the **registration or** license of such dealer.

13:54-[5.7]**6.7** Regulations during a civil disturbance or declared emergency period

(a) In the interest of the public health, safety and welfare, firearms dealers shall discontinue the sale of firearms and ammunition upon notification by the Superintendent [of State Police] or the chief of police of the municipality where the firearms dealers' business is located, that a civil disturbance or other emergency exists.

(b) Those businesses affected shall not resume the sale of firearms or ammunition until such time as the Superintendent [of State Police] or the chief of police of the municipality determines that the civil disturbance or other emergency no longer exists.

(c) All dealers located in the area affected by such disturbance or emergency shall be required to comply with one of the following:

1. Arrange with the chief of police officer of the municipality for appropriate security of firearms and ammunition; **or**

2. Remove all firearms and ammunition from the business premises to a secure location.

(d) Failure of the dealer to comply with any of the above requirements may result in the revocation of the license of such dealer.

(a)

NEW JERSEY RACING COMMISSION

Thoroughbred Rules

Definitions

Proposed Amendment: N.J.A.C. 13:70-2.1

Authorized By: New Jersey Racing Commission, Charles K. Bradley, Deputy Director.

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

Proposal Number: PRN 1991-407.

Submit written comments by September 4, 1991 to:

Charles K. Bradley, Deputy Director
New Jersey Racing Commission
200 Woolverton Street, CN 088
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The proposed new definitions are intended to clarify racing terms used throughout N.J.A.C. 13:70. In this case, the terms "delay period," "advance wagers" and "early bird wagering" are described.

Social Impact

To the extent that the definitions clarify racing terms, there will be a positive social impact.

Economic Impact

The proposed definitions would not have any economic impact on the State of New Jersey, the track associations, the horsemen in the form of purses and breeder organizations or patrons.

Regulatory Flexibility Statement

The proposed new definitions, which clarify chapter terms, 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.

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

13:70-2.1 Definitions

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

...

"Advance wagers" means any wager placed at least one race in advance of the current race.

...

"Delay period" means the set period of time between the sounding of the bell to signal the end of wagering in each race and the time mutuel machines will not accept cancellations and are completely deactivated for the current race. This delay period can be adjusted at the discretion of the Commission from zero to 20 seconds and is available only for the protection of the mutuel clerks by permitting them to cancel wagers that patrons place and refuse to accept immediately before the beginning of the delay period.

...

"Early bird wagering" means wagering that occurs on races in advance of the normal time racetracks open mutuel machines for their live racing program.

(b)

NEW JERSEY RACING COMMISSION

Thoroughbred Rules

Cash-Sell System

Proposed Amendment: N.J.A.C. 13:70-29.55

Authorized By: New Jersey Racing Commission, Charles K. Bradley, Deputy Director.

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

Proposal Number: PRN 1991-414.

Submit written comments by September 4, 1991 to:

Charles K. Bradley, Deputy Director
New Jersey Racing Commission
200 Woolverton Street, CN 088
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The proposed amendment to the cash-sell section simply removes an outdated cancellation rule. The cancellation rule has been revised and identified under a separate heading in the mutuel rules section (see the notice of proposal for new rule N.J.A.C. 13:70-29.59 published elsewhere in this issue of the New Jersey Register).

Social Impact

This proposed amendment will have a positive social impact since rules will be classified under proper titles.

Economic Impact

The proposed amendment to the cash-sell system section will not have any economic impact on the State of New Jersey, track associations, horsemen or breeders organizations, or patrons.

Regulatory Flexibility Statement

The proposed amendment imposes 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 amendment simply deletes an outdated cancellation provision, which is simultaneously revised and proposed as a new rule.

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

13:70-29.55 Cash-sell system

[(a) In addition to the foregoing rules which shall be applicable to all pari-mutuel systems excepting the following additional rules shall apply only to associations utilizing a "cash-sell" system.

1. There shall be no cancellation of tickets permitted once the patron has left the window and in no event shall there be any cancellation of tickets after four transactions have occurred at the individual terminal without recourse to a special terminal.

2. There shall be no cancellation of tickets permitted after off-time for any race.]

Recodify 3. and 4. as **(a) and (b)** (No change in text.)

(a)

NEW JERSEY RACING COMMISSION

Thoroughbred Rules
Cancellations
Proposed New Rule: N.J.A.C. 13:70-29.59

Authorized By: New Jersey Racing Commission, Charles K. Bradley, Deputy Director.
Authority: N.J.S.A. 5:5-30.
Proposal Number: PRN 1991-408.

Submit written comments by September 4, 1991 to:
Charles K. Bradley, Deputy Director
New Jersey Racing Commission
200 Woolverton Street, CN 088
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The proposed new cancellation rule defines the cancellation policy that has been in effect through New Jersey Racing Commission directive. These directives have been developed over a period of time and have evolved in relation to the technological advances with the mutuel department. The primary concern of the Racing Commission is to prevent the manipulation of odds when permitting cancellations of mutuel tickets. The attached rule provides the flexibility needed for mutuel clerks and patrons without the possibility of manipulating the odds.

Social Impact

By providing the opportunity to cancel certain types of pari-mutuel wagers by patrons and mutuel clerks, there will be a positive social impact.

Economic Impact

The proposed new rule may have a positive economic impact on the State of New Jersey, track associations, horsemen and breeders organizations. By permitting patrons to cancel certain wagers, this should encourage additional wagers which may increase the amount wagered by patrons. Since the State of New Jersey, the track associations and breeders organizations share in a percentage of the dollars wagered, they would in turn receive the benefit of increased wagering.

Regulatory Flexibility Statement

The proposed new rule does not impose reporting, recordkeeping or compliance requirements on small businesses, as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The rule sets standards for the cancellation of mutuel tickets, to be applied by mutuel clerks. Such clerks are employed by track associations, which, due to their size, are not small businesses under the Act.

Full text of the proposal follows:

13:70-29.59 Cancellations

(a) Cancellations of mutuel tickets are prohibited on wagers purchased on the current race once the patron has left the window on all types of wagers where odds or probable payouts are displayed to the public.

(b) Mutuel clerks shall be permitted to cancel current race mutuel tickets during the delay period provided it is the last transaction before the bell sounds signaling the end of wagering. If it is determined by the Executive Director of the Racing Commission or his or her designee that mutuel clerks are abusing this cancellation privilege, they will be subject to fine and/or suspension.

(c) No cancellation of mutuel tickets is permitted after the delay period.

(d) Cancellation of all advance wagers is permitted up until the race immediately preceding the advance wager becomes official.

(e) Mutuel clerks are permitted to cancel mutuel tickets purchased at self-service terminals provided they are advance wagers or wagers where odds or probable payouts are not displayed to the public.

(b)

NEW JERSEY RACING COMMISSION

Thoroughbred Rules
Expiration of Mutuel Tickets and Vouchers
Proposed New Rule: N.J.A.C. 13:70-29.60

Authorized By: New Jersey Racing Commission, Charles K. Bradley, Deputy Director.
Authority: N.J.S.A. 5:5-30.
Proposal Number: PRN 1991-409.

Submit written comments by September 4, 1991 to:
Charles K. Bradley, Deputy Director
New Jersey Racing Commission
200 Woolverton Street, CN 088
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The proposed new rule clearly identifies the expiration period of mutuel tickets and mutuel vouchers. The expiration period for mutuel tickets is defined in N.J.S.A. 5:5-64; however, no reference is made to mutuel vouchers. This rule incorporates an opinion from the Attorney General's office regarding the expiration period of both vouchers and mutuel tickets.

Social Impact

The clarity provided by clearly defining the expiration period of both mutuel tickets and vouchers provides a positive social impact.

Economic Impact

The proposed new rule will not have any economic impact on the State of New Jersey, track associations, horsemen or breeders organizations, or patrons. The ticket expiration date is fixed by statute, and the rule is based upon the Attorney General's opinion concerning both tickets and vouchers.

Regulatory Flexibility Statement

The proposed new rule imposes no reporting, recordkeeping or compliance requirements on small businesses, as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The rule clarifies the expiration period of mutuel tickets and mutuel vouchers.

Full text of the proposal follows:

13:70-29.60 Expiration of mutuel tickets and vouchers

All mutuel tickets and vouchers shall expire six months and one day from the date of issue (that is, tickets and vouchers purchased on January 1 will expire at the close of business on July 1).

(c)

NEW JERSEY RACING COMMISSION

Harness Rules
Definitions
Proposed Amendment: N.J.A.C. 13:71-4.1

Authorized By: New Jersey Racing Commission, Charles K. Bradley, Deputy Director.
Authority: N.J.S.A. 5:5-30.
Proposal Number: PRN 1991-410.

Submit written comments by September 4, 1991 to:
Charles K. Bradley, Deputy Director
New Jersey Racing Commission
200 Woolverton Street, CN 088
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The proposed new definitions are intended to clarify racing terms used throughout N.J.A.C. 13:71. In this case, the terms "delay period," "advance wagers" and "early bird wagering" are described.

Social Impact

To the extent that the definitions clarify racing terms, there will be a positive social impact.

Economic Impact

The proposed definitions would not have any economic impact on the State of New Jersey, the track associations, the horsemen in the form of purses and breeder organizations or patrons.

Regulatory Flexibility Statement

The proposed new definitions, which clarify chapter terms, 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.

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

13:71-4.1 Definitions

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

...

"Advance wagers" means any wager placed at least one race in advance of the current race.

...

"Delay period" means the set period of time between the sounding of the bell to signal the end of wagering in each race and the time mutuel machines will not accept cancellations and are completely deactivated for the current race. This delay period can be adjusted at the discretion of the Commission from zero to 20 seconds and is available only for the protection of the mutuel clerks by permitting them to cancel wagers that patrons place and refuse to accept immediately before the beginning of the delay period.

...

"Early bird wagering" means wagering that occurs on races in advance of the normal time racetracks open mutuel machines for their live racing program.

(a)

NEW JERSEY RACING COMMISSION

Harness Rules

Cash-Sell System

Proposed Amendment: N.J.A.C. 13:71-27.52

Authorized By: New Jersey Racing Commission,
Charles K. Bradley, Deputy Director.

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

Proposal Number: PRN 1991-411.

Submit written comments by September 4, 1991 to:
Charles K. Bradley, Deputy Director
New Jersey Racing Commission
200 Woolverton Street, CN 088
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The proposed amendment to the cash-sell section simply removes an outdated cancellation rule. The cancellation rule has been revised and identified under a separate heading in the mutuel rules section (see the notice of proposal for new rule N.J.A.C. 13:71-27.57 published elsewhere in this issue of the New Jersey Register).

Social Impact

This proposed amendment will have a positive social impact since rules will be classified under proper titles.

Economic Impact

The proposed amendment to the cash-sell system section will not have any economic impact on the State of New Jersey, track associations, horsemen or breeders organizations, or patrons.

Regulatory Flexibility Statement

The proposed amendment imposes no reporting, recordkeeping or compliance requirements on small businesses, as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The amendment simply deletes an outdated cancellation provision, which is simultaneously revised and proposed as a new rule.

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

13:71-27.52 Cash-sell system

[(a) In addition to the foregoing rules which shall be applicable to all parimutuel systems excepting the following additional rules shall apply only to associations utilizing a cash-sell system.

1. There shall be no cancellation of tickets permitted once the patron has left the window and in no event shall there be any cancellation of tickets after four transactions have occurred at the individual terminal without recourse to a special terminal.

2. There shall be no cancellation of tickets permitted after off-time for any race.]

Recodify 3. and 4. as **(a) and (b)** (No change in text.)

(b)

NEW JERSEY RACING COMMISSION

Harness Rules

Cancellations

Proposed New Rule: N.J.A.C. 13:71-27.57

Authorized By: New Jersey Racing Commission,
Charles K. Bradley, Deputy Director.

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

Proposal Number: PRN 1991-412.

Submit written comments by September 4, 1991 to:
Charles K. Bradley, Deputy Director
New Jersey Racing Commission
200 Woolverton Street, CN 088
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The proposed new cancellation rule defines the cancellation policy that has been in effect through New Jersey Racing Commission directive. These directives have been developed over a period of time and have evolved in relation to the technological advances with the mutuel department. The primary concern of the Racing Commission is to prevent the manipulation of odds when permitting cancellations of mutuel tickets. The attached rule provides the flexibility needed for mutuel clerks and patrons without the possibility of manipulating the odds.

Social Impact

By providing the opportunity to cancel certain types of pari-mutuel wagers by patrons and mutuel clerks, there will be a positive social impact.

Economic Impact

The proposed new rule may have a positive economic impact on the State of New Jersey, track associations, horsemen and breeders organizations. By permitting patrons to cancel certain wagers, this should encourage additional wagers which may increase the amount wagered by patrons. Since the State of New Jersey, the track associations and breeders organizations share in a percentage of the dollars wagered, they would in turn receive the benefit of increased wagering.

Regulatory Flexibility Statement

The proposed new rule does not impose reporting, recordkeeping or compliance requirements on small businesses, as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The rule sets standards for the cancellation of mutuel tickets, to be applied by mutuel clerks. Such clerks are employed by track associations, which, due to their size, are not small businesses under the Act.

Full text of the proposal follows:

13:71-27.57 Cancellations

(a) Cancellations of mutuel tickets are prohibited on wagers purchased on the current race once the patron has left the window on all types of wagers where odds or probable payouts are displayed to the public.

(b) Mutuel clerks shall be permitted to cancel current race mutuel tickets during the delay period provided it is the last transaction before the bell sounds signaling the end of wagering. If it is determined by the Executive Director of the Racing Commission or his or her designee that mutuel clerks are abusing this cancellation privilege, they will be subject to fine and/or suspension.

(c) No cancellation of mutuel tickets is permitted after the delay period.

(d) Cancellation of all advance wagers is permitted up until the race immediately preceding the advance wager becomes official.

(e) Mutuel clerks are permitted to cancel mutuel tickets purchased at self-service terminals provided they are advance wagers or wagers where odds or probable payouts are not displayed to the public.

(a)

NEW JERSEY RACING COMMISSION

Harness Rules

Expiration of Mutuel Tickets and Vouchers

Proposed New Rule: N.J.A.C. 13:71-27.58

Authorized By: New Jersey Racing Commission, Charles K. Bradley, Deputy Director.

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

Proposal Number: PRN 1991-413.

Submit written comments by September 4, 1991 to:

Charles K. Bradley, Deputy Director
New Jersey Racing Commission
200 Woolverton Street, CN 088
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The proposed new rule clearly identifies the expiration period of mutuel tickets and mutuel vouchers. The expiration period for mutuel tickets is defined in N.J.S.A. 5:5-64; however, no reference is made to mutuel vouchers. This rule incorporates an opinion from the Attorney General's office regarding the expiration period of both vouchers and mutuel tickets.

Social Impact

The clarity provided by clearly defining the expiration period of both mutuel tickets and vouchers there will be a positive social impact.

Economic Impact

The proposed new rule will not have any economic impact on the State of New Jersey, track associations, horsemen or breeders organizations, or patrons. The ticket expiration date is fixed by statute, and voucher holders have had notice of the voucher expiration period since vouchers were introduced.

Regulatory Flexibility Statement

The proposed new rule imposes no reporting, recordkeeping or compliance requirements on small businesses, as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The rule clarifies the expiration period of mutuel tickets and mutuel vouchers.

Full text of the proposal follows:

13:71-27.58 Expiration of mutuel tickets and vouchers

All mutuel tickets and vouchers shall expire six months and one day from the date of issue (that is, tickets and vouchers purchased on January 1 will expire at the close of business on July 1).

(b)

VIOLENT CRIMES COMPENSATION BOARD

Compensable Damages; Lost Member Schedule; Counseling Fees

Proposed Amendments: N.J.A.C. 13:75-1.7 and 1.27

Proposed Repeal: N.J.A.C. 13:75-1.23

Authorized By: Violent Crimes Compensation Board, Jacob C. Toporek, Chairman.

Authority: N.J.S.A. 52:4B-9.

Proposal Number: PRN 1991-384.

Submit comments by September 4, 1991 to:

Cindy R. Merker, Esq.
Violent Crimes Compensation Board
60 Park Place
Newark, New Jersey 07102

The agency proposal follows:

Summary

As a result of the proposed amendments and repeal, the Board will no longer compensate victims for replacement services, accommodations, replacement tuition costs and lump sum payments for lost members. The proposed amendments will also limit the amount of counseling, chiropractic and physical therapy sessions for which the Board will provide compensation. Lastly, the proposed amendments will limit the total award made to any claimant in an amount no greater than 75 percent of the incurred out-of-pocket unreimbursed or unreimbursable medical expenses, loss of earnings or support or related pecuniary loss.

Social Impact

The proposed amendments and repeal will allow the Board to retain and reserve funds so that it can compensate a greater number of victims and put all victims and claimants on notice that certain losses previously compensated by the Board will no longer be considered for payment.

Economic Impact

Since money used to compensate victims and claimants is continually evaporating due to cutbacks in funding, increased medical costs and an ever increasing number of applications, the Board is taking measures to limit payments to victims and claimants. The Board is taking these measures based on its statute which states that it must take into account the availability of funds appropriated to the Board in determining amounts of compensation.

Regulatory Flexibility Statement

The Violent Crimes Compensation Board's rules govern the process by which victims of violent crimes and their attorneys may make claims for compensation.

The proposed amendments and repeal impose no reporting, recordkeeping or other compliance requirements upon small businesses, as defined under the Regulatory Flexibility Act, N.J.S.A. 52:4B-16 et seq., since they establish compensation eligibility criteria for individual victims. Therefore, a regulatory flexibility analysis is not required.

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

13:75-1.7 Compensable damages

(a) The Board may enter an Order of Payment where the claimant has suffered a minimum out-of-pocket loss of $100.00 as defined by N.J.S.A. 52:4B-18(d), or has lost at least two continuous weeks' earnings or support. **For all claims closed on or after (the effective date of this amendment) the Board shall make no award in an amount greater than 75 percent of the out-of-pocket unreimbursed or reimbursable medical expenses, loss of earnings or support or related pecuniary loss, incurred by the victim, claimant or secondary victim as defined by N.J.A.C. 13:75-1.28 and as verified by the Board's investigative staff, approved by the Commissioners and subject to limitations provided by these rules.**

1. (No change.)

(b) The Board may order the payment of compensation for expenses incurred as a result of the personal injury or death of the victim. These expenses must represent a pecuniary loss to the claimant as defined by N.J.S.A. 52:4B-1 et seq., and these rules consist-

ing of, but not limited to, work and earnings loss, [replacement service loss (defined below)], dependents' loss of support in case of death, **and** other reasonable pecuniary loss incurred by claimant due to victim's death[, and]. **The Board may also award payment for** such allowable expenses which the Board determines to be reimbursable within these rules, such as reasonable charges for reasonably needed products and services, [accommodations, replacement tuition costs,] medical care, rehabilitation, rehabilitative occupational training, and other remedial treatment and care.

1. (No change).

[2. Replacement services loss means expenses reasonably incurred in obtaining ordinary and necessary services in lieu of those the injured person would have performed, not for income, but for the benefit of himself or his family, if he had not been injured.]

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

(c)-(i) (No change.)

(j) The Board shall award no compensation for chiropractic or physical therapy services for a period greater than 30 visitations for treatment related to the incident notwithstanding the nature of said treatments and visits. Where direct victims, claimants or secondary victims have been compensated for or attended more than 30 such visitations (as of the effective date of this amendment), the Board shall award no compensation for chiropractic or physical therapy services for an additional period greater than six sessions beyond the date of last service.

13:75-1.23 [Lost member schedule] **(Reserved)**

[(a) Amounts awarded by the Board as compensation for loss or permanent loss of use of members shall not exceed the maximum prevailing benefit payable under Workers Compensation schedules in effect in this State at the time of the injury for those incidents which occurred between the effective date of the Criminal Injuries Act of 1971 and December 6, 1982 inclusive. However, the amount so awarded shall not exceed $10,000, the maximum award permitted by the statutory provisions of N.J.S.A. 52:4B-18 in effect at that time.

(b) For injuries arising from incidents which occur after December 6, 1982, the award for lost or permanent loss of use of members shall be fixed by the Board. The maximum award for such loss resulting from said incident, unless further amended by the Board, shall be as set forth in the following pay schedule.

1. Loss of arm	$12,500.00	
2. Loss of leg	12,500.00	
3. Loss of hand	11,500.00	
4. Enucleation of one eye	11,000.00	
5. Loss of sight in one eye	10,500.00	
6. Loss of foot	10,500.00	
7. Loss of pinky	950.00	
8. Loss of ringfinger	1,400.00	
9. Loss of 2nd finger	1,900.00	
10. Loss of index finger	2,350.00	
11. Loss of thumb	3,550.00	
12. Loss of big toe	1,900.00	
13. Loss of remaining toes	700.00	(each)
14. Loss of tooth	232.00	(per tooth)
15. Loss of hearing:		
(75 percent of total hearing loss as determined by the Board shall be considered as total loss for the purpose of this section)		
1 ear	$ 2,800.00	
2 ears	10,800.00	

(c) The Board may, within its discretion, award a lump sum payment for such loss not provided for, herein, except that no award made pursuant to this section shall exceed $12,500.00 per lost member. The loss of any two body members identified in (b)1 through 6 shall entitle the victim to an award of $25,000.]

13:75-1.27 Counseling fees

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

(c) Notwithstanding (a) and (b) above, in the case of residential counseling services the Board shall approve no more than one such period of counseling not exceeding 30 days in length and shall limit reimbursement to no more than 50 percent of the total cost of the service. Subsequent residential treatments shall not be compensated by the Board.

(d) The Board shall award no compensation for out-of-pocket unreimbursed or unreimbursable psychological counseling expenses related to the incident for a period greater than 50 sessions for any victim or claimant 18 years of age or older, and for no more than 100 sessions for any victim under the age of 18 (on the effective date of this amendment) notwithstanding the date upon which the application for compensation was filed.

1. For any claim wherein the Board has approved and awarded compensation for 50 sessions of counseling services for a victim or claimant 18 years of age or older or 100 sessions of counseling services for a victim under the age of 18 years, the Board shall award no more than 12 sessions beyond the date of last service (as of the effective date of this amendment).

(e) The term sessions as used in this section means a one hour session and includes individual, group or family therapy and the presence of a counselor in a legal proceeding as determined by the Board to be necessary for the emotional support of the direct victim, claimant or secondary victim. No award of compensation shall be made for an appearance or presence required to assist in prosecution of the offender or in a proceeding to prosecute a collateral legal right.

PUBLIC UTILITIES

(a)

BOARD OF PUBLIC UTILITIES

Telephone

Proposed Readoption with Amendments: N.J.A.C. 14:10

Authorized By: Board of Public Utilities, George H. Barbour and Jeremiah F. O'Connor, Commissioners.
Authority: N.J.S.A. 48:2-13.
BPU Docket Number: TX91061090.
Proposal Number: PRN 1991-390.

Submit written comments by September 4, 1991 to:
Michael Gallagher, Director
Division of Telecommunications
Board of Public Utilities
Two Gateway Center
Newark, New Jersey 07102

The agency proposal follows:

Summary

Pursuant to Executive Order No. 66(1978), N.J.A.C. 14:10 expires on September 8, 1991. The Board of Public Utilities (Board) has reviewed the rules and determined them to be necessary, reasonable and proper for the purpose for which they were originally promulgated as required by the Executive Order. These rules have served over an extended period of time in the regulation of telephone utilities subject to the jurisdiction of the Board in such areas as service standards, payments for service, extensions of service, and the regulation of interLATA telecommunication carriers and Alternative Operator Service (AOS) providers.

The proposed readoption is necessary in that the existing rules relate directly to the provision of safe, adequate and proper service by New Jersey telephone utilities. The proposed amendments, which are specifically set out herein below, reflect only minor changes such as: the correction of typographical errors; stylistic changes to reflect current rule structure practices; the designation of the Board's proper name; the elimination of certain effective dates that are no longer applicable; and an updating of the list of current interexchange carriers that are authorized to provide service in New Jersey. In addition, a reference to telegrams in N.J.A.C. 14:10-2.1 has been deleted in that telephone utilities in New Jersey do not currently provide such service.

The Board would further note that a notice of a pre-proposal of amendments to N.J.A.C. 14:10-6, Regulation of Alternate Operator Service, was published in the March 4, 1991 New Jersey Register at 23 N.J.R. 676(b). The Board is currently considering comments that have

been filed in response to said pre-proposal. Pending any subsequent action that it may take with regard to this pre-proposal, the Board, at this time, intends to readopt N.J.A.C. 14:10-6, pending to the regulation of AOS providers, in its present form.

In addition to the notice of the pre-proposal of amendments to N.J.A.C. 14:10-6, the March 4, 1991 New Jersey Register also contained notices of pre-proposals of new rules N.J.A.C. 14:10-7, Rules for the Resale of Telecommunications Services, and N.J.A.C. 14:10-8, Rules for Customer Provided Pay Telephone Service, which were published at 23 N.J.R. 670(a) and 23 N.J.R. 680(a), respectively.

The substantive provisions of the rules proposed to be readopted by the Board are summarized as follows:

N.J.A.C. 14:10-1.1 pertains to the provision of service connections by telephone utilities to customers.

N.J.A.C. 14:10-1.2 pertains to the provision of information by telephone utilities to customers regarding the rates, charges and provisions applicable to the service furnished or available to a customer; any alternative services available to the customer to meet his or her communication requirements; and an estimate of the charges where special charges not specifically set forth in the telephone utility's tariff are levied.

N.J.A.C. 14:10-1.3 pertains to the staffing and operation of business offices of telephone utilities.

N.J.A.C. 14:10-1.4 specifies certain information to be made available at business offices upon request.

N.J.A.C. 14:10-1.5 pertains to the publication, distribution and content of telephone directories and the procedures to be followed when telephone numbers are changed subsequent to the publication of a directory.

N.J.A.C. 14:10-1.6 pertains to situations where a telephone utility cannot: provide regular service to an applicant within 5 working days; upgrade an existing customer within 30 days; provide special services within a reasonable period of time; or meet a previously provided date for service installation.

N.J.A.C. 14:10-1.7 pertains to customer complaints and trouble reports and utility response thereto.

N.J.A.C. 14:10-1.8 pertains to the availability of coin telephones to the public.

N.J.A.C. 14:10-1.9 pertains to procedures to be employed by telephone utilities to ensure that they maintain adequate service.

N.J.A.C. 14:10-1.10 establishes service levels which should generally be provided by a telephone utility.

N.J.A.C. 14:10-1.11 pertains to the information that is to be recorded when mechanical and/or electronic measuring and record keeping devices are used by telephone utilities.

N.J.A.C. 14:10-1.12 pertains to a program of inspections, tests and preventive maintenance to be employed by each telephone utility.

N.J.A.C. 14:10-1.13 pertains to service interruptions.

N.J.A.C. 14:10-1.14 pertains to the construction of telephone plant.

N.J.A.C. 14:10-1.15 provides for the preservation of records in the manner set out in the current rules and regulations of the Federal Communications Commission.

N.J.A.C. 14:10-1.16 adopts by reference the Uniform System of Accounts for Telephone Companies promulgated by the Federal Communications Commission.

N.J.A.C. 14:10-2.1 sets out that information to be included on customer bills.

N.J.A.C. 14:10-2.2 requires all toll calls to be itemized.

N.J.A.C. 14:10-2.3 provides for refunds to customers in the event service remains interrupted for a period of 24 hours after the interruption has been reported.

N.J.A.C. 14:10-2.4 allows a customer to request that his or her service be temporarily suspended and requires the tariffs of telephone utilities to provide for a suspension of service rate.

N.J.A.C. 14:10-3.1 contains general provisions pertaining to the suggested formulae for the extension of telephone service.

N.J.A.C. 14:10-3.2 pertains to the construction of a service extension on public highways.

N.J.A.C. 14:10-3.3 pertains to construction and attachments on private property.

N.J.A.C. 14:10-3.4 permits a guaranty in lieu of a deposit with regard to the construction of an extension.

N.J.A.C. 14:10-4.1 pertains to the applicability of regulations regarding residential telephone underground extensions.

N.J.A.C. 14:10-4.2 contains definitions relevant to residential telephone underground extensions.

N.J.A.C. 14:10-4.3 pertains to the use and availability of rights-of-way and easements for underground extensions.

N.J.A.C. 14:10-4.4 pertains to the installation of underground communication systems within subdivisions.

N.J.A.C. 14:10-4.5 pertains to the connection of the underground extension to the existing telephone distribution system.

N.J.A.C. 14:10-4.6 pertains to deposits that may be required from an applicant by a telephone utility prior to the start of construction on a section of the subdivision.

N.J.A.C. 14:10-4.7 provides that specified charges for underground extensions are based on the premise that each applicant will agree to cooperate with the utility in an effort to keep construction costs as low as possible. In addition, temporary wires may be installed in the event of unusual conditions that would delay underground installation.

N.J.A.C. 14:10-4.8 pertains to the construction of underground service extensions.

N.J.A.C. 14:10-4.9 requires certain records to be maintained by each telephone utility on a calendar year basis regarding underground service extensions.

N.J.A.C. 14:10-4.10 provides that where application of the Board's requirements for underground extensions would cause extreme hardship or inequity, applicants may apply for special conditions or exemption.

N.J.A.C. 14:10-4.11 pertains to the applicability of prior rules.

N.J.A.C. 14:10-4.12 provides that requirements that are in conflict with the Board's rules pertaining to underground telephone service shall not be imposed through municipal ordinances or regulations.

N.J.A.C. 14:10-5.1 sets forth the scope of the rules pertaining to the adjustment of rates for intrastate interLATA services.

N.J.A.C. 14:10-5.2 provides that the rules are to be construed to allow maximum flexibility in setting rates for interexchange carriers and that said rules are to be reviewed by the Board in order to determine whether they should be continued.

N.J.A.C. 14:10-5.3 contains definitions relevant to the regulation of interLATA service.

N.J.A.C. 14:10-5.4 pertains to initial rates for interexchange carriers authorized to operate in New Jersey.

N.J.A.C. 14:10-5.5 pertains to the upward adjustment in individual rates of up to 25 percent over initial rates.

N.J.A.C. 14:10-5.6 pertains to the downward adjustment in individual rates of up to 25 percent below initial rates.

N.J.A.C. 14:10-5.7 pertains to the initiation of rate proceedings.

N.J.A.C. 14:10-5.8 requires Board Staff, in conjunction with the interexchange carriers and the Division of Rate Counsel, to develop appropriate reporting mechanisms to ensure proper notification on and oversight of earnings, return on equity and rate changes contemplated by the Board's rules.

N.J.A.C. 14:10-5.9 pertains to the discontinuance of service offerings by interexchange carriers.

N.J.A.C. 14:10-6.1 sets out the scope of the Board's regulations pertaining to the provision of Alternative Operator Service (AOS).

N.J.A.C. 14:10-6.2 provides that the rules pertaining to the provision of AOS will be reviewed after 24 months in order to determine if they should be continued or to make any necessary modifications.

N.J.A.C. 14:10-6.3 contains certain definitions relevant to the provision of AOS.

N.J.A.C. 14:10-6.4 sets out the Board's authority over AOS providers.

N.J.A.C. 14:10-6.5 pertains to access to AOS and other operator service providers.

N.J.A.C. 14:10-6.6 pertains to emergency call handling.

N.J.A.C. 14:10-6.7 pertains to completion of intraLATA calls.

N.J.A.C. 14:10-6.8 pertains to the filing of AOS Acknowledgment Forms.

N.J.A.C. 14:10-6.9 requires local exchange carriers to advise customers on their bills that the competitive operator service provider is not affiliated with the local exchange carrier and that the charges set forth are not regulated by the Board.

Social Impact

The proposed readoption relates directly to the provision of safe, adequate and proper service by telephone utilities authorized to operate in New Jersey. Said rules are necessary to ensure that telephone plant is constructed and installed pursuant to acceptable standards and that customers receive a consistently high level of service.

Economic Impact

As a result of the proposed readoption, telephone utilities, as they have in the past, will incur expenses for, among other things, inspecting and testing their plant and maintaining required records. Since items such as these represent appropriate business activities, all reasonable levels of costs associated therewith will be allowed to be passed along to ratepayers through rates for service.

Regulatory Flexibility Statement

The proposed readoption will not impose reporting, recordkeeping or other compliance requirements on small businesses, as the term is defined in the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16, et seq. The rules apply only to those telephone utilities which have been authorized to operate in New Jersey. Said utilities are considered to be large businesses and/or dominant in their fields.

Full text of the proposed readoption may be found in the New Jersey Administrative Code at N.J.A.C. 14:10.

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

14:10-1.1 Service connections

(a) (No change.)

(b) If the length of service connection exceeds the requirements specified in [subsection] (a) **above** [of this section], the [custmer] **customer** may be required to pay for the cost of such excess.

(c) (No change.)

14:10-1.6 Held applications

(a) (No change.)

(b) When, because of shortage of facilities, a telephone utility is unable to supply main telephone service on dates requested by applicants, priority shall be given to furnishing those services which are essential to public health and safety. In cases of prolonged shortage or other emergency, the [board] **Board** may require establishment of a priority plan subject to its approval for clearing held orders, and may request periodic reports concerning the progress being made.

(c) (No change.)

14:10-1.9 Adequacy of service

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

(d) The telephone utility shall employ prudent management and engineering practices, including the employment of reliable procedures for forecasting future demand for service, conduct studies and maintain records to the end that reasonable margins of facilities and adequate personnel are available with the objective that service will meet all standards prescribed by the [board] **Board.**

14:10-1.10 Service standards

(a) These standards establish service levels which would generally be provided by a telephone utility. Failure to attain these levels does not by itself indicate poor service and the liability of the telephone utility to its customers or other persons using its facilities for any such failure shall be governed by the applicable provisions of its tariff. Each telephone utility shall make measurements to determine the level of service for each item included in these standards. Each telephone utility shall provide the [board] **Board** or its staff with the measurements and summaries thereof for any of the items included herein on request of the [board] **Board** or its staff. Records of these measurements and summaries shall be retained by the utility as specified by the [board] **Board** and monthly reports on all service measurements may be [requred] **required** by the [board] **Board.** When a utility fails to meet any of the minimum service levels listed below in a reporting entity for three consecutive months, the service data for the standard not met in that entity shall be reported to the [board] **Board.**

(b) The following are the minimum service levels referred to in [subsection] (a) **above** [of this section]:

1. Installation of service:

i. (No change.)

ii. Eighty-eight percent of the commitments to customers, with the exception of customer-caused [dalays] **delays**, as to the date of installation of regular service, shall be met.

iii. (No change.)

2. (No change.)

3. Dial service: Sufficient central office capacity and equipment shall be provided to meet the following requirements:

i. Ninety-five percent of dialed local calls shall be completed without encountering an all [truck] **trunk** busy or equipment irregularity.

ii. (No change.)

4.-5. (No change.)

(c) (No change.)

14:10-2.1 Bills for service

(a) The customer's bill shall include as applicable:

1.-3. (No change.)

4. Total charge for calls outside local service area [and telegrams, if any] supported by statement;

5.-7. (No change.)

14:10-3.1 General provisions

These formulae shall not be binding on the parties but are suggested as a guide to customers and utilities. Parties are still free to exercise their rights under N.J.S.A. 48:2-27. When an applicant for an extension is dissatisfied with these suggested extension [regulations] **rules**, he may petition the [board] **Board** for a finding that the extension should be made without charge.

(b) (No change.)

14:10-3.4 Guaranty in lieu of deposit

Where the cost to the utility for an extension to individual permanent residential customers exceeds the amount which the utility must install without cost to the customer, in accordance with [Section 2 (Construction on public highways) of this Subchapter] **N.J.A.C. 14:10-3.2**, the utility and the customer may agree that in lieu of requesting a deposit by the customer equal to the excess cost of the extension, the customer will guarantee a monthly revenue. Such guarantee shall be not more than 1/60 of the total cost of the extension.

14:10-4.1 Applicability

(a) Extensions of telephone distribution lines installed after the effective date of this [Subchapter] **subchapter**, and necessary to furnish permanent telephone service to new residential buildings and mobile homes within an approved subdivision having three or more building lots or to new multiple-occupancy buildings, shall be made underground, except for interconnecting points and pedestals.

(b) Such extensions of service shall be made by the utility in accordance with the provisions in this [Subchapter] **subchapter.**

[(c) This Subchapter shall apply to those lines on which actual construction has commenced on or after January 1, 1974.]

14:10-4.2 Definitions

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

. . .

"Board" means [Department] **the Board** of Public Utilities [, Board of Public Utility Commissioners].

. . .

14:10-4.4 Installation of underground communication system within subdivision

(a) Upon receipt of a proper application the utility shall, after conditions in [Section 3(b) of this Subchapter] **N.J.A.C. 14:10-4.3(b)** have been met and after coordination with other utilities, install along new streets and along existing streets not already served by overhead facilities, using suitable materials, an underground telephone communication system reasonably equivalent to a comparable overhead system which will assure that the applicant will receive safe, adequate and proper service.

(b) Semiannually, [commencing January 1, 1975,] each utility may submit a proposed tariff modifying existing undergrounding charges.

The proposed tariffs shall be supported by unit costs of construction in a form as required for approval by the Board.

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

14:10-4.6 Advances by applicant

(a) Prior to the start of construction on a section of the subdivision, the utility may require from the applicant a deposit equivalent to the estimated amount of the charges payable to the utility in accordance with the tariff filed by the utility pursuant to [Section 4 of this subchapter] **N.J.A.C. 14:10-4.4** for the installation of the communication facilities shown on the subdivision map supplied to the utility by the applicant under the provisions of [Section 3(d) of this Subchapter] **N.J.A.C. 14:10-4.3(d).**

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

14:10-4.7 Cooperation by applicant

(a) The charges specified in this [Subchapter] **subchapter** are based on the premise that each applicant shall agree to cooperate with the utility in accordance with [subsection (b) of this Section] **(b) below** in an effort to keep the cost of construction and installation of the underground telephone communication system as low as possible. This includes the scheduling of construction to preclude the necessity of trenching in frozen soils or in land fill operatons before soils have become stabilized.

(b) Should unusual circumstances arise which unreasonably would delay underground service, temporary wires may be installed in whatever manner is most practical under the circumstances, provided, however, that such temporary wires shall be replaced as soon as practicable with a permanent installation in accordance with the provisions of this [Subchapter] **subchapter**.

(c) Requests for adjustments of charges, specified in the approved tariff of the utility to cover excess cost, if any, due to temporary installations, may be referred to the Board in accordance with [Section 10 of this Subchapter] **N.J.A.C. 14:10-4.10**.

14:10-4.9 Records

(a) Each telephone utility shall maintain on a calendar year basis for periodic review by, or upon request, submission to the Board the following records:

1. (No change.)

2. The number of subdivisions, the number of lots and the number of buildings of all types, including mobile homes, for which services was made available under this [Subchapter] **subchapter**.

14:10-4.10 Special conditions or exemptions

When the application of this [Subchapter] **subchapter** will result in extreme hardship or inequity, or be discriminatory to other customers, the utility or applicant may refer the matter to the Board for special exemptions or for approval of special conditions. The applicant invoking the jurisdiction of this Board, pursuant to this [Section] **section**, may be required to deposit in an escrow account as determined by the Board, prior to hearing, a deposit up to the estimated cost differential between underground and overhead service to be advanced to the utility in the event the Board determines an exemption is not warranted.

14:10-4.11 Prior regulations

Except for N.J.A.C. 14:3-8.1, 14:3-8.2 and 14:3-8.3 as otherwise provided herein, rules, regulations and standards heretofore promulgated with respect to the subject matter encompassed by this [Subchapter] **subchapter** are hereby superseded and revoked.

14:10-4.12 Compliance

(a) This [Subchapter] **subchapter**, having been enacted in the public interest, calls for cooperation by utilities, developers, builders and municipal bodies to achieve the desired underground telephone service in new residential subdivisions at the lowest reasonable cost consistent with system reliability and safety.

(b) Therefore, in accordance with N.J.S.A. 48:2-13, which grants general supervision and regulation of, and jurisdiction and control over, all public utilities to the Board, requirements in conflict with this [Subchapter] **subchapter** which would prevent or interfere with telephone utilities' compliance with this [Subchapter] **subchapter** shall not be imposed through municipal ordinances or regulations.

14:10-5.1 Scope

The [regulations] **rules** in this subchapter govern the adjustment of rates by telecommunications interexchange carriers subject to the jurisdiction of the New Jersey Board of Public Utilities. The [regulations] **rules** will apply to the adjustment of rates for only those services which are clearly competitive for all intrastate interLATA carriers, after initial tariffs have been approved by the Board. Connection, service discontinuance, and other matters, unless expressly stated herein, will continue to be governed by existing sections of Title 14 of the New Jersey Administrative Code.

14:10-5.3 Definitions

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

...

"Intrastate interLATA carriers" and "interexchange carriers" means AT&T Communications of New Jersey, MCI, [GTE-Sprint, USTS,] **US Sprint, Communications Services, Inc., Cable & Wireless Communications, Inc., Teleconnect Long Distance Services and Systems, WTG East & Central, Inc.,** RCI [, Western Union] and other common carriers (OCC's) authorized by the Board to provide intrastate interLATA telecommunications service in New Jersey.

...

14:10-5.4 Initial rates

Initial rates for interexchange carriers currently authorized to operate in New Jersey shall be the rates in effect upon Board adoption of these [regulations] **rules**. For any additional carriers that may subsequently be authorized to provide interstate interLATA service, initial rates shall be those contained in the initial tariffs approved by the Board. Initial rates, as used herein, shall be the midpoint of the range of rates approved for each interexchange carrier. The range of rates approved for each carrier is hereby determined to be plus or minus 25 percent over or under each individual initial rate approved by the Board.

14:10-5.8 Reporting requirements

Board [Staff], **staff** in conjunction with Rate Counsel and the interexchange carriers, shall [within six months of the effective date of these rules] develop appropriate reporting mechanisms to insure proper notification on and oversight of earnings, return on equity and the rate changes contemplated herein. These reporting mechanisms shall be placed upon the Board's Agenda for approval.

(a)

OFFICE OF CABLE TELEVISION

Regulations of Cable Television Telephone System Performance

Reproposed New Rule: N.J.A.C. 14:18-7.7

Authorized By: Celeste M. Fasone, Director, Office of Cable Television (with approval of the Board of Public Utilities).

Authority: N.J.S.A. 48:5A10-10.

Proposal Number: PRN 1991-379.

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

Friday, August 23, 1991 at 10:00 A.M. at:
Board of Public Utilities
Hearing Room, 10th Floor
Two Gateway Center
Newark, New Jersey 07102

Submit written comments by September 4, 1991 to:

Celeste M. Fasone, Director
Office of Cable Television
Board of Public Utilities
Two Gateway Center
Newark, New Jersey 07102

The agency proposal follows:

Summary

The reproposed new rule is a result of research, public hearing, and comments submitted in pre-proposal and proposal hearings, docket

numbers CX87091172 and CX89120973. This proposal is in response to numerous comments on an earlier proposal and the Board's consideration of those comments. The notice of proposed rulemaking was originally published on September 17, 1990 in the New Jersey Register at 22 N.J.R. 2895(a); (see also the adoption notice in this Register). The Board received numerous and lengthy comments from cable operators concerned with the burden which proposed N.J.A.C. 14:18-7.7 would place upon them and with redundant or unnecessary aspects of the reporting requirements. In response to those comments, the Board has made substantive and technical changes to the rule. Basically, the Board proposes to simplify the reporting requirements.

As now reproposed, N.J.A.C. 14:18-7.7 requires the filing of reports every 60 days detailing the performance of the cable operator's telephone system for six listed months of the calendar year. The telephone system performance information will serve to measure actual telephone system performance using such parameters as caller hold times, total calls received, percentage of time a caller would receive a busy signal and rates at which callers abandon their calls. The perfomance data are requested for each day for every other month. The reproposed rule also requires a cable operator to submit an explanation of events which cause extraordinary changes in telephone traffic.

As originally proposed, several cable operators expressed concern for the difficulty in providing telephone information on an hourly basis, claiming that this would produce unnecessary, large volumes of data. The Board agrees that hourly compilation could be burdensome and has therefore revised the proposed rule to require cable operators to provide statistics for daily and monthly performance only. This resulted in the deletion of six of the original reporting statistics. Most cable operators commenting stated that it was impossible for them to provide the number of calls receiving a busy signal. After further research, the Board believes the cable operators' contention that these statistics might produce a significant cost burden without a corresponding benefit to the public is reasonable and has therefore deleted these subsections. However, the remaining data collection requirements will supply sufficient data for analysis by the Board.

The analysis provided by daily and monthly statistics will not provide the detail and volume of information as would have been compiled if the rule were adopted as originally proposed, but the Board believes that the information which will be collected pursuant to the reproposed N.J.A.C. 14:18-7.7 will provide a meaningful analysis for the evaluation of telephone system performance without unduly burdening cable operators or ratepayers. The information will allow staff to direct possible enforcement actions to those cable operators with chronic problems without burdening the rest of the industry. Further, the information could lead to the development of meaningful performance standards.

Several cable operators suggested adoption of a performance standard without benefit of a record. The Board believes that setting a standard without a record would be premature. Examination of the information collected pursuant to reproposed N.J.A.C. 14:18-7.7 may be helpful in determining the extent to which a standard is necessary and, therefore, the Board has decided to examine the record in depth before deciding whether to set a standard.

Social Impact

Complaints to the Office of Cable Television (OCTV) show that subscribers have difficulty reaching their cable operators. It is therefore appropriate to examine the operational components of each cable operator's telephone system along with the actual performance of the telephone systems by requiring the cable operators to measure, record and file certain performance data. Analysis of this data and of corresponding complaints about telephone accessibility may suggest an appropriate performance standard which will serve the needs of cable subscribers and other members of the public needing access to the cable company.

The reproposed new rule is an outgrowth of comments in the Board's recent review of its substantive regulations, comments from an earlier proposal proceeding in Docket No. CX87091172 and the comments received during the proposal proceeding Docket No. CX90050381. The originally proposed N.J.A.C. 14:18-7.7 has been amended and shortened considerably for re-publication and comment as a result of the comments received from cable operators on the burden this rule would impose. In this reproposal, there are four reporting requirements. The other 10 statistics have been deleted.

Economic Impact

The data reporting requirements of N.J.A.C. 14:18-7.7 regarding telephone system performance are repetitive filings submitted to the Board six times each year (every 60 days). Often, this empirical data on telephone system performance is gathered and used by many cable operators through the capabilities of their existing telephone switches. A few larger cable companies collect and analyze additional data, but according to the comments submitted, smaller companies would need to incur significant expenditures to meet all or even most of the performance statistics required in the previous proposal. Ancillary devices can be employed by cable operators that cannot supply performance data, telephone utilities and service suppliers can provide the empirical data being requested in the previously proposed rule, but a cable operator could incur a significant expense by utilizing these options. The rule as modified upon reproposal will be much less burdensome and, for the most part, cable operators will not need to purchase new equipment in order to meet the filing requirements.

No single performance factor is dispositive of true telephone performance but a study of four remaining reporting statistics over time should be sufficient to allow a full appreciation of and proper response to the telephone accessibility problem. Some cable operators may be unable to provide some of the data requested and those systems may request specific waivers pursuant to proposed N.J.A.C. 14:18-7.7(g) should it be impossible, impracticable or unduly burdensome for the cable operator to supply certain information. The industry itself should benefit from the collection, filing and analysis of this data as it will influence decisions made by the cable operator to improve their own telephone system and traffic management.

In proposing this revised rule, the Board has considered the comments of cable operators on the economic burden that the statistics imposed by requiring filing of hourly statistics. The remaining four reporting statistics request information of daily and monthly telephone performance, not hourly as originally proposed. The reduction of the amount of filing statistics should significantly reduce the economic burden placed upon the cable operator while still providing the Board with adequate data concerning telephone system performance.

In summary, the Board contends that the economic implications for most cable operators will be minimal and that those systems unduly burdened can seek waivers of specific rule requirements.

Regulatory Flexibility Analysis

The reproposed new rule will affect two cable television operators defined as small businesses under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq.

As outlined in the summary section of the notice, the rule imposes reporting and recordkeeping requirements on cable television operators. These include collection and filing of statistics to the Board. The Board has reviewed the reproposed rule and believes it is necessary to protect the subscriber and insure that cable companies deliver a proper level of service. As such, it is not appropriate to waive the requirement of the proposed rule for small businesses.

By reducing the reporting requirements of the rule from the prior proposal, the Board believes that the remaining reporting requirements could be performed by employees of the company. The reduction of the reporting requirements should also reduce the need for a small cable television company to retain outside professional services and that any burden posed by the remaining reporting requirements could be mitigated through the waiver provision contained in the rule.

Full text of the reproposed new rule follows:

14:18-7.7 Telephone system performance

(a) Each cable television operator shall provide the Office with the following information for all telephone trunk lines normally used by subscribers and the general public for every office it maintains:

1. The total number of incoming calls received during each day of the listed month;

2. The percentage of time in which an inward dialed telephone call would receive a busy signal for each day for the listed month;

3. The average length of time of incoming calls held in queue (hold time) for each day for the listed month; and

4. The percentage of calls terminated by the caller (abandoned) while the call is held in queue during each day for the listed month.

(b) The data requested by (a) above shall be provided for the calendar months of January, March, May, July, September and November, and shall be accompanied by a certification from the

system manager or other appropriate system personnel that the information is correct.

(c) Reports of the information required by (a) above shall be filed by the operator within 10 days of the end of the month for which the report is filed. The data shall be submitted in a summary format, on forms prescribed by the Director.

(d) The Office may direct a cable television operator to record and submit additional data or to conduct, or have conducted, other or more detailed telephone traffic analyses, if circumstances so require.

(e) All averages and percentages compiled pursuant to (a) above shall consider only the hours in which the cable television company's office is open to receive incoming calls.

(f) A cable television operator shall submit an explanation of any extraordinary change in telephone traffic patterns as indicated by the data provided to the Office. Explanations shall be provided for extraordinary changes caused by situations such as outages, phone equipment failure and rate changes.

(g) A cable television operator may request, in writing, a waiver of one or more of the reporting requirements or required report formats of (a) above from the Director. Any such waivers will be for periods of up to one year and are renewable. In considering such requests, the Director shall consider factors such as the size of the system, the burden on the cable television operator for providing the information, the capability of the cable television operator's telephone system and the nature and type of alternative information the cable television operator intends to provide.

INSURANCE

(a)

DIVISION OF PROPERTY AND CASUALTY

Producer Voluntary Placement Plan

Proposed New Rules: N.J.A.C. 11:3-41

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

Authority: N.J.S.A. 17:1C-6(e), 17:1-8.1, 17:33B-9 and 17:33B-11.

Proposal Number: PRN 1991-417.

Submit comments by September 4, 1991 to:

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

The agency proposal follows:

Summary

N.J.S.A. 17:33B-9b provides that the Commissioner of Insurance (Commissioner) shall initiate a plan to encourage the broadening of authorities held by those brokers who have been active as producers for the New Jersey Automobile Full Insurance Underwriting Association (Association). In addition, N.J.S.A. 17:33B-9c, requires the Commissioner to establish a producer assignment program to be available upon application to any licensed insurance producer who: (1) is a producer for the Association; (2) has no affiliation with a voluntary market company for the purpose of placement of private passenger automobile insurance; (3) had an affiliation with an insurance company for the placement of automobile insurance in the voluntary market which was terminated by the insurer on or after December 31, 1980; (4) has demonstrated to the Commissioner his competency, efficiency and effectiveness in servicing Association and other insurance business as determined by a review of the record of the producer for complaints, violations of the licensing law and other factors deemed relevant by the Commissioner; and (5) is located and services insurance in a geographic area which the Commissioner has determined to lack sufficient representation for the placement of automobile insurance business in the voluntary market. Many producers, however, had an affiliation with a voluntary market company which was terminated prior to December 31, 1980, or never had an affiliation with an insurance company for the placement of automobile insurance in the voluntary market. These producers, therefore, are not eligible for assignment under N.J.S.A. 17:33B-9c.

On July 2, 1991 the Commissioner issued Order No. A91-280 which established a voluntary producer placement plan (Plan). The Plan provides procedures by which insurers may receive credit toward producer assigments made by the Commissioner pursuant to the Producer Assignment Program set forth in Order No. A91-281 (as codified by proposed N.J.A.C. 11:3-42, published elsewhere in this issue of the New Jersey Register), and for credit toward its depopulation quota for each exposure transferred from the Market Transition Facility (MTF) written by producers voluntarily appointed.

These proposed new rules essentially codify the existing Plan and provide the procedures by which insurers may receive credit against producer assignments and depopulation quotas for the voluntary apportionment of Association producers who are eligible for assignment pursuant to N.J.S.A. 17:33B-9c, and certain other Association producers which are not eligible for assignment, in order to encourage and facilitate the voluntary establishment of agency agreements beween insurers and Association producers for the purpose of writing private passenger automobile insurance and such other lines of insurance mutually agreed upon. For example, the rules provide the procedures by which the Association producer's business shall be transferred to the insurer, the procedures by which the insurer may terminate an agreement entered into pursuant to these rules, and the compensation of producers voluntarily appointed.

The Department believes that codification of the existing Plan through these rules should continue to provide an incentive to insurers to enter into voluntary agreements with Association producers, implementing the intent of the Legislature as expressed in N.J.S.A. 17:33B-9b, and reducing market disruptions associated with the termination of Association producers not eligible for assignment under N.J.S.A. 17:33B-9c and the severing of established relationships between producers and insureds.

Proposed N.J.A.C. 11:3-41.1 sets forth the purpose and scope of the proposed new rules.

Proposed N.J.A.C. 11:3-41.2 sets forth the definitions of terms used in the subchapter.

Proposed N.J.A.C. 11:3-41.3 provides a definition of active Association producers.

Proposed N.J.A.C. 11:3-41.4 establishes categories for active Association producers.

Proposed N.J.A.C. 11:3-41.5 provides for the compilation of a list by the Department of active Association producers to be made available to licensed insurers.

Proposed N.J.A.C. 11:3-41.6 establishes criteria for the determination of inadequately serviced geographic areas.

Proposed N.J.A.C. 11:3-41.7 provides procedures for the appointment of producers pursuant to these rules.

Proposed N.J.A.C. 11:3-41.8 sets forth procedures for the transfer of Association/MTF business from producers which have been appointed pursuant to these rules.

Proposed N.J.A.C. 11:3-41.9 provides that the producer shall be authorized to solicit, negotiate and effectuate new contracts of automobile insurance in accordance with all applicable laws and regulations and the insurer's underwriting guidelines.

Proposed N.J.A.C. 11:3-41.10 provides for the termination of appointment under the rules.

Proposed N.J.A.C. 11:3-41.11 and 41.12 provide for the compensation of appointed producers.

Proposed N.J.A.C. 11:3-41.13 provides for the appointment of producers to other lines of business.

Proposed N.J.A.C. 11:3-41.14 provides for credits against an insurer's depopulation quota for producers appointed pursuant to these rules.

Proposed N.J.A.C. 11:3-41.15 provides for credits against an insurer's producer assignments for producers voluntarily appointed under these rules.

Proposed N.J.A.C. 11:3-41.16 provides that producers may be excluded from this Plan under certain circumstances.

Proposed N.J.A.C. 11:3-41.17 sets forth reporting requirements for insurers appointing insurers under these rules.

Social Impact

The proposed new rules should reduce any market disruptions caused by the termination of Association producers who are not eligible for assignment pursuant to N.J.S.A. 17:33B-9c, and should avoid disruptions caused by the severing of established relationships between these producers and insureds, thus benefiting the public. In addition, these

proposed new rules provide a means by which insurers that voluntarily appoint producers may receive credit against their depopulation quota and mandatory producer assignments. This benefits insurers which choose to participate and provides an incentive for insurers to enter into voluntary agreements with Association producers to write private passenger automobile insurance and other lines mutually agreed upon, thus furthering the intent of the Legislature as expressed in N.J.S.A. 17:33B-9.

Economic Impact

Insurers which choose to appoint Association insurers in accordance with these rules will be required to bear any costs associated with complying with the appointment procedures, reporting requirements and all other procedural requirements set forth in these rules. Any costs, however, are within the control of the insurer since compliance with these rules is voluntary. The Department further believes that any compliance costs are mitigated by the credit toward an insurer's depopulation quotas of up to two to one for each exposure from the Association or MTF written through the producer, and credit toward any mandatory producer assignments as provided by these rules.

These proposed new rules encourage insurers to enter into voluntary agreements with Association producers and thus should reduce costs associated with disruptions due to the termination of producers not eligible for assignment under N.J.S.A. 17:33B-9c and the severing of established relationships between Association producers and insureds.

The Department will be required to bear any costs associated with compiling a list of active Association producers and providing such lists to insurers upon request. The Department will also bear any costs associated with reviewing reports submitted by insurers pursuant to these rules and otherwise ensuring compliance by insurers and producers which choose to participate in the voluntary placement plan.

Regulatory Flexibility Analysis

These proposed new rules may apply to "small businesses" as that term is defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The proposed new rules will apply to small businesses which are insurers licensed to transact private passenger automobile insurance in this State and which seek to voluntarily appoint Association producers pursuant to these rules. These proposed new rules also apply to Association producers who mutually agree with insurers to the appointment. To the extent the proposed new rules apply to small businesses, they may impose a greater impact on small businesses in that they may have to devote proportionately more staff and financial resources to comply with the requirements set forth in the rules. However, any additional costs to insurers or producers is under the control of those parties since compliance with these rules is not mandatory. In addition, any adverse impact which may be imposed upon small businesses which choose to participate is mitigated by the fact that insurers which voluntarily appoint Association producers pursuant to these rules may receive additional credits toward mandatory producer assignments and depopulation quotas.

Insurers which choose to participate in the Plan established by these rules will be required to comply with the appointment procedures, termination requirements, producer compensation criteria, procedures governing the transfer of the appointed producer's business, and all reporting requirements set forth in these rules.

These rules provide no different compliance requirements based on business size. The proposed rules provide a regulatory framework by which insurers may receive credits for Association producers voluntarily appointed in accordance with these rules. An insurer is not required to appoint Association producers under these rules. Compliance is within the discretion of the insurer and producer. In addition, any adverse impact on small businesses is mitigated by the producer assignment and depopulation quota credits which are available under these rules. Since compliance with these rules is voluntary, any additional adverse impact is minimal, and in the interest of consistency and uniformity in allowing credit for the voluntary appointment of Association producers, no differentiation in compliance requirements is provided based on business size.

Full text of the proposal follows:

SUBCHAPTER 41. PRODUCER VOLUNTARY PLACEMENT PLAN

11:3-41.1 Purpose and scope

(a) N.J.S.A. 17:33B-9a requires that the Commissioner of Insurance, on or before October 1, 1990, compile a list of insurance brokers licensed pursuant to N.J.S.A. 17:22A-1 et seq., who are producers for the New Jersey Automobile Full Insurance Underwriting Association (Association) pursuant to N.J.S.A. 17:30E-10. The list shall include the name of the broker and any applicable fictitious, trade or firm name used by the broker, the business address of the broker and shall set forth the authorities that the broker holds pursuant to N.J.S.A. 17:22A-10. The list shall be made available to all insurers licensed to transact automobile insurance in this State.

(b) N.J.S.A. 17:33B-9b further provides that the Commissioner shall initiate a plan to encourage the broadening of authorities held by those brokers who have been active as Association producers.

(c) This Plan is intended to encourage and facilitate the establishment, on a voluntary basis, of agency agreements between licensed insurers and active Association producers for the purpose of writing private passenger automobile insurance, as well as such other lines of insurance as may be mutually agreed upon by the insurer and the producer.

(d) Insurers may appoint any Association producer included on the producer list compiled by the Department pursuant to N.J.S.A. 17:33B-9a, subject to statutory requirements. However, this Plan shall be applicable only to active Association producers as defined herein and to appointments made on or before June 30, 1992. Notwithstanding the foregoing, this Plan also shall apply to any Category A or B Association producer as defined in N.J.A.C. 11:3-41.4 appointed by the insurer on or after October 1, 1990 and before September 30, 1991. Depopulation quota credit for appointments made during this period may be applied by the insurer to either the April 1, 1991 quota or the October 1, 1991 quota, at its discretion.

11:3-41.2 Definitions

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

"Association" means the New Jersey Automobile Full Insurance Underwriting Association established pursuant to N.J.S.A. 17:30E-1 et seq.

"Automobile" is as defined in N.J.S.A. 17:30E-3b.

"Automobile insurance" is as defined in N.J.S.A. 17:30E-3c.

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

"Department" means the New Jersey Department of Insurance.

"MTF" means the Market Transition Facility established pursuant to N.J.S.A. 17:33B-11.

"Plan" means the Producer Voluntary Placement Plan established by this subchapter.

11:3-41.3 Active Association producers

(a) The term, active Association producer, shall mean a producer who:

1. Is licensed in this State as a resident agent or broker;

2. Had a valid Association producer contract in force on September 30, 1990;

3. Meets all of the eligibility criteria and performance standards set forth in the Association Plan of Operation (Operating Principles, Part III—Producers, Section I: Producer Eligibility, subsection 2, General Standards, and Section 4: Producer Performance Standards; subsection 1, Performance Standards—General); and

4. Has derived not less than $7,500 in commission income from Association or Market Transition Facility (MTF) policies combined in calendar year 1990.

i. Category A producers, as defined in N.J.A.C. 11:3-41.4, also may apply any commission income from voluntary market automobile insurance policies received during 1990 to meet the $7,500 threshold.

(b) An active Association producer shall not be precluded from entering into a voluntary agreement with an insurer to write such producer's Association/MTF book of business and new automobile insurance business as provided in N.J.A.C. 11:3-41.7, due to any mandatory depopulation assignment plan established by the Commissioner.

11:3-41.4 Producer categories

(a) Active Association producers shall be placed in the following categories for the purposes of this Plan:

1. A Category A producer shall mean a producer without a current affiliation with a voluntary market company for the purposes of placement of private passenger automobile insurance, but who had such an affiliation that was terminated by the insurer between December 31, 1980 and October 1, 1992. A Category A producer shall also include a producer whose only voluntary market outlet for private passenger automobile insurance is as the appointed representative of an insurer who has been:

i. Exempted from meeting the requirements of N.J.S.A. 17:30E-14b and 17:33B-11(c)(5);

ii. Ordered by the Commissioner to cease the writing of automobile insurance; or

iii. Permitted by the Commissioner to cease writing automobile insurance pursuant to an approved plan of withdrawal.

2. A Category B producer shall mean a producer without a current affiliation with a voluntary market company for the purposes of placement of private passenger automobile insurance who:

i. Had such an affiliation with an insurer that was terminated by the insurer prior to December 31, 1980; or

ii. Never had such an affiliation with a voluntary market company for the purposes of placement of private passenger automobile insurance.

3. A Category C producer shall mean a producer with a current appointment with a voluntary market company for the purposes of placement of private passenger automobile insurance on file with the Department's License Division.

(b) In the event that an appointment made under this Plan with a Category B producer is terminated by an insurer, the producer's category status shall be determind as follows:

1. Where the insurer has made an unconditional appointment of the producer, as provided in N.J.A.C. 11:3-41.10(b)1, or where termination occurs either subsequent to the expiration of the 12-month conditional appointment period or subsequent to June 30, 1992, as provided in N.J.A.C. 11:3-41.10(b), the producer shall be placed in Category A; or

2. Where the producer is terminated within the 12-month conditional appointment period, and prior to June 30, 1992, he or she shall remain in Category B.

(c) A Category C producer shall not be eligible for this Plan except as provided in (d) below. In the event a Category C producer's affiliation with the voluntary market insurer is terminated by the insurer on or before October 1, 1992, and the producer otherwise qualifies as an active Association producer as set forth in N.J.A.C. 11:3-41.3, such producer shall be considered a Category A producer.

(d) An insurer may receive up-front depopulation exposure credits, as defined in N.J.A.C. 11:3-41.14, for the books of business of its own producers who are in Category C under the following conditions:

1. Guaranteed offers of coverage must be made to all insureds who qualify as eligible persons pursuant to N.J.A.C. 11:3-34. In determining whether an insured qualifies as an eligible person, insurers shall comply with N.J.A.C. 11:3-8.4. An insurer may also make guaranteed offers to insureds who do not qualify as eligible persons;

2. An insurer that wishes to receive up-front credits for the Association/MTF business of its appointed producers must offer the opportunity to participate to all such producers. A producer may not be penalized for refusing to participate in the program;

3. All such agreements must be executed on or before September 30, 1991. The insurer must request approval of the up-front credits from the Department and provide details on the number of producers with whom the agreements were made and the terms of those agreements; and

4. Requests for approval of up-front credits must be received at the Department no later than October 20, 1991.

(e) Exposures from approved agreements may be applied by the insurer to either its April 1, 1991 and/or October 1, 1991 quota, at its discretion.

11:3-41.5 Producer information

(a) The Department shall compile a list of active Association producers that shall be made available to licensed insurers on diskette, upon written request. Producers shall be listed alphabetically by producer category, and shall set forth:

1. The producer's license reference number;

2. The producer's name and business address;

3. The rating territory in which the producer's main business office is located; and

4. The approximate number of policies in the producer's book of business.

(b) Requests for the Department's producer list and all other information required by this subchapter shall be submitted to:

ARM Unit
Department of Insurance
CN 325
Trenton, New Jersey 08625-0325

(c) The Association's data bank administrator, Equifax, shall compile underwriting/loss information on each Association producer's Association/MTF book of business that shall be made available to licensed insurers upon application to Equifax. Underwriting/loss information also shall be made available to each Association producer solely with respect to such producer's Association/MTF book of business.

1. No insurer shall utilize the underwriting/loss information furnished by Equifax to solicit private passenger automobile insurance or any other line of insurance, except where the insurer has entered into a voluntary agreement with the producer to represent the company and only for so long as such agreement continues in force.

2. Information shall be made available on computer tape (cartridge, reel or any media mutually agreed upon by the producer, insurer and Equifax) or in hard copy (that is, paper form). The record format for the underwriting/loss information that shall be made available by Equifax on each producer's book of business is set forth in Appendix A to this subchapter, incorporated herein by reference.

3. Insurers/producers shall be charged for the underwriting/loss information in accordance with fees mutually agreed upon between the insurer/producer and Equifax. Insurers/producers may contract separately with Equifax to have Equifax provide additional information concerning the producer's book of business or to provide information in a different record format than that set forth in Appendix A.

11:3-41.6 Inadequately serviced geographic areas

(a) For the purposes of the Plan, the State shall be divided into geographic areas corresponding to the rating territories used by the Association/MTF to write private passenger automobile insurance. Each rating territory shall be designated as either adequately serviced or inadequately serviced. For the initial implementation of this Plan (that is, for the period commencing October 1, 1990 and ending September 30, 1991), the definition of these terms shall be as follows:

1. A territory shall be designated as adequately serviced if the proportion of voluntary market private passenger automobile non-fleet exposures to total private passenger non-fleet exposures in that territory meets or exceeds both the aggregate Statewide quota established pursuant to N.J.S.A. 17:30E-14b(2), for the quota period ending on September 30, 1990 and the aggregate Statewide quota established pursuant to N.J.S.A. 17:33B-11c(5), for the quota period ending March 31, 1991.

2. A territory shall be designated as inadequately serviced if the proportion of voluntary market private passenger automobile non-

fleet exposures to total private passenger non-fleet exposures in that territory is less than the aggregate Statewide quota established pursuant to N.J.S.A. 17:30E-14b(2), for the quota period ending on September 30, 1990 or pursuant to N.J.S.A. 17:33B-11c(5), for the quota period ending April 1, 1991.

(b) Thereafter, the Commissioner shall review the status of each rating territory at the conclusion of each quota period established pursuant to N.J.S.A. 17:33B-11c(5). A rating territory shall be determined by the Commissioner to be inadequately serviced under the following conditions:

1. If the proportion of voluntary market private passenger automobile non-fleet exposures to total private passenger automobile non-fleet exposures in that territory is below the aggregate Statewide quota for the quota period; or

2. If the territory is not inadequately serviced based on the criteria established in (b)1 above, but the volume of exposures insured in the voluntary market was not achieved in the territory substantially through the voluntary writing of exposures but was achieved through the mandatory assignment of exposures pursuant to any mandatory depopulation plan established by the Commissioner.

(c) The Commissioner, in his or her discretion, may find that specific areas within a rating territory are inadequately serviced although the territory as a whole has been determined to be adequately serviced. The Commissioner's determination shall set forth the basis for his or her finding in such instances.

(d) The Commissioner shall provide notice to insurers of those rating territories or, if applicable, areas within rating territories that are inadequately serviced and the depopulation exposure credits applicable to each such territory by Order on May 15, and November 15, for the quota periods ending on April 1 and October 1, respectively.

(e) Except as may be otherwise permitted by the Commissioner, producers shall be deemed to be located and servicing business in a single rating territory for the purposes of this Plan. The producer shall be assigned to the rating territory in which the producer's main business office is located, as reflected in the Department's licensing records.

(f) The Commissioner may, in his or her discretion, revise the methodology for determining whether a geographic area is adequately serviced with respect to the placement of automobile insurance business in the voluntary market.

11:3-41.7 Appointment

(a) Insurers and producers participating in this Plan shall negotiate in good faith to establish fair and equitable voluntary agreements. Upon presentation of a final offer of appointment by the insurer, the producer shall have 30 days in which to determine whether to accept or refuse such offer.

1. A producer who refuses an offer from a voluntary company remains in the same producer category.

2. Insurers shall immediately provide notice of a refusal by the producer to accept an offer of appointment to the Department in the format set forth in Appendix B to this subchapter, incorporated herein by reference. A copy of such notice shall also be delivered to the producer.

3. A producer shall be excluded from further participation in this Plan and/or the producer Assignment Program as provided in N.J.A.C. 11:3-41.15 if he or she refuses more than two bona fide offers under this Plan.

(b) Where an insurer has reached a voluntary agreement with a producer pursuant to this Plan, the producer shall be appointed as the company's agent by written contract for the writing and servicing of private passenger automobile insurance coverage pursuant to the provisions of N.J.S.A. 17:22A-15 and any rules promulgated pursuant thereto.

i. Insurers that are members of a group that utilizes different member companies for the purpose of writing standard and non-standard risks shall appoint the producer as an agent for all such companies.

ii. For the purposes of this Plan, an appointment of a producer shall be designated either conditional or unconditional. An insurer that makes a conditional appointment of a producer may use the expanded termination provisions of N.J.A.C. 11:3-41.10(a). An unconditional appointment is an appointment the insurer would make in the ordinary course of business and shall be subject to the provisions of N.J.S.A. 17:22-6.14a and the termination provisions of N.J.A.C. 11:3-41.10(b). Except as provided in N.J.A.C. 11:3-41.10(a)3iii, depopulation quota credits apply regardless of the method by which a producer is appointed under this Plan.

(c) Pursuant to N.J.S.A. 17:22-6.14a(e), an insurer may use an insurance marketing system that provides for its agents to be compensated on a salary basis without commission or provides for its agents to represent the company exclusively. Such an insurer may utilize its customary marketing system when selecting producers under this Plan or may appoint such producers as independent agents, subject to mutual agreement between the parties.

(d) Insurers shall provide notice of appointments made pursuant to this Plan to the Department in the format set forth in Appendix C to this subchapter, incorporated herein by reference. Such notice shall be in addition to any notice of appointment otherwise established by law or rule.

1. With respect to insurers that are members of a group, the notice shall specify the member companies to which the producer is appointed as an agent.

2. The insurer is responsible for ensuring that the information on the form is accurate and complete. The Department shall make the final determination of the category to which a producer belongs.

(e) Insurers shall submit the notices of appointment prescribed in (d) above to the Department on a monthly basis. Notices must be received at the Department 10 days after the end of month in which appointments were executed.

1. In order to receive up-front credits towards a depopulation quota as provided in N.J.A.C. 11:3-41.14, notices of appointment must be received by the Department no later than 10 days after the end of the quota period for which credit is sought as required by (e) above. Notices of appointment received more than 10 days after the end of the quota period will result in the application of the credits to the next quota period.

2. For the initial implementation of this Plan (that is, the period commencing October 1, 1991), all notices of appointments, as required by (d) above, executed prior to the effective date of this Plan must be received at the Department within 30 days of the effective date of this Plan. Thereafter, notices shall be submitted monthly as provided in (e) above.

(f) In order to receive up-front credits towards a depopulation quota as provided in N.J.A.C. 11:3-41.14, the insurer must begin to accept applications on the producer's Association/MTF business and new business within 45 days of appointing the producer.

11:3-41.8 Transfer of Association/MTF business

(a) The insurer shall make an offer of coverage to each Association/MTF insured serviced by the producer who qualifies as an eligible person pursuant to N.J.A.C. 11:3-34. In determining whether the Association/MTF insured qualifies as an eligible person, insurers shall comply with N.J.A.C. 11:3-8.4. An insurer also may determine to make an offer of coverage to an insured who does not qualify as an eligible person.

(b) The transfer of the producer's Association/MTF policies to the assuming insurer shall be accomplished through completion by the producer of a new business application and a coverage selection form from the insured. Pursuant to mutual agreement between the insurer and the producer, the new business application may be unsigned. However, a coverage selection form signed by the insured shall be submitted to the insurer.

(c) To promote efficiency in the transfer of Association/MTF policies to the assuming insurer, the issuance of a competitive renewal quotation by the MTF servicing carrier is to be avoided. The Department shall notify insurers by Bulletin within 30 days of the effective date of this Plan of procedures for the exchange of electronic information that insurers may utilize to suppress the issuance of a renewal offer by the MTF servicing carrier.

11:3-41.9 New business

The producer shall be authorized to solicit, negotiate and effect new contracts of automobile insurance in accordance with all applicable laws and regulations, and the insurer's underwriting guidelines, consistent with procedures applicable to the insurer's other representatives.

11:3-41.10 Termination of appointment under this plan

(a) During the first 12 months of a conditional appointment under this Plan producers and insurers may terminate the appointment only as provided below.

1. Producers and insurers are prohibited from terminating the appointment for a period of six months from the date of appointment, except as provided below:

i. The insurer may terminate an appointment due to the producer's insolvency, abandonment, gross and willful misconduct or failure to pay over to the company monies due to the company after his receipt of a written demand therefor or after revocation of the producer's license by the Commissioner. In such case, the insurer may reassign the producer's book of business to another active agent of the company or service it directly.

ii. An insurer that terminates an appointment within the first six months except as provided in (a)1i above shall be excluded from participation in the Plan as provided in N.J.A.C. 11:3-41.16, in addition to other penalties provided by law.

iii. A producer who terminates an appointment within the first six months shall be excluded from further participation in this Plan and from assignment pursuant to the Producer Assignment program as provided in N.J.A.C. 11:3-41.16.

2. The insurer or producer may terminate the conditional appointment at any time after six months but before 12 months from the date of appointment in accordance with the procedure below provided that notice of termination is given prior to June 30, 1992.

i. Terminations of appointments that occur within the 12-month period and before June 30, 1992, shall not be subject to the provisions of N.J.S.A. 17:22-6.14a.

ii. Upon termination, the producer's book of business written with the insurer (including transferred Association/MTF policies as well as any new business) shall be transferred to a servicing carrier designated by the MTF, pursuant to procedures and requirements established by the Department. This business shall be transferred from the insurer to the designated MTF servicing carrier on a renewal policy basis unless otherwise required by the Department.

iii. Such terminations shall not be construed as activity evidencing a withdrawal from the market as contemplated by N.J.S.A. 17:17-10f and N.J.A.C. 11:2-29.

iv. No new business shall be written by the producer for the company after notice of termination without the prior written approval of the company.

v. Until such time as the transfer process is completed, the insurer shall not refuse to renew, accept additional or replacement vehicles, provide changes in the limits of liability or service to a policyholder in any other manner, that is in accordance with the company's current underwriting standards, provided the agent maintains a valid New Jersey producer's license and has not been replaced as broker of record by the insured. During the transfer process, the insurer shall continue to pay compensation to the producer in accordance with the terms established under the voluntary agreement.

vi. A producer who terminates appointment with insurers more than two times shall be excluded from further participation in this Plan and from assignment pursuant to the Producer Assignment Program as provided in N.J.A.C. 11:3-41.16.

3. Insurers shall provide notice of the termination by the insurer of any conditional appointment to the Department in the format of Appendix D to this subchapter, incorporated herein by reference. Such notice shall be in addition to any notice of termination otherwise established by law or rule. Notice of termination shall be given to the Department and the affected producer simultaneously.

(b) If the agreement has not been terminated at the expiration of the 12-month period or before June 30, 1992, whichever comes first, the insurer must continue the appointment of the producer as the company's representative for the writing and servicing of private passenger automobile insurance coverage. At such time, a conditional appointment shall be deemed unconditional for the purposes of this Plan and shall be subject to the provisions of N.J.S.A. 17:22-6.14a, N.J.S.A. 17:22A-1 et seq. and any rules promulgated pursuant thereto.

1. The insurer may decide not to avail itself of the entire period set forth in (a) above and may make the producer's appointment unconditional at any time.

i. Insurers shall notify the Department of conditional appointments that are made unconditional during the 12-month period or before June 30, 1992 as set forth in (a) above.

2. The terms of an unconditional appointment shall be the same as were agreed to for the conditional appointment unless the producer and insurer both agree otherwise.

3. Any termination of an unconditional appointment shall be subject to the provisions of law, including but not limited to N.J.S.A. 17:22-6.14a and 17:22A-1 et seq. and may be considered by the Department in determining whether an insurer has engaged in withdrawal activity pursuant to N.J.S.A. 17:17-10f and N.J.A.C. 11:2-29.

11:3-41.11 Producer compensation—company rates

(a) Where an insurer determines to use its own rates for Association/MTF policies transferred to the insurer and/or new business written through the producer, the contract shall provide for the producer to be compensated based on the insurer's current schedule of commissions or other formula used to provide compensation to its agents. Policies transferred from the Association/MTF shall be considered as new business with respect to providing producer compensation, for the assuming insurer's initial policy period.

(b) Where an insurer's compensation schedule contemplates support services, such as office space, equipment or advertising, or other employee benefits, and such services or benefits are not provided to the producer, the compensation schedule shall be adjusted to reflect accurately the value of such services or benefits so that the producer shall receive compensation that is equivalent to the compensation paid to, or on behalf of, the company's agents who receive such services or benefits.

1. For the purposes of this section, agent shall be construed to have the broadest possible meaning, including, but not limited to, exclusive agents and independent agents.

2. Where an insurer has more than one schedule of commissions for its agents, it shall negotiate in good faith with producers selected pursuant to this Plan to determine the commission to be paid.

(c) In the case of companies that are dircet writers, expenses for a direct marketing department and related support staff shall be considered in determining the commission to be paid to producers appointed pursuant to this Plan and insurers shall negotiate in good faith with the producers to determine the commission.

1. The commission agreed to by any direct writer and a producer shall be equivalent to the compensation paid to independent agents by insurers that utilize such agents.

2. Where an insurer that is a direct writer also maintains, through a subsidiary company or otherwise, a mechanism to accept business from producers who are not the normal, exclusive agents or representatives of the direct writers, the commission schedule applicable to such producers shall be utilized consistent with (a) above.

11:3-41.12 Producer compensation—MTF rates

Where an insurer is authorized by law to use MTF rates, rules and forms for policies written through the producer, the compensation level shall not be less than that provided by the MTF.

11:3-41.13 Other lines of insurance

Appointment of a producer by an insurer pursuant to this Plan may also provide for the producer to represent the insurer for other lines of insurance for which the company is authorized in this State and the producer holds authority in this State. Such provisions shall be by mutual agreement between the parties and subject to the provisions of law, including, but not limited to N.J.S.A. 17:22-6.14a and 17:22A-1 et seq.

11:3-41.14 Depopulation quota credits

(a) The Commissioner shall by Order establish credits for depopulation quotas in amounts deemed necessary to encourage and facilitate agreements between insurers and producers located in inadequately serviced territories. For purposes of depopulation quota credits, the Commissioner by Order may divide inadequately serviced territories into two or more groups based upon the degree that each territory is inadequately serviced in relation to all inadequately serviced territories.

(b) The depopulation quota credits provided under this Plan shall not apply to any exposure written by the insurer as a result of any mandatory producer assignment made to the insurer pursuant to N.J.S.A. 17:33B-9c or to any Association/MTF exposure written by the insurer through the producer of record pursuant to any mandatory depopulation plan established by the Commissioner.

1. Depopulation quota credits shall apply to any new private passenger exposure(s) written by an insurer through a producer whose Association/MTF exposures may have been assigned to that insurer or another insurer pursuant to any mandatory depopulation plan established by the Commissioner, after the insurer enters into a voluntary agreement with the producer for the writing of new business pursuant to this Plan.

i. For the purposes of this provision, new business shall not include additional or replacement vehicles insured on the transferred policy or insured under a separate policy issued to the same named insured(s).

(c) Any depopulation quota credits, otherwise referred to as "up-front credits," for Association/MTF exposures that will be written by the insurer pursuant to an appointment that is executed during a quota period shall be fully applied to the insurer's calculation of in-force exposures for the quota period, irrespective of whether the transfer process has been completed during that quota period.

i. Such credits shall be subject to a true-up performed on a quarterly basis pursuant to N.J.A.C. 11:3-41.17. Such true-up shall reflect the insurer's actual number of in-force exposures from the producer's Association/MTF book of business, net of policy cancellations, vehicle deletions, etc.

ii. Any depopulation quota credits for conditional appointments that are terminated, whether for cause or otherwise, during a quota period, including credits for former Association/MTF business and new business, shall be deleted from the insurer's calculation of in force exposures for that quota period, irrespecitve of whether the transfer process (that is, back to the MTF) has been completed during that quota period.

11:3-41.15 Producer assignment credits

Pursuant to N.J.S.A. 17:33B-9c, the Commissioner shall establish a Producer Assignment Program to provide for the assignment of qualified producers on an equitable basis to insurers writing private passenger automobile insurance in the voluntary market. Each insurer participating in this Plan shall receive credits toward any producer assignments made by the Commissioner in accordance with the credit allowances set forth in the Producer Assignment Program.

11:3-41.16 Exclusion from Plan/right of appeal

(a) Any producer who has refused a fair and equitable offer of appointment by an insurer pursuant to N.J.A.C. 11:3-41.7(a) on more than two occasions, who has terminated a conditional appointment(s) pursuant to N.J.A.C. 11:3-41.10(a)1 or terminated appointments pursuant to N.J.A.C. 11:3-41.10(a)3 on more than two occasions shall be excluded from further participation in this Plan. Such producer also shall be ineligible for assignment pursuant to the Producer Assignment Program.

(b) Any insurer that terminates a conditional appointment of a producer within the first six months except as provided in N.J.A.C. 11:3-41.10(a)2i shall be excluded from further participation in this Plan.

(c) The Commissioner shall provide written notice to the producer or insurer detailing the reasons for exclusion from the Plan.

(d) Any producer whose appointment is terminated by an insurer under this Plan for reasons that adversely reflect on the producer's competency, efficiency or effectiveness in servicing insurance business or that demonstrate unworthiness, bad faith, lack of integrity, financial irresponsibility or dishonesty shall be excluded from participation in this Plan. Such producer shall also be ineligible for assignment pursuant to the Producer Assignment Program.

(e) A producer who has received a notice of refusal, a notice of termination for cause from an insurer, or a producer or an insurer that has received a notice of exclusion from the Plan by the Commissioner, may contest the notice by filing a written response thereto with the Department. Such response shall be made within 30 days of the insurer's notice. The Commissioner shall advise the producer as to his or her decision within 30 days.

11:3-41.17 Reporting requirements

(a) Insurers participating in the Plan shall continue to file the quarterly in-force exposure report required by the Association's Plan of Operation, Operating Principles—Part I, Section 13, Voluntary Market Placement Program and the MTF's Plan of Operation Part I, Depopulation of Residual Market. Such reports shall continue to indicate the actual number of in-force exposures written by the insurer for each rating territory and shall not include any credits associated with this Plan.

(b) Insurers participating in this Plan shall file a separate quarterly report that identifies and tracks both the in-force exposures written, and up-front credits awarded, resulting from producers appointed pursuant to this Plan during the six-month period ending on the close of business of the following periods:

1. Period 1—exposures and credits resulting from producers appointed prior to September 30, 1991 whose books of business are being applied to the quota period ending March 31, 1991;

2. Period 2—exposures and credits resulting from producers appointed prior to September 30, 1991 whose books of business are being applied to the quota period ending September 30, 1991;

3. Period 3—exposures and credits resulting from producers appointed between October 1, 1991 and March 31, 1992; and

4. Period 4—exposures and credits resulting from producers appointed between April 1, 1992 and June 30, 1992.

(c) With respect to the tracking of the in-force exposures required by the quarterly report, insurers participating in the Plan shall identify separately the in-force exposures rewritten from the producer's Association/MTF book of business and subsequent new business exposures written through the producer appointment.

(d) Insurers participating in this Plan shall submit the following information to the Department concerning in-force exposures and up-front credits by rating territory and producer category for each block of producers:

i. The total number of exposures which the insurer expects to rewrite from producers' Association/MTF books of business;

ii. The actual number of exposures the insurer rewrote from producers' Association/MTF books of business during the preceding quarter;

iii. The cumulative number of exposures the insurer rewrote from producers' Association/MTF books of business from the date of appointment to the close of business of the preceding quarter;

iv. The actual number of exposures the insurer wrote through producers as new business during the preceding quarter;

v. The cumulative number of exposures the insurer wrote through producers as new business from the date the voluntary agreement was signed to the close of business of the preceding quarter; and

vi. With respect to appointments terminated in accordance with this Plan, the total number of exposures the insurer estimated that it was going to rewrite from terminated producers' Association/MTF books of business plus the cumulative number of new business exposures actually written by the insurer from the date of appointment to the close of business of the preceding quarter.

Example: For purposes of illustration only, assume that ABC Insurance Company (ABC) signs up 10 producers during Period 3. On April 20, 1992, ABC will file the first quarter report which identifies and tracks the in-force exposures and up-front credits awarded resulting from business from this block of 10 producers. Assume further that ABC signed up an additional five producers during Period 4. On July 20, 1992, ABC will file two quarterly reports with the Department as required by this section. One of these

quarterly reports is the second quarterly report which continues to identify and track the in-force exposures and up-front credits awarded resulting from business from the block of 10 producers signed up during Period 3. The other quarterly report represents the first report filed by ABC which identifies and tracks the in-force exposures and up-front credits awarded resulting from business from the second block of 15 producers which were signed up during Period 4.

(e) Any report required by this Plan must be delivered and received by the Department no later than the close of business on the 20th calendar day following the end of each calendar quarter.

i. Where the 20th calendar day falls on a weekend or holiday, the report is due by the close of business of the next business day.

(f) The report and the content of the report required by (b) above shall be in the format of Appendix E to this subchapter, incorporated herein by reference. The report shall be mailed to the Department at the following addresss:

Department of Insurance
ARM Unit/PVPP Reports
Department of Insurance
CN 325
Trenton, New Jersey 08625-0325
Telephone Number: (609) 292-4240
Facsimile Number: (609) 392-0047

(g) Insurers participating in this Plan may appoint producers anytime during the periods set forth in (b) above. Notices of appointment for each producer with whom a voluntary agreement has been reached shall be submitted to the Department as set forth in N.J.A.C. 11:3-41.7(d) and (e) above. The Department will calculate the credits that shall be applied towards the insurer's apportionment share and shall notify the company of the number of credits awarded.

(h) Based on the information contained in the quarterly reports required to be filed by this section of the Plan, the Department shall subsequently adjust the up-front credits which were previously awarded to the insurer.

APPENDIX A
NEW JERSEY AFIUA ROLLOVER RECORD

FIELD NAME	FIELD TYPE	FIELD LENGTH	REQUIRED/ OPTIONAL	VALID VALUES	COMMENTS
POLICY HOLDER RECORD			M		
KEY					
RECORD TYPE	N	2	M	01 = POLICY HOLDER	
POLICY NUMBER	A/N	20	M		
DATA					
PRODUCER CODE NUMBER	A/N	20	R		REQUIRED FOR ALLSTATE
PRODUCER TAX ID	A/N	10	R		REQUIRED FOR ALL OTHER COMPANIES
PRODUCER NAME	A/N	40	M		
ADDITIONAL PRODUCER NAME	A/N	40	0		
PRODUCER ADDRESS	A/N	40	0		
ADDITIONAL PRODUCER ADDRESS	A/N	40	0		
PRODUCER CITY-STATE-ZIP			0		
CITY	A/N	28			
STATE	A	2		USPS CODE	
ZIP CODE					
FIVE DIGIT ZIP CODE	N	5			
ZIP-DASH	A/N	1		DASH, SPACE WHEN ZIP-SUFFIX IS ZERO	
ZIP-SUFFIX	A/N	4		BLANK WHEN ZERO	
POLICY EXPIRATION DATE	N	6	M	YYMMDD	
POLICYHOLDER TELEPHONE NUMBER			0		
AREA CODE	N	3			
TELEPHONE NUMBER	N	7			
POLICYHOLDER SORT NAME	A/N	3	M		FIRST THREE CHARACTERS OF LAST NAME
POLICYHOLDER NAME	A/N	40	M		
ADDITIONAL POLICYHOLDER NAME	A/N	40	R		
POLICYHOLDER ADDRESS	A/N	40	0		RESIDENTIAL ADDRESS IF DIFFERENT FROM MAILING ADDRESS
ADDITIONAL POLICYHOLDER ADDRESS	A/N	40	0		
POLICYHOLDER CITY-STATE-ZIP			0		
CITY	A/N	28			
STATE	A	2		USPS CODE	
ZIP CODE					
FIVE DIGIT ZIP CODE	N	5			
ZIP-DASH	A/N	1		DASH, SPACE WHEN ZIP-SUFFIX IS ZERO	
ZIP-SUFFIX	A/N	4		BLANK WHEN ZERO	
POLICYHOLDER MAILING ADDRESS	A/N	40	M		
ADDITIONAL MAILING ADDRESS	A/N	40	R		

MAILING CITY-STATE-ZIP			M		
CITY	A/N	28			
STATE	A	2		USPS CODE	
ZIP CODE					
FIVE DIGIT ZIP CODE	N	5			
ZIP-DASH	A/N	1		DASH, SPACE WHEN ZIP-SUFFIX IS ZERO	
ZIP-SUFFIX	A/N	4		BLANK WHEN ZERO	
ADDITIONAL INTERESTED PARTY IND	A/N	1	M	Y/N	INDICATES ADDITIONAL INFORMATION IS BEING SENT VIA HARDCOPY
NUMBER OF DRIVER RECORDS	N	3	M	001-999	RECORD COUNT PER POLICY
NUMBER OF VEHICLE RECORDS	N	3	M	001-999	RECORD COUNT PER POLICY
NUMBER OF DRIVER CLAIM RECORDS	N	3	M	000-999	RECORD COUNT PER POLICY
NUMBER OF LIENHOLDER RECORDS	N	3	M	000-999	RECORD COUNT PER POLICY
NUMBER OF LESSOR RECORDS	N	3	M	000-999	RECORD COUNT PER POLICY
NUMBER OF COMMENTS RECORDS	N	3	M	000-999	RECORD COUNT PER POLICY
DRIVER RECORD			M		OCCURS FOR EACH DRIVER
KEY					
RECORD TYPE	N	2	M	02 = DRIVER	
POLICY NUMBER	A/N	20	M		
DRIVER NUMBER	N	2	M		
DATA					
DRIVER NAME	A/N	40	R		
DRIVER LICENSE NUMBER	A/N	22	M		
DRIVER DATE OF BIRTH	N	6	R	YYMMDD FORMAT	
DRIVER LICENSE STATE	A	2	R	USPS CODE	
DRIVER SEX CODE	A	1	R	M OR F	
DRIVER MARITAL STATUS	A	1	R	M OR S	BASED ON CLASS CODE CRITERIA
DATE LICENSED	N	6	R	YYMMDD, ZERO FILL UNKNOWN PARTS	DATE ORIGINAL LICENSE ISSUED
NUMBER OF DRIVER EVENTS	N	2	M		COUNT OF DRIVER EVENT RECORDS
DRIVER EVENT RECORD			R		EACH RECORD REPRESENTS ONE EVENT
KEY					
RECORD TYPE	N	2	M	03 DRIVER EVENT	
POLICY NUMBER	A/N	20	M		
DRIVER NUMBER	N	2	M		
DATA					
DRIVER EVENT CODE	A/N	5	R	SEE COMMENTS	USE DIP PLAN CODES FOR EVENTS, "ACCUM" FOR POINTS ACCUMULATION "ACCID" FOR ACCIDENTS "COMP" FOR COMPREHENSIVE "COLL" FOR COLLISION
TOTAL POINTS	N	2	R		ZERO IF DRIVER EVENT CODE NOT = "ACCUM"
DRIVER EVENT DATE	N	6	R	YYMMDD FORMAT	VIOLATION DATE, OR COMP. LOSS DATE, OR LOSS PAYMENT DATE EARLIEST DATE IF EVENT CODE = "ACCUM"
EVENT AT-FAULT INDICATOR	A	1	R	Y OR N	
DRIVER CLAIM RECORD			R		OCCURS FOR EACH CLAIM COVERAGE
KEY					
RECORD TYPE	N	2	M	04 DRIVER CLAIM	
POLICY NUMBER	A/N	20	M		
DRIVER NUMBER	N	2	M	99 IF EVENT CANNOT B 99	
DATA					
CLAIM DATE OF LOSS	N	6	0	YYMMDD FORMAT	
CLAIM AT-FAULT INDICATOR	A	1	0	Y OR N	
CLAIM COVERAGE CODES	A/N	8	0	POS 1 A = BI POS 2 B = PD POS 3 D = COMP POS 4 G = COLL POS 5 H = ROAD SERVICE POS 6 R = RENTAL POS 7 U = UNINSURE POS 8 P = PIP	POSITIONAL FROM LEFT TO RIGHT

TOTAL AMOUNT PAID	N	7	0	WHOLE DOLLARS	
DATE PAID	N	6	0	YYMMDD FORMAT	DATE OF FIRST PAYMENT. ZERO IF NO PAYMENTS HAVE BEEN MADE
ACCIDENT DATE	N	6	0	YYMMDD FORMAT	
CLAIM NUMBER	A/N	20	0		
COMMENTS	A/N	150	0		
VEHICLE RECORD			M		OCCURS FOR EACH VEHICLE
KEY					
RECORD TYPE	N	2	M	05 = VEHICLE	
POLICY NUMBER	A/N	20	M		
VEHICLE NUMBER	N	2	M		
DATA					
RATING TERRITORY	N	2	M	AFIUA CODE	
GARAGE ZIP CODE	N	5	R		
MODEL YEAR	N	2	M		
VEHICLE MAKE/MODEL	A/N	17	M	MAKE SPACE MODEL	
VIN NUMBER	A/N	17	M		
VEHICLE TYPE	N	1	M	1 = PRIVATE PASS. 2 = TRAILER 3 = MOTOR HOME 4 = MOTORCYCLE 5 = UTILITY/VAN 6 = CLASSIC 7 = ANTIQUE 8 = ELECTRIC	
COST NEW	N	6	0	WHOLE DOLLARS ONLY	
VEHICLE SYMBOL	A/N	2	R	ISO CODES	
EXPIRING CLASS CODE	A/N	6	M	ISO CODES	
VEHICLE DRIVER DATE OF BIRTH	N	6	0	YYMMDD FORMAT	DOB OF RATED DRIVER OF VEHICLE
ANTI-THEFT DEVICE	N	1	M	0 = 0% 1 = 5% 2 = 15%	REPRESENTS DISCOUNT PERCENTAGE TO BE APPLIED
PASSIVE RESTRAINT INDICATOR	A/N	1	M	Y OR N	
VEHICLE STATED AMOUNT	N	6	R	WHOLE DOLLARS ONLY	
VEHICLE CC'S	N	4	M		MOTORCYCLE ENGINE SIZE
PIP RENEWAL DISCOUNT	A/N	1	0	Y OR N	
OPERATOR INFORMATION	GROUP		M	OCCURS 10 TIMES	
DRIVER NUMBER	N	2	M		IDENTIFIES DRIVERS ASSIGNED TO THIS VEHICLE
PRINCIPAL OPERATOR INDICATOR	A	1	M	Y OR N	
BODILY INJURY–SPLIT	N	1	M	3 = 15/30 5 = 25/50 6 = 50/100 8 = 100/300 1 = 250/500	
BODILY INJURY–CSL	N	1	M	3 = 35 5 = 50 4 = 75 6 = 100 7 = 250 8 = 300 9 = OVER 300	
PROPERTY DAMAGE	N	1	M	1 = 5 2 = 10 4 = 25 5 = 50 6 = 100	
MEDICAL EXPENSE	N	1	M	0 = CSL 3 = 1000 8 = 10000	
UNINSURED MOTORIST–SPLIT	N	1	R	3 = 15/30 5 = 25/50 6 = 50/100 7 = 100/300 9 = 250/500	ZERO IF N/A
UNINSURED MOTORIST–CSL	N	1	R	3 = 35 5 = 50 4 = 75 6 = 100	ZERO IF N/A

				7 = 250	
				8 = 300	
				9 = 500	
UNINSURED MOTORIST–PD	N	1	R	1 = 5	ZERO IF N/A
				2 = 10	
				4 = 25	
				5 = 50	
				6 = 100	
UMPD DEDUCTIBLE	N	1	M	0 = 250	BUY BACK
				1 = 500	
TORT THRESHOLD	N	1	M	2 = 200	
				3 = 1950	
				4 = VERBAL	
				5 = NON-VERBAL	
PIP COVERAGE	N	3	M	025 = MED ONLY	
				001 = NO ADDITIONAL	
				026 = PED COV ONLY	
				007 = OTHER OPTION	
				002 = OPTION 1	INSURED & SPOUSE
				003 = OPTION 2	INSURED & SPOUSE
				004 = OPTION 3	INSURED & SPOUSE
				005 = OPTION 4	INSURED & SPOUSE
				006 = OPTION 5	INSURED & SPOUSE
				010 = OPTION 6	INSURED & SPOUSE
				011 = OPTION 7	INSURED & SPOUSE
				012 = OPTION 8	INSURED & SPOUSE
				013 = OPTION 9	INSURED & SPOUSE
				014 = OPTION 10	INSURED & SPOUSE
				015 = OPTION 11	INSURED & SPOUSE
				016 = OPTION 12	INSURED & SPOUSE
				017 = OPTION 13	INSURED & SPOUSE
				018 = OPTION 14	INSURED & SPOUSE
				019 = OPTION 15	INSURED & SPOUSE
				020 = OPTION 16	INSURED & SPOUSE
				n30 = OPTION 1	RESIDENT RELATIVES n = NUMBER OF
				n31 = OPTION 2	RESIDENT RELATIVES RELATIVES
				n32 = OPTION 3	RESIDENT RELATIVES
				n33 = OPTION 4	RESIDENT RELATIVES
				n34 = OPTION 5	RESIDENT RELATIVES
				n35 = OPTION 6	RESIDENT RELATIVES
				n36 = OPTION 7	RESIDENT RELATIVES
				n37 = OPTION 8	RESIDENT RELATIVES
				n38 = OPTION 9	RESIDENT RELATIVES
				n39 = OPTION 10	RESIDENT RELATIVES
				n40 = OPTION 11	RESIDENT RELATIVES
				n41 = OPTION 12	RESIDENT RELATIVES
				n42 = OPTION 13	RESIDENT RELATIVES
				n43 = OPTION 14	RESIDENT RELATIVES
				n44 = OPTION 15	RESIDENT RELATIVES
				n45 = OPTION 16	RESIDENT RELATIVES
PIP DEDUCTIBLE	N	1	M	0 = 250	
				1 = 500	
				2 = 1000	
				3 = 2500	
PIP SETOFF	A/N	1	M	Y OR N	
COMPREHENSIVE DEDUCTIBLE	N	3	M	062 = 50	WITH TOWING
				065 = 100	WITH TOWING
				739 = 150	WITH TOWING
				063 = 200	WITH TOWING
				066 = 250	WITH TOWING
				722 = 500	WITH TOWING
				723 = 1000	WITH TOWING
				743 = 1500	WITH TOWING
				747 = 2000	WITH TOWING
				003 = 50	WITHOUT TOWING
				010 = 100	WITHOUT TOWING
				741 = 150	WITHOUT TOWING
				015 = 200	WITHOUT TOWING
				055 = 250	WITHOUT TOWING
				726 = 500	WITHOUT TOWING
				727 = 1000	WITHOUT TOWING

				745 = 1500	WITHOUT TOWING
				749 = 2000	WITHOUT TOWING
COLLISION DEDUCTIBLE	N	3	M	074 = 100	
				075 = 150	
				073 = 200	
				076 = 250	
				082 = 300	
				077 = 500	
				078 = 1000	
				845 = 1500	
				846 = 2000	
RENTAL REIMBURSEMENT	A	1	M	Y OR N	
NON-OWNED COVERAGE	N	1	M	0 = NONE	
				01 = INS. & SPOUSE	
				n2 = INS. RELATIVES	n = NUMBER OF DRIVERS
				n3 = ALL	n = NUMBER OF DRIVERS
SOUND TAPES	A	1	M	Y OR N	
SOUND EQUIPMENT	N	1	M	0 = NONE	
				1 = 1-200	
				2 = 201-500	
				3 = 501-1000	
				4 = 1001-2500	
				5 = 2501+	
COST OF CUSTOMIZATION	N	6	R		ZERO IF NONE
LIENHOLDER NAME OF RECORD			R		
KEY					
RECORD TYPE	N	2	M	06 = LIENHOLDER	
POLICY NUMBER	A/N	20	M		
VEHICLE NUMBER	N	2	M		
DATA					
LIENHOLDER NAME	A/N	40	M		
ADDITIONAL LIENHOLDER NAME	A/N	40	R		
LIENHOLDER ADDRESS	A/N	40	M		
ADDITIONAL LIENHOLDER ADDRESS	A/N	40	M		
LIENHOLDER CITY-STATE-ZIP			M		
CITY	A/N	28			
STATE	A	2		USPS CODE	
ZIP CODE					
FIVE DIGIT ZIP CODE	N	5		DASH, SPACE WHEN	
ZIP-DASH	A/N	1		ZIP-SUFFIX IS ZERO	
ZIP-SUFFIX	A/N	4		BLANK WHEN ZERO	
LESSOR/ADDITIONAL INSURED RECORD			R		EITHER LESSOR OR ADDITIONAL INSURED
KEY					
RECORD TYPE	N	2	M	07 = LESSOR	
POLICY NUMBER	A/N	20	M		
VEHICLE NUMBER	N	2	R	ZERO IF UNKNOWN	
DATA					
LESSOR NAME	A/N	40	M		
ADDITIONAL LESSOR NAME	A/N	40	R		
LESSOR ADDRESS	A/N	40	R		
ADDITIONAL LESSOR ADDRESS	A/N	40	R		
LESSOR CITY-STATE-ZIP			R		
CITY	A/N	28			
STATE	A	2		USPS CODE	
ZIP CODE					
FIVE DIGIT ZIP CODE	N	5			
ZIP-DASH	A/N	1		DASH. SPACE WHEN ZIP-SUFFIX IS ZERO	
ZIP-SUFFIX	A/N	4		BLANK WHEN ZERO	
NAME TYPE	N	1	M	0 = UNKNOWN	
				1 = LESSOR	
				2 = ADDITIONAL INSURED	
				3 = BOTH	

COMMENTS RECORD			R		
KEY					
RECORD TYPE	N	2	M	08 = COMMENTS	
POLICY NUMBER	A/N	20	M		
SEQUENCE NUMBER	N	3	M	001-999	USED TO PROVIDE SEQUENCING FOR THE COMMENTS LINE
DATA					
FREE FORM COMMENTS	A/N	132	M		
PRODUCER SUMMARY RECORD			M		ONE RECORD AFTER EACH PRODUCER
KEY					
RECORD TYPE	N	2	M	98 = PRODUCER SUMMARY	
PRODUCER CODE	A/N	20	M		USE PRODUCER TAX ID IF NOT ALLSTATE
DATA					
POLICY COUNT	N	7	M		NUMBER OF POLICIES FOR THIS PROVIDER
RECORD COUNT	N	9	M		RECORD COUNT FOR THIS PROVIDER (INCLUDING THE SUMMARY RECORD)
FILE SUMMARY RECORD			M		ONE RECORD PER FILE
KEY					
RECORD TYPE	N	2	M	99 = FILE SUMMARY	
FILLER	N	20	M	ALL 9's	
DATA					
POLICY COUNT	N	7	M		TOTAL NUMBER OF POLICIES
RECORD COUNT	N	9	M		TOTAL RECORD COUNT (INCLUDING THE SUMMARY RECORD)

APPENDIX B

PRODUCER VOLUNTARY PLACEMENT PROGRAM—REFUSAL OF APPOINTMENT
(Please print or type)

---------- Company Information ----------

_____ _____
Name of Company or Group NAIC #

Address: _____

_____ _____
Company Contact Person Title

Phone No.: (____) _____ FAX No.: (____) _____

---------- Producer Information ----------

_____ |_|_|_|_|_|_|_|_|_|_|
Name of JUA/MTF Contractholder DOI Producer Reference No.

Contact Person: _____
Individual Licensee if above is Partnership or Corporation

_____
Main Business Address—No. and Street (P.O. Box not permitted)

_____ NJ _____ (____) _____
City Zip Phone

Rating Territory of Business Address: _____ Producer Category _____

---------- Refusal Information ----------

Date of Refusal: Mo.___ Day ___ Yr.___

Explanation _____

_____

_____

_____

_____

CERTIFICATION

I certify that the above information is correct to best of my knowledge, information and belief. I understand that if I have knowingly made any false statements I will be subject to penalties.

_____ _____
Signature of Company Representative Print Name

_____ _____
Title Date

APPENDIX C

PRODUCER VOLUNTARY PLACEMENT PROGRAM—NOTICE OF PRODUCER APPOINTMENT
(Please print or type)

---------- Company Information ----------

Name of Company or Group _____ NAIC # _____

Address: _____

Company Contact Person _____ Title _____

Phone No.: (____) _____ FAX No.: (____) _____

---------- Producer Information ----------

Name of JUA/MTF Contractholder _____ DOI Producer Reference No. | | | | | | | | | |

Contact Person: _____ _____
Individual Licensee if above is Partnership or Corporation Rating Territory of Business Address

Main Business Address—No. and Street (P.O. Box not permitted)

_____ NJ _____ (____) _____
City Zip Phone

Date of Appointment: Mo. ____ Day ____ Yr. ____ Conditional/Unconditional (C/U) _____

Producer's total JUA/MTF Exposures in force as of above date _____

Estimated eligible exposures (above total less 15%) _____

Appointment effective for new business on: Month ____ Day ____ Year _____

Appointment effective for JUA/MTF renewals on: Month ____ Day ____ Year _____

Name of MTF Servicing Carrier _____

Name(s) of JUA Servicing Carrier(s), if different than MTF Carrier _____

Voluntary Market Companies for which producer is authorized to write automobile insurance (do not include your company):

1. _____
2. _____
3. _____
4. _____
5. _____

None ____ If applicable, provide the name of any Voluntary Market Insurer that terminated the producer's authorization to write auto insurance on or after 12/31/80:

_____ Date of Termination: _____

CERTIFICATION

I certify that the above information is correct to best of my knowledge, information and belief. I understand that if I have knowingly made any false statements I will be subject to penalties.

Signature of Company Representative _____ Print Name _____

Title _____ Date _____

APPENDIX D

PRODUCER VOLUNTARY PLACEMENT PROGRAM—TERMINATION OF PRODUCER APPOINTMENT
(Please print or type)

---------- Company Information ----------

Name of Company or Group _____ NAIC # _____

Address: _____

Company Contact Person _____ Title _____

Phone No.: (____) _____ FAX No.: (____) _____

---------- Producer Information ----------

Name of JUA/MTF Contractholder _____ DOI Producer Reference No. |_|_|_|_|_|_|_|_|_|_|

Contact Person: _____
Individual Licensee if above is Partnership or Corporation

Main Business Address—No. and Street (P.O. Box not permitted)

City _____ NJ Zip _____ (____) Phone _____

Rating Territory of Business Address: _____ Producer Category_____ Credit Rec'd _____

Name of MTF Servicing Carrier _____

Name(s) of JUA Servicing Carrier(s), if different than MTF Carrier _____

---------- Termination Information ----------

Date of Appointment: Mo. ____ Day ____ Yr. ____

Date of Termination: Mo. ____ Day ____ Yr. ____

Termination by Insurer ____ Producer ____ If Insurer, termination for cause? Y/N ____
If Yes, Explain basis in detail. Attach additional sheets if necessary.

_____

_____

_____

_____

_____

No. exposures counted up-front _____ × Credit Factor _____ = _____

No. exposures written as new business _____ × Credit Factor = _____

Total = _____

Termination effective for new business on: Month ____ Day ____ Year _____

Termination effective for JUA/MTF renewals on: Month ____ Day ____ Year _____

CERTIFICATION

I certify that the above information is correct to best of my knowledge, information and belief. I understand that if I have knowingly made any false statements I will be subject to penalties.

Signature of Company Representative _____ Print Name _____

Title _____ Date _____

APPENDIX E

PRODUCER VOLUNTARY PLACEMENT PROGRAM

MEMBER COMPANY QUARTERLY REPORT

MEMBER COMPANY NAME: _____ NAIC NO.: _____ GROUP NAIC NO.: _____

DATE OF REPORT: _____ PRODUCER SIGN-UP PERIOD: _____

RATING TERR # /PROD CAT	ESTIMATED # OF EXPOSURES TO BE REWRITTEN FROM PRODUCER BOOK OF BUS (1)	ACTUAL # OF EXPOSURES REWRITTEN FROM PROD BK (FOR QTR) (2)	CUM # OF EXPOSURES REWRITTEN FROM PROD BK (TO DATE) (3)	ACTUAL # OF EXPOSURES FROM NEW BUSINESS (FOR QTR) (4)	CUM # OF EXPOSURES FROM NEW BUSINESS (TO DATE) (5)	TOTAL EXPOSURES (TO DATE) (6) = (1) + (5)	TOTAL # OF EXPOSURES FROM TERMINATED PRODUCERS (7)	NET EXPOSURES (TO DATE) (8) = (6) - (7)	TERR CREDIT (9)	TOTAL EXPOSURES & CREDITS (10) = (8) * (9)
01 - A									1.5	
01 - B									2.0	
01 - C									1.0	
02 - A									1.5	
02 - B									2.0	
02 - C									1.0	
03 - A									1.3	
03 - B									1.5	
03 - C									1.0	
04 - A									1.3	
04 - B									1.5	
04 - C									1.0	

PRODUCER VOLUNTARY PLACEMENT PROGRAM

MEMBER COMPANY QUARTERLY REPORT

MEMBER COMPANY NAME: _____ NAIC NO.: _____ GROUP NAIC NO.: _____

DATE OF REPORT: _____ PRODUCER SIGN-UP PERIOD: _____

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05 - A									1.3	
05 - B									1.5	
05 - C									1.0	
06 - A									1.1	
06 - B									1.2	
06 - C									1.0	
07 - A									1.5	
07 - B									2.0	
07 - C									1.0	
08 - A									1.3	
08 - B									1.5	
08 - C									1.0	

Interested Persons see Inside Front Cover

PRODUCER VOLUNTARY PLACEMENT PROGRAM

MEMBER COMPANY QUARTERLY REPORT

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10 - A									1.0	
10 - B									1.1	
10 - C									1.0	
11 - A									1.1	
11 - B									1.2	
11 - C									1.0	
12 - A									1.1	
12 - B									1.2	
12 - C									1.0	
13 - A									1.1	
13 - B									1.2	
13 - C									1.0	

PRODUCER VOLUNTARY PLACEMENT PROGRAM

MEMBER COMPANY QUARTERLY REPORT

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14 - A									1.1	
14 - B									1.2	
14 - C									1.0	
15 - A									1.0	
15 - B									1.1	
15 - C									1.0	
16 - A									1.1	
16 - B									1.2	
16 - C									1.0	
17 - A									1.0	
17 - B									1.1	
17 - C									1.0	

Interested Persons see Inside Front Cover

PRODUCER VOLUNTARY PLACEMENT PROGRAM

MEMBER COMPANY QUARTERLY REPORT

MEMBER COMPANY NAME: _____ NAIC NO.: _____ GROUP NAIC NO.: _____

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19 - A									1.5	
19 - B									2.0	
19 - C									1.0	
22 - A									1.5	
22 - B									2.0	
22 - C									1.0	
23 - A									1.5	
23 - B									2.0	
23 - C									1.0	
24 - A									1.0	
24 - B									1.1	
24 - C									1.0	

PRODUCER VOLUNTARY PLACEMENT PROGRAM

MEMBER COMPANY QUARTERLY REPORT

MEMBER COMPANY NAME: _____ NAIC NO.: _____ GROUP NAIC NO.: _____

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25 - A									1.0	
25 - B									1.1	
25 - C									1.0	
26 - A									1.0	
26 - B									1.1	
26 - C									1.0	
27 - A									1.1	
27 - B									1.2	
27 - C									1.0	
31 - A									1.1	
31 - B									1.2	
31 - C									1.0	

Interested Persons see Inside Front Cover

PRODUCER VOLUNTARY PLACEMENT PROGRAM

MEMBER COMPANY QUARTERLY REPORT

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38 - A									1.5	
38 - B									2.0	
38 - C									1.0	
39 - A									1.1	
39 - B									1.2	
39 - C									1.0	
40 - A									1.1	
40 - B									1.2	
40 - C									1.0	
TOTALS										

(a)

DIVISION OF PROPERTY AND CASUALTY

Producer Assignment Program

Proposed New Rules: N.J.A.C. 11:3-42

Authorized By: Samuel F. Fortunato, Commissioner, Department of Insurance.
Authority: 17:1C-6(e); 17:1-8.1 and 17:33B-9.
Proposal Number: PRN 1991-416.

Submit comments by September 4, 1991 to:
Verice M. Mason
Assistant Commissioner
Department of Insurance
Legislative and Regulatory Affairs
Trenton, New Jersey 08625

The agency proposal follows:

Summary

N.J.S.A. 17:33B-9c requires that the Commissioner of Insurance (Commissioner) establish a producer assignment program to be available upon application to any licensed insurance producer who: (1) is a producer for the New Jersey Automobile Full Insurance Underwriting Association (Association); (2) has no affiliation with a voluntary market company for the purposes of placement of private passenger automobile insurance; (3) had an affiliation with an insurance company for the placement of automobile insurance in the voluntary market which was terminated by the insurer on or after December 31, 1980; (4) has demonstrated to the Commissioner his competency, efficiency and effectiveness in servicing Association other insurance business as determined by a review of the producer for complaints, violations of the licensing law and other factors deemed relevant by the Commissioner; and (5) is located and services insurance in a geographic area which the Commissioner has determined to lack sufficient representation for the placement of automobile insurance in the voluntary market.

On July 2, 1991, the Commissioner issued Order No. A91-281 which established a producer assignment program (Program) in accordance with N.J.S.A. 17:33B-9c for the assignment of eligible Association producers. In general, the Program provides procedures by which the Commissioner shall establish a list of qualified producers, the method by which producers may apply for assignment, the appointment of eligible producers to insurers licensed to transact private passenger automobile insurance in this State, the terms and conditions of appointment, compensation of appointed producers, and transfer of business from the Association or Market Transition Facility (MTF) to the insurer. An insurer may receive credit toward mandatory producer assignments under the Program for appointing producers voluntarily under the Voluntary Producer Placement Plan as established by Order No. A91-280 (as codified in proposed N.J.A.C. 11:3-41, published elsewhere in this issue of the New Jersey Register), and for demonstrating that it has established voluntary market participation in inadequately serviced geographic areas. The Department of Insurance (Department) proposes these new rules to codify the existing procedures and requirements set forth in the Program established by Order. These proposed new rules thus codify a regulatory framework by which the Commissioner may assign Association producers in accordance with N.J.S.A. 17:33B-9c and thus reduce market disruptions associated with the termination of eligible Association producers and the severing of established relationships between eligible Association producers and insureds.

Proposed N.J.A.C. 11:3-42.1 sets forth the purpose and scope of these proposed rules.

Proposed N.J.A.C. 11:3-42.2 sets forth the definition of terms used in this subchapter.

Proposed N.J.A.C. 11:3-42.3 provides for the establishment of a list of producers qualified for assignment.

Proposed N.J.A.C. 11:3-42.4 sets forth minimum requirements for producer eligibility.

Proposed N.J.A.C. 11:3-42.5 describes the method of the determination of inadequately serviced geographic areas.

Proposed N.J.A.C. 11:3-42.6 describes the application procedures for producers seeking to be assigned under this Program.

Proposed N.J.A.C. 11:3-42.7 provides the review procedures for producer applications.

Proposed N.J.A.C. 11:3-42.8 sets forth the standards for a producer to be qualified for assignment under the Program.

Proposed N.J.A.C. 11:3-42.9 provides exemptions for insurers from the Program.

Proposed N.J.A.C. 11:3-42.10 describes the procedures for the apportionment of procedures for assignment and credits against assignments for producers voluntarily appointed.

Proposed N.J.A.C. 11:3-42.11 describes the procedures for the assignment of producers under the Program.

Proposed N.J.A.C. 11:3-42.12 sets forth requirements for insurer appointment of assigned producers.

Proposed N.J.A.C. 11:3-42.13 sets forth procedures and requirements for the transfer of the appointed producer's Association or MTF business to the insurer.

Proposed N.J.A.C. 11:3-42.14 provides for the effectuation of new business by the insurer.

Proposed N.J.A.C. 11:3-42.15 and 42.16 provide procedures for the compensation of assigned producers.

Proposed N.J.A.C. 11:3-42.17 sets forth the requirements for the duration and terms of producer assignment.

Proposed N.J.A.C. 11:3-42.18 provides for the exclusion of producers from the Program under specified circumstances.

Proposed N.J.A.C. 11:3-42.19 provides special requirements for the initial implementation of the Program.

Proposed N.J.A.C. 11:3-42.20 sets forth the penalties for violations of the subchapter.

Social Impact

These proposed new rules codify an existing mechanism by which the Commissioner may assign eligible Association producers to insurers pursuant to N.J.S.A. 17:33B-9c. This should reduce any market disruptions associated with termination of eligible Association producers, thus benefiting the public.

Economic Impact

Insurers authorized to transact private passenger automobile insurance in this State will be required to bear any costs associated with the appointment of eligible Association producers which are assigned pursuant to these rules. The Commissioner, however, may suspend an insurer's obligations under these rules if an insurer avers that it is in an unsafe or unsound financial condition. In addition, insurers may receive credits against producer assignments under these rules for appointing Association producers voluntarily in accordance with procedures set forth in Order No. A91-280, (as codified in proposed N.J.A.C. 11:3-41), and for demonstrating that it has established voluntary market participation in inadequately serviced geographic areas. These credits should mitigate against any additional costs imposed by these rules.

These rules should also benefit the public by reducing costs associated with market disruptions due to termination of Association producers and due to the severing of established relationships between eligible Association producers and insureds.

The Department will be required to bear any costs associated with compiling the list of eligible Association producers and all other costs associated with the assignment of producers to insurers in accordance with these rules.

Regulatory Flexibility Analysis

These proposed new rules may apply to "small businesses" as that term is defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The proposed new rules will apply to small businesses which are insurers authorized to transact private passenger automobile insurance in this State. These small businesses will be required to bear any costs associated with complying with these rules (for example, payment of compensation to producers appointed and assumption of business written by those producers). To the extent the proposed new rules apply to small businesses they may impose a greater impact on small businesses in that they may have to devote proportionately more staff and financial resources to comply with these rules.

Producers to be assigned under this Program will be required to comply with the application procedures set forth in these rules. Insurers which are assigned producers pursuant to these rules are required to: appoint such producers as agents in accordance with the procedures set forth in these rules; comply with the procedures governing the transfer of business by assigned producers; provide for the compensation of assigned producers in accordance with these rules; and comply with the procedures governing the termination of assigned producers.

The proposed new rules provide no different compliance requirements specifically based on business size. The rules do provide, however, that insurers with less than 1,000 exposures at the end of the last quota period will not be assigned a producer whose book of business exceeds 15 percent (or greater than 25 percent in the case of insurers with more than 1,000 exposures) of the total private passenger automobile exposure of that insurer. Although not specifically based on business size, the rules provide relief for insurers with small book of business. In addition, the assignment of Association producers is tied to the amount of business written both presently and in the past. Accordingly, an insurer that writes a large amount of business will incur greater expense than an insurer that writes a small amount of business. Further, the Commissioner may suspend an insurer's obligations under these rules if the insurer is in an unsafe or unsound condition. Finally, as previously noted, insurers may receive credit towards mandatory producer assignments pursuant to these rules which in turn, should mitigate against any additional costs imposed. The Department believes that this should reduce any additional costs which may be imposed on small insurer's through implementation of these rules.

Full text of the proposal follows:

SUBCHAPTER 42. PRODUCER ASSIGNMENT PROGRAM

11:3-42.1 Purpose and scope

(a) This subchapter implements N.J.S.A. 17:33B-9c and provides for the assignment of qualified producers on an equitable basis to insurers writing private passenger automobile insurance in the voluntary market.

(b) This subchapter applies to all insurers licensed to transact private passenger automobile insurance in this State, unless otherwise exempt pursuant to this subchapter, and all qualified producers who seek to be assigned to insurers pursuant to the procedures set forth in this subchapter.

(c) Producer assignments under the Program shall cease with any assignments made pursuant to the April 1, 1993 list of qualified producers. Notwithstanding the foregoing, the Commissioner may reactivate the assignment procedure in the event he or she determines that there are geographic areas in this State that lack sufficient representation for the placement of automobile insurance business in the voluntary market.

11:3-42.2 Definitions

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

"Association" means the New Jersey Automobile Full Insurance Underwriting Association established pursuant to N.J.S.A. 17:30E-1 et seq.

"Automobile" is as defined in N.J.S.A. 17:30E-3b.

"Automobile insurance" is as defined in N.J.S.A. 17:30E-3c.

"Category B Association producer" means a producer who:

1. Is licensed in this State as a resident agent or broker;

2. Had a valid Association producer contract in force on September 30, 1990;

3. Meets all of the eligibility criteria and performance standards set forth in the Association Plan of Operation (Operating Principles, Part III—Producers, Section I: Producer Eligibility, subsection 2, General Standards, and Section 4: Producer Performance Standards; subsection 1, Performance Standards—General);

4. Has derived not less than $7,500 in commission income from Association or MTF policies combined in calendar year 1990; and

5. Does not have a current affiliation with a voluntary market company for the purposes of placement of private passenger automobile insurance who:

i. Had such an affiliation with an insurer that was terminated by the insurer prior to December 31, 1980; or

ii. Never had such an affiliation with a voluntary market company for the purposes of placement of private passenger automobile insurance.

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

"Department" means the New Jersey Department of Insurance.

"Geographic area" means any one of the 27 rating territories in this State approved by the Commissioner for use in private passenger automobile rating systems.

"MTF" means the Market Transition Facility established pursuant to N.J.S.A. 17:33B-11.

"Program" means the Producer Assignment Program established pursuant to N.J.S.A. 17:33B-9c and this subchapter.

"Voluntary market insurer" means an insurer authorized to transact private passenger automobile insurance in this State.

11:3-42.3 List of qualified producers

The assignment of producers shall be made on a biannual basis subsequent to the conclusion of the quota periods established pursuant to N.J.S.A. 17:33B-11, commencing with the October 1, 1991 quota. The Commissioner shall, on October 1, and April 1 of each year, establish a list of eligible producers as defined in N.J.A.C. 11:3-42.4 who the Commissioner has determined are qualified for assignment to voluntary market insurers pursuant to this subchapter.

11:3-42.4 Elgible producers

(a) For the purposes of this subchapter, an "eligible producer" is a producer who:

1. Is licensed in this State as a resident agent or broker;

2. Had a valid Association producer contract in force on September 30, 1990;

3. Does not have a current affiliation with a voluntary market insurer for the purposes of placement of private passenger automobile insurance but who had such an affiliation that was terminated by the insurer between December 31, 1980 and October 1, 1992;

4. Is located in a rating territory that is determined by the Commisioner to be inadequately serviced, as defined in N.J.A.C. 11:3-42.5; and

5. Has derived not less than $7,500 in commission income from Association or MTF policies combined in calendar year 1990.

i. A producer may use any voluntary market private passenger automobile insurance commission income he or she received during 1990 to meet the $7,500 threshold.

(b) For purposes of this section, a producer who does not have a current affiliation with a voluntary market insurer for the purposes of placement of private passenger automobile insurance shall include the appointed representatives of insurers who have been:

1. Exempted from meeting the requirements of N.J.S.A. 17:30E-14b and 17:33B-11(c)(5);

2. Ordered by the Commissioner to cease the writing of automobile insurance; or

3. Permitted by the Commissioner to cease writing automobile insurance pursuant to a plan of orderly withdrawal approved pursuant to N.J.A.C. 11:2-29.

11:3-42.5 Inadequately serviced geographic areas

(a) For the purposes of the Program, the State shall be divided into geographic areas corresponding to the rating territories used by the Association/MTF to write private passenger automobile insurance. Each rating territory shall be designated as either adequately serviced or inadequately serviced. For the producer assignment to be made after the quota period ending October 1, 1991, the determination of whether a territory is adequately or inadequately serviced shall be as follows:

1. A territory shall be designated as adequately serviced if the proportion of voluntary market private passenger automobile non-fleet exposures to the total private passenger non-fleet exposures in that territory meets or exceeds both the aggregate Statewide quota established pursuant to N.J.S.A. 17:30E-14b(2), for the quota period ending on September 30, 1990 and the aggregate Statewide quota established pursuant to N.J.S.A. 17:33B-11c(5), for the quota ending April 1, 1991.

2. A territory shall be designated as inadequately serviced if the proportion of voluntary market private passenger automobile non-fleet exposures to the total private passenger non-fleet exposures in that territory is less than the aggregate Statewide quota established pursuant to N.J.S.A. 17:30E-14b(2), for the quota period ending on September 30, 1990 or pursuant to N.J.S.A. 17:33B-11c(5), for the quota period ending April 1, 1991.

(b) For quota periods ending after April 1, 1991, the Commissioner shall review the status of each rating territory at the conclusion of each quota period established pursuant to N.J.S.A. 17:33B-11c(5). A rating territory shall be determined by the Commissioner to be inadequately serviced under the following conditions:

1. If the proportion of voluntary market private passenger automobile non-fleet exposures to the total private passenger automobile non-fleet exposures in that territory is below the aggregate statewide quota for the quota period; or

2. If the territory is adequately serviced based on the criteria established in (b)1 above, but the volume of exposures insured in the voluntary market was not achieved in the territory substantially through the voluntary writing of exposures but was achieved through the mandatory assignment of exposures pursuant to any mandatory depopulation plan established by the Commissioner.

(c) Notwithstanding the foregoing, the Commissioner, in his or her discretion, may find that specific areas within a rating territory are inadequately serviced although the territory as a whole has been determined to be adequately serviced. The Commissioner's determination shall set forth the basis for his or her finding in such instances.

(d) The Commissioner may, in his or her discretion, revise the methodology for determining whether a geographic area is inadequately serviced with respect to the placement of automobile insurance business in the voluntary market.

(e) Except as may be otherwise permitted by the Commissioner, producers shall be deemed to be located and servicing business in a single rating territory for the purposes of this Program. The producer shall be assigned to the rating territory in which the producer's main business office is located, as reflected in the Department's licensing records.

(f) The Commissioner shall, on May 15 and November 15 of each year, establish a list of those rating territories or, if applicable, areas within rating territories that are determined to be inadequately serviced based on a review of the results of the immediately preceding quota periods (April 1 and October 1, respectively). Notice thereof shall be provided to all Association producers by bulletin.

11:3-42.6 Application procedures

(a) Any producer seeking assignment to a voluntary market insurer pursuant to this Program shall make application to the Commissioner on a form prescribed and furnished by the Commissioner. The Department shall provide the form, upon written request, within five working days of receipt of such request.

(b) All applications and accompanying documents shall be submitted to the Department. Applications premised on the May 15 list of inadequate territories shall be filed with the Department no later than July 1 and applications premised on November 15 list shall be filed no later than January 1.

(c) In the event an application is not fully completed, or the information provided is inadequate or required documentation is missing, the application shall be disapproved and the producer so notified, in writing, within 10 working days of receipt of the application by the Department. The producer shall be afforded an opportunity to cure any deficiencies in the application, provided, however, that such deficiencies are cured and a completed application is filed with the Department by the filing dates specified in (b) above.

(d) The Department shall review each application to determine whether the producer meets each of the criteria established by the Commissioner pursuant to N.J.S.A. 17:33B-9c and shall advise the applicant, in writing, as to whether he or she is qualified for assignment under this Program. Any disapproval of an application shall specify the reason(s) for such disapproval, and where applicable, advise the applicant as to whether there are any limitations on his or her ability to reapply for the Program as provided in N.J.A.C. 11:3-42.8(b).

(e) Notifications to producers applying pursuant to the May 15 list of inadequately serviced territories shall be issued by the Department on or before September 1; notifications to producers applying pursuant to the November 15 list of inadequately serviced territories shall be issued by the Department on or before March 1.

(f) Completed applications and other information required to be submitted pursuant to this subchapter shall be submitted to the Department at the following address:

ARM Unit/PAP
Department of Insurance
CN 325
Trenton, New Jersey 08625

11:3-42.7 Review of applications

(a) In determining whether a producer is qualified for participation in this Program, the Department's review shall include, but not be limited to, the following:

1. Any records concerning the termination of the producer's affiliation with any voluntary market insurer(s) to determine whether:

i. The producer was terminated on or after December 31, 1980 (as provided at N.J.S.A. 17:33B-9c(3));

ii. The producer has violated any of the insurance laws of this State or rules promulgated pursuant thereto; and

iii. The reason for termination adversely reflects on the producer's competency, efficiency and effectiveness in servicing insurance business or otherwise indicates that the producer should not be qualified for this Program due to unworthiness, bad faith, lack of integrity, financial irresponsibility, dishonesty or other criteria deemed relevant by the Commissioner;

2. Any records relating to the appointment of the producer to act as an Association or MTF producer, his or her performance as an Association or MTF producer, any bona fide complaints filed against the producer with the Association, MTF, or any servicing carrier of these entities and any corrective or disciplinary action taken by the Association or MTF with respect to the producer;

3. Any records of bona fide complaints filed against the producer with the Department or any formal administrative action instituted by the Department (for example, the issuance of an Order to Show Cause or the issuance of an Order pursuant to N.J.S.A. 17:22A-20d) with respect to the producer that has resulted in the imposition of fines or suspension or revocation of license privileges; and

4. Upon disclosure on the application or any other document reviewed by the Department of such administrative actions, any records relating to formal administrative actions instituted by any licensing authority of this or any other state or the Federal government with respect to the producer that has resulted in the imposition of fines, or suspension or revocation of license privileges.

11:3-42.8 Producer qualification standards

(a) An application for qualification under this Program shall be disapproved if, based on the review as set forth in N.J.A.C. 11:3-42.7:

1. It is determined that the producer fails to meet the eligibility criteria set forth in N.J.A.C. 11:3-42.4;

2. The producer does not meet all of the eligibility requirements set forth in the Association Plan of Operation, Part III, Operating Principles—Producer's, Section 1: Producer Eligibility, subsection 2, General Standards;

3. The producer has failed to comply with insurance laws and regulations and/or the producer performance standards established by the Association Plan of Operation, Part III Operating Principles, Section 4: Producer Performance Standards, subsection 1, Performance Standards—General, or the MTF Plan of Operation, Part III, Operating Principles, Section 4: Producer Performance Standards, subsection 1, Performance Standards—General;

4. The producer's affiliation with any voluntary market insurer has been terminated for reasons that adversely reflect on the producer's competency, efficiency or effectiveness in servicing insurance business or that otherwise indicate that the producer should not be qualified for this Program due to unworthiness, bad faith, lack of integrity, dishonesty, financial irresponsibility or other criteria deemed relevant by the Commissioner. This standard shall apply to all terminations of affiliation, including, but not limited to, agency appointments, brokerage arrangements, limited insurance representative appointments, and termination of an appointment made pursuant to the Producer Voluntary Placement Plan established by the Commissioner, and any termination of an assigned appointment made under this Program;

5. The producer failed to file a completed application with the Department as provided in N.J.A.C. 11:3-42.6(c);

6. The producer intentionally withheld material information on the application or any accompanying document or intentionally made or caused to be made any false, deceptive or fraudulent statement during the application process, or otherwise qualified or attempted to qualify for this Program by fraud or material misrepresentation; or

7. The producer has been excluded by the Commissioner from the Producer Voluntary Placement Plan established by the Commissioner or this Program.

(b) An otherwise eligible producer whose application has been disapproved may reapply for the Program in a subsequent period except where such disapproval is for cause. For the purpose of this provision the term, "for cause", shall mean any willful and/or repeated violation of insurance laws or regulations, or Association or MTF performance standards, or any conduct that demonstrates unworthiness, lack of integrity, bad faith, dishonesty, financial irresponsibility or incompetency to transact business as an insurance producer.

11:3-42.9 Exemptions

(a) An insurer may request an exemption from assignments under this Program if the insurer demonstrates that its marketing system, either through the use of its own producers or otherwise, provides sufficient access to the public in inadequately serviced territories. Sufficient access to the public in inadequately serviced territories shall mean the following:

1. The insurer met or exceeded all depopulation quotas; and

2. As of the end of the most recent past quota period, the market share of the insurer in those territories defined as inadequately serviced in N.J.A.C. 11:3-42.5 is not significantly less than the Statewide average market share of the insurer.

i. The Department shall make this determination by calculating:

(1) The market share of the insurer in each individual rating territory;

(2) The average or mean Statewide market share of the insurer using the data in (a)2i(1) above; and

(3) The standard deviation of the insurer's market share using the data from (a)2i(1) and (12) above.

ii. If the actual market share of an inadequately serviced territory is less than the Statewide average market share minus the product of the standard deviation and 1.645, the insurer does not provide sufficient access to the public in that territory.

iii. If the insurer's actual market share in three or more inadequately serviced territories is below the level specified in (a)2ii above, the insurer does not provide sufficient access to the public in inadequately serviced territories of the State and the request for an exemption shall be denied.

(b) An insurer may request an exemption from assignments under this Program if the insurer demonstrates to the satisfaction of the Commissioner that the obligation to accept assignments under this Program would place the insurer in an unsafe or unsound financial condition.

(c) An insurer may request an exemption from assignments under this Program as part of a plan of orderly withdrawal submitted for approval or previously approved pursuant to N.J.A.C. 11:2-29.

(d) An insurer seeking an exemption pursuant to this section shall submit the request at least 45 days prior to the promulgation of the lists of qualified producers as provided in N.J.A.C. 11:3-42.3.

11:3-42.10 Apportionment of producers; credits

(a) Each insurer authorized to transact the business of private passenger automobile insurance in this State shall be subject to the assignment of qualified producers pursuant to the procedures and requirements set forth in this Program. Producer assignments shall be apportioned among insurers based upon each insurer's apportionment share as determined for purposes of depopulation pursuant to N.J.S.A. 17:30E-14, subject to any exemptions as set forth in N.J.A.C. 11:3-42.9.

(b) Any insurer that has appointed eligible Association producers pursuant to the Producer Voluntary Placement Plan established by the Commissioner shall receive credit against any producer assignments to be made under this Program on a one-for-one basis. The one-for-one credit shall be premised on a calculation of the insurer's apportionment share of the total number of producers who otherwise would have been eligible for assignment under this Program in the absence of any voluntary agreements entered into by those companies subject to assignment.

1. In the event that an insurer appoints sufficient eligible Association producers to meet or exceed the insurer's apportionment share of such producers for that assignment period, the insurer shall not be subject to producer assignment during that assignment period and the excess shall be credited against any subsequent assignments made by the Commissioner.

2. The excess shall not be credited against subsequent assignments to the extent that the insurer has terminated any producer appointments prior to the next assignment period.

3. Credits against future assignments shall apply irrespective of whether the producer(s) for whom credit was received for the ensuing assignment period continues to be located in a territory that is determined by the Commissioner to be inadequately serviced for that assignment period.

(c) Any insurer that has appointed Category B, active Association producers, pursuant to the Producer Voluntary Placement Plan established by the Commissioner, who are located in territories that have been determined by the Commissioner to be inadequately serviced pursuant to N.J.A.C. 11:3-42.5, shall receive credits against any producer assignments based on the credit allowance set forth in (d) below.

1. In the event that an insurer appoints sufficient Category B Association producers to meet or exceed the insurer's apportionment share of eligible producers for that assignment period, the insurer shall not be subject to producer assignment during that assignment period and the excess shall be credited against any subsequent assignments made by the Commissioner.

2. The excess shall not be credited against subsequent assignments to the extent that the insurer has terminated any producer appointments prior to the next assignment period.

3. Credits against future assignments shall apply irrespective of whether the producer(s) subject to credit for the ensuing assignment period continues to be located in a territory that is determined by the Commissioner to be inadequately serviced for that assignment period.

(d) The credit allowance specified in (c) above shall be calculated so as to ensure the Commissioner's ability to provide assignments for all or substantially all producers on each list of qualified producers. The credit allowance shall be reviewed and adjusted, if necessary, on a periodic basis. For the initial implementations of this Program, an insurer shall receive one credit toward a producer assignment for every four Category B producers appointed who are located in inadequately serviced territories.

(e) In calculating any insurer's apportionment share of any producer assignments made pursuant to this Program, the following procedures shall govern:

1. The apportionment shares of producer assignments of any insurer which have been granted a suspension or exemption from obligations under the Program pursuant to N.J.A.C. 11:3-42.9, shall be calculated and such shares redistributed among the remaining insurers in the proportion that each of the remaining insurer's market shares bears to the total market share of all such insurers;

2. Credits against an insurer's apportionment share of producer assignments received pursuant to (b) above shall be calculated and the producers redistributed among the remaining insurers in the proportion that each of the remaining insurer's producer assignments (after application of the one-for-one credit) bears to the total number of such assignments; and

3. Credits against an insurer's apportionment share of producer assignments received pursuant to (c) above shall be calculated and the producers redistributed among the remaining insurers in the proportion that each of the remaining insurer's producer assignments (after application of any credits under (c) above) bears to the total number of such assignments.

(f) In calculating credits under this section, the Department shall utilize the number of voluntary agreements that are in force at the end of the April 1 and October 1 quota periods, as applicable. Any credits that are earned by an insurer for a given assignment period that are based on an appointment that is subsequently terminated shall be removed and adjustments made to the insurer's apportionment share in the next assignment period.

11:3-42.11 Producer assignments

(a) Each insurer subject to the assignment of producers pursuant to this Program shall be notified by Order subsequent to the Commissioner's establishment of each list of qualified producers. The Order shall identify the producers who have been assigned to the carrier and set forth the procedures and requirements applicable to the assignments, including provision for the transfer of the producer's Association/MTF book of business from the servicing carrier to the assigned insurers. Except as provided in (a)1 below, qualified producers shall be assigned to the insurers subject to assignment on a random basis.

1. No insurer whose total private passenger automobile in-force exposures at the end of the last quota period is greater than 1,000 will be assigned a producer whose book of business of eligible persons is greater than 25 percent of the total private passenger automobile exposures of that insurer.

2. No insurer whose total private passenger automobile in-force exposures at the end of the last quota period is less than 1,000 will be assigned a producer whose book of business of eligible persons is greater than 15 percent of the total private passenger automobile exposures of that insurer.

3. The Department shall consider the total in-force exposures of the insurer in making assignments under this Program.

11:3-42.12 Appointment

(a) Any producer assigned to an insurer under this Program shall be appointed by the insurer as an agent of the insurer pursuant to N.J.S.A. 17:22A-15 and notice thereof shall be provided to the Department by the insurer pursuant to N.J.A.C. 11:17-2.9. Contracts between the insurer and the assigned producer(s) shall be executed no later than 30 days following issuance of the Order specified in N.J.A.C. 11:3-42.11. With respect to insurers that are members of a group, the notice to the Department shall specify the member insurers to which the producer is appointed as an agent. Where the group utilizes different member insurers for the purpose of writing standard and nonstandard risks, the producer shall be appointed as an agent for all such insurers.

(b) Pursuant to N.J.S.A. 17:22-6.14a(e), an insurer may use an insurance marketing system that provides for its agents to be compensated on a salary basis without commission or provides for its agents to represent the company exclusively. Such an insurer may utilize this system for producers assigned to it under this Program or may appoint such producers as independent agents.

11:3-42.13 Transfer of Association/MTF business

(a) An insurer which is assigned producers pursuant to N.J.A.C. 11:3-42.11 shall make an offer of coverage to each Association/MTF insured serviced by the producer who is determined by the insurer to qualify as an eligible person pursuant to N.J.A.C. 11:3-34. In determining whether the Association/MTF insured qualifies as an eligible person, insurers shall comply with N.J.A.C. 11:3-8.4. An insurer also may determine to make an offer of coverage to an insured who does not qualify as an eligible person.

(b) The transfer of the producer's Association/MTF policies to the insurer shall be accomplished through completion by the producer of a new business application and a coverage selection form for the insured. Pursuant to mutual agreement between the insurer and the producer, the new business application may be unsigned. However, a coverage selection form signed by the insured shall be submitted to the insurer.

(c) To promote efficiency in the transfer of Association/MTF policies to the assigned insurer, the issuance of a competitive renewal quotation by the MTF servicing carrier is to be avoided. The Department shall notify insurers by Bulletin within 30 days of the effective date of this Program of procedures for the exchange of electronic information that insurers may utilize to suppress the issuance of a renewal offer by the MIF servicing carrier.

11:3-42.14 New business

The producer shall be authorized to solicit, negotiate and effect new contracts of automobile insurance in accordance with all applicable laws and regulations of this State, and the insurer's underwriting guidelines, consistent with procedures applicable to the insurer's other representatives.

11:3-42.14 Producer compensation; company rates

(a) Where an insurer determines to use its own rates for former Association/MTF insureds transferred to the insurer and/or new business written through the producer, the contract shall provide for the producer to be compensated based on the insurer's current schedule of commissions or other formula used by the insurers to provide compensation to its agents. Policies transferred from the Association/MTF shall be considered as new business with respect to providing producer compensation for the initial policy period.

(b) Where an insurer's compensation schedule contains support services, such as office space, equipment or advertising, or other employee benefits, and such services or benefits are not provided to the producer, the compensation schedule shall be adjusted to reflect accurately the value of such services or benefits so that the producer shall receive compensation that is equivalent to the compensation paid to, or on behalf of the insurer's agents who receive such services or benefits.

1. For the purpose of this section, the term "agent" shall be construed to have the broadest possible meaning, including, but not limited to, exclusive agents or independent agents.

2. Where an insurer has more than one schedule of commissions for its agents, it shall negotiate in good faith with producers assigned pursuant to this Program to determine the commission to be paid.

(c) In the case of companies that are direct writers, expenses for a direct marketing department and related support staff shall be considered in determining the commission to be paid to assigned producers under (a) above.

1. The commission agreed to by any direct writer and an assigned producer under (a) above shall be equivalent to the compensation paid to independent agents by insurers that utilize such agents.

2. Where an insurer that is a direct writer also maintains, through a subsidiary company or otherwise, a mechanism to accept business from producers who are not the normal, exclusive agents of the direct writer, the commission schedule applicable to such producers shall be utilized consistent with (a) above.

11:3-42.16 Producer compensation; MTF rates

Where the insurer is authorized by law to use MTF rates, rules and forms for policies written through the producer, it shall pay the producer the same commission paid by the MTF.

11:3-42.17 Duration and terms of producer assignment

(a) Any termination of an appointment of a producer assigned to an insurer pursuant to this Program shall be prohibited for two years following the date of contract, except where such termination is based on the producer's insolvency, abandonment, gross and willful misconduct or failure to pay over to the insurer monies due the insurer after his or her receipt of written demand therefor, or after revocation of the producer's license by the Commission. In such case, the insurer may reassign the producer's book of business to another active producer of the company or service it directly.

(b) At the conclusion of the two year period, the producer and insurer shall negotiate in good faith to do one of the following:

1. Irrespective of the marketing system customarily used by the insurer, appoint the producer as an independent agent. The termination of such appointment shall be governed by N.J.S.A. 17:22-6.14a(d);

2. Where the insurer, pursuant to N.J.S.A. 17:22-6.14a(e), uses an insurance marketing system that provides for its agents to be compensated on a salary basis without commission or provides for its agents to represent that insurer exclusivey, the insurer may appoint the producer under that system; or

3. Buy out the producer by paying to him or her an amount equivalent to one year's commission based on the book of business at the end of the two year assignment period.

(c) If the insurer and the producer cannot reach an agreement under (b) above, the producer shall be deemed a terminated agent who is subject to the provisions of N.J.S.A. 17:22-6.14a(d) and (i), notwithstanding N.J.S.A. 17:22-6.14a(e) or the mode of appointment of the producer under this Program (that is, exclusive agent or independent agent).

11:3-42.18 Exclusion from program

(a) Any producer who refuses an assignment under this Program that provides for his or her appointment as the assigned insurer's agent on fair and equitable terms, or who is terminated within the two year period set forth in N.J.A.C. 11:3-42.17(a), shall be excluded from further participation in this Program.

(b) Insurers shall immediately provide notice of any termination for cause as provided in N.J.A.C. 11:3-42.7(a) or any refusal of assignment as provided in (b) above, in writing to the Department in format set forth in Appendix A to this subchapter, incorporated herein by reference. A copy of the notice shall be simultaneously delivered to the affected producer. The producer may contest the insurer's notice by filing a written response thereto with the Department. Such response shall be made within 30 days of the insurer's notice. The Commissioner shall advise the producer as to his decision within 30 days.

11:3-42.19 Initial implementation of program

The Department will make its first assignment of producers under this Program subsequent to the conclusion of the October 1, 1991 quota period.

11:3-42.20 Penalties

Failure to comply with the provisions of this subchapter may result in the imposition of penalties as authorized by law.

APPENDIX A

PRODUCER ASSIGNMENT PROGRAM—TERMINATION OR REFUSAL OF PRODUCER APPOINTMENT
(Please print or type)

---------- Company Information ----------

_____ _____
Name of Company or Group NAIC #

Address: _____

_____ _____
Company Contact Person Title

Phone No.: (____) _____ FAX No.: (____) _____

---------- Producer Information ----------

_____ |_|_|_|_|_|_|_|_|_|_|
Name of JUA/MTF Contractholder DOI Producer Reference No.

Contact Person: _____
Individual Licensee if above is Partnership or Corporation

_____
Main Business Address—No. and Street (P.O. Box not permitted)

_____ NJ _____ (____) _____
City Zip Phone

---------- Termination Information ----------

Date of Appointment: Mo.___ Day ___Yr.___Date of Termination: Mo.___ Day ___Yr. ____

Explain basis for termination for cause in detail. Attach additional sheets if necessary.

_____

_____

_____

_____

_____

---------- Refusal Information ----------

Date of Refusal of Appointment: Mo.___ Day ___Yr. ____

Comment: _____

_____

CERTIFICATION

I certify that the above information is correct to best of my knowledge, information and belief. I understand that if I have knowingly made any false statements I will be subject to penalties.

_____ _____
Signature of Company Representative Print Name

_____ _____
Title Date

(a)

DIVISION OF ADMINISTRATION

Legal Services Insurance

Proposed Readoption: N.J.A.C. 11:12

Authorized By: Samuel F. Fortunato, Commissioner, Department of Insurance.
Authority: N.J.S.A. 17:1C-6(e), 17:1-8.1, 17:46C-1 et seq.
Proposal Number: PRN 1991-415.

Submit comments by September 4, 1991 to:
Verice M. Mason
Assistant Commissioner
Legislative and Regulatory Affairs
Department of Insurance
CN 325
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The Commissioner of Insurance (Commissioner) proposes to readopt N.J.A.C. 11:12 which governs insurers or any person seeking to transact legal services insurance in this State pursuant to N.J.S.A. 17:46C-1 et seq. Generally, these rules set forth procedures by which an authorized insurer or person may become authorized to transact legal services insurance in this State, and provide specified reporting requirements for entities authorized to transact legal services insurance.

Pursuant to Executive Order No. 66(1978), N.J.A.C. 11:12 expires on October 27, 1991. The Department of Insurance (Department) has reviewed these rules and has determined that they are necessary, reasonable and proper for the purposes for which they were originally promulgated. Since the time of the original adoption of these rules, the Department has experienced little activity with respect to insurers transacting legal services insurance. Accordingly, the Department believes that, at this time, N.J.S.A. 17:46C-1 et seq. and these rules provide an adequate regulatory framework by which the Department may regulate the business of legal services insurance in this State.

Social Impact

The proposed readoption will continue to provide a basic regulatory framework by which the Department may regulate the business of legal services insurance in this State and thereby ensure compliance with statutory requirements. The proposed readoption will further continue to encourage the development and economically sound methods of making legal services more readily available to New Jersey's citizens while continuing to provide necessary safeguards to protect the interests of the public.

Economic Impact

The proposed readoption will continue to promote the business of legal services insurance and to create a competitive market enabling consumers to elect the most effective and economically beneficial services. Insurers are required to make submissions and file reports with the Commissioner. Since no additional filing or reporting requirements are imposed by this readoption, no additional economic burden is imposed on the Department or entities seeking to transact legal services insurance in this State.

Regulatory Flexibility Analysis

The proposed readoption may apply to "small businesses" as that term is defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq.

The proposed readoption will apply to small businesses which are insurers or other entities seeking to transact legal services insurance in this State. These small businesses will be required to bear any costs associated with filing the data set forth in N.J.A.C. 11:12. To the extent the proposed readoption applies to small businesses, they may impose a greater impact on small businesses in that they may have to devote proportionately more staff and financial resources to comply with requirements set forth in the rules. The Department however believes these costs to be minimal. Further, no additional compliance or reporting requirements are imposed by this proposed readoption. Accordingly, small businesses should experience no additional economic burden.

The proposed readoption continues to provide a basic regulatory framework by which the Department may regulate the business of legal services insurance and thus enable the Department to ensure that entities seeking to transact legal services insurance are in compliance with the requirements set forth in N.J.S.A. 17:46C-1 et seq. This statute provides no different compliance requirements based on business size. In the interests of continued consistency and uniformity in the regulation of legal services insurance, the proposed readoption provides no differentiation in compliance requirements based on business size.

Full text of the proposed readoption may be found in the New Jersey Administrative Code at N.J.A.C. 11:12.

RULE ADOPTIONS

BANKING

(a)

OFFICE OF REGULATORY AFFAIRS

Procedural Rules
Closing Branch Offices
Adopted New Rule: N.J.A.C. 3:1-2.17

Proposed: March 18, 1991 at 23 N.J.R. 801(a).
Adopted: June 24, 1991 by Jeff Connor, Commissioner, Department of Banking.
Filed: July 5, 1991 as R.1991 d.392, **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. 17:1-8.1.

Effective Date: August 5, 1991.
Expiration Date: January 4, 1996.

Summary of Public Comments and Agency Responses:

The Department of Banking received comments from the following persons:

1. Wendell T. Breithaupt, President and CEO, Trenton Savings Bank.
2. Jerome D. Greco, Senior Vice President and Director of Public Affairs, First Fidelity Bancorporation.
3. Barry J. Zadworny, Senior Vice President, Roma Savings Bank, S.L.A.
4. James R. Silkensen, Executive Vice President, New Jersey Savings League.
5. Robert A. Gunther, Senior Vice President and Associate Counsel, U.J.B. Financial Corporation.
6. Patricia Dorsey, Consumer Advocate, New Jersey Public Interest Research Group.
7. Alfred H. Griffith, Executive Vice President, New Jersey Bankers Association.

A summary of comments and responses follows:

COMMENT: In addition to or as an alternative to newspaper publication of branch closings, the rule should allow the bank to place notices in the lobby or mail notices to existing customers of the bank. Notice in one of these ways would be more effective in ensuring that interested persons receive notification.

RESPONSE: The Department agrees that notice in the branch would be more effective. Accordingly, in a proposal filed concurrently with the adoption, the Department proposes that such notice be conspicuously posted in the branch to be closed (see proposal notice published elsewhere in this issue of the Register).

COMMENT: The newspaper publication requirement should be changed from once a week for four weeks to once a week for two weeks.

RESPONSE: Since the Department is proposing that notice also be published in the branch, the Department agrees that two newspaper publications are sufficient. Accordingly, the adoption reflects this minor substantive change.

COMMENT: The proposed rule requires the Commissioner to designate a newspaper of general circulation in the municipality for publication. The institution should be permitted to publish notice in any newspaper of substantial circulation. This would prevent undue delay.

RESPONSE: The Department has a similar publication requirement for charter applications (see N.J.A.C. 3:1-2.6). An applicant merely has to telephone the Department to learn which newspapers are acceptable. Since this process does not cause delay, the Department rejects this comment.

COMMENT: The Department received a comment suggesting that a 60-day notification period was too long, and should be shortened to 30 days. The Department received a second comment suggesting that the notice period be increased to 90 days.

RESPONSE: Given the rapid changes and consolidation being made in the financial services sector, the Department agrees that a 30-day period is long enough to alert consumers of the impending branch closing, and will allow sufficient time for comments to be received, without unduly interfering with management prerogatives. In those instances where it is in the public interest, the Commissioner is authorized to waive the notice requirements.

COMMENT: The term "objections" in subsection (b) should be changed to "comments."

RESPONSE: The Department agrees with this change, since all responses to proposed branch closings will not be objections. Accordingly, this technical change has been made upon adoption.

COMMENT: A copy of the comment should also be sent directly to the financial institution so as to allow it to respond, thus obviating the need for action by the Commissioner in some instances.

RESPONSE: The Department agrees, and has made this minor substantive change upon adoption.

COMMENT: A record of any hearings and/or meetings concerning the branch closing should be included in the Community Reinvestment Act (CRA) files of other branches of the bank.

RESPONSE: The Department agrees that community members should have the right to review the results of any recent meetings on branch closings. Accordingly, in a proposal filed concurrently with this adoption, the Department proposes to require depositories which close a branch to maintain a public file at their principal office in this State which describes any meetings that occurred incident to this rule, and the outcome of the meetings. In addition, a minor substantive change has been made to the adoption which requires notice of the nearest existing branch.

COMMENT: This rule is unnecessary, since branch closings are already a component of the CRA evaluation. In addition, this rule will place State chartered institutions at a competitive disadvantage with Federal institutions. The Office of the Comptroller of the Currency views branch closings as a management decision, and does not require an application. The Office of Thrift Supervision requires only 60-day notification to the agency, and does not require notice to the community or a meeting.

RESPONSE: An institution considering closing a branch is encouraged by the CRA process to assess the potential impact on its ability to continue offering an appropriate level of services throughout the local community. This assessment includes the institution's taking into consideration information obtained from consultations with members of the community. Through this rule, the Department will provide a vehicle to facilitate communication between the institution and the community. Because of the profound effect a branch closing may have on a community, the Department believes that the community is also entitled to notice and an opportunity to comment.

The Department considers carefully any rule which places requirements on State chartered institutions which do not exist for Federally chartered depositories. In this instance, the Department does not view the requirements imposed by this rule to be onerous. In addition, it is hoped that Federal regulators will impose similar requirements so that communities will be given advance notice of all branch closings.

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

3:1-2.17 Closing of branch offices

(a) A bank, savings bank or savings and loan association shall notify the Department not less than *[60]* ***30*** days before closing a full branch office. The institution shall include in this notice the following:

1. The name of the institution and the location of its principal office;
2. The location of the branch office which will be closed;
3. The prospective date of closing;
4. A statement of reasons leading to the decision to close the branch;
5. A map of the general area served by the branch showing all remaining branches of State or Federally chartered banks, savings banks and savings and loan associations within such area; and
6. A statement indicating the effect the branch closing will have on the availability of financial services in the area.

(b) Beginning within 10 calendar days after notification of the Department, the bank, savings bank or savings and loan association

shall publish notice of the proposed closing once a week for *[four]* ***two*** successive weeks in a newspaper designated by the Commissioner, which is published and circulated in the municipality in which said branch is to be closed, or if there be no such newspaper, then in a newspaper of general circulation in the municipality. The institution shall include in this notice the name of the institution, the location of the branch office which will be closed and the prospective date of closing*, **the location of the depository's nearest branch office,*** and a statement indicating that all *[objections]* ***comments*** to the closing of the branch may be made to ***the institution and to*** the Department of Banking, along with the mailing address of the Department ***and the institution***.

(c) If the Commissioner determines that there are valid concerns regarding the effect of the closing upon the local community, the Commissioner shall be authorized to conduct such meetings with the institution closing the branch, and with banks, savings banks, savings and loan associations, community leaders and others, as are necessary in his or her judgment to explore the effect of the branch closing on the community and the possibility of replacing such branch office with other adequate facilities.

(d) The Commissioner may suspend the notice requirements on this rule in the event of an emergency or a supervisory merger or acquisition, or when otherwise in the public interest.

(a)

OFFICE OF REGULATORY AFFAIRS

Audit Requirements

Adopted Amendments: N.J.A.C. 3:29-1.1, 1.2, 1.3, 1.4, 1.6, 1.7 and 1.8

Proposed: May 20, 1991 at 23 N.J.R. 1485(b).
Adopted: July 11, 1991 by Jeff Connor, Commissioner, Department of Banking.
Filed: July 16, 1991 as R.1991, d.418, **without change.**

Authority: N.J.S.A. 17:1-8.1 and 17:12B-176.

Effective Date: August 5, 1991.
Expiration Date: August 5, 1996.

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

Full text of the adoption follows.

3:29-1.1 Qualifications of auditor

An audit of an associationn shall be performed by a competent accountant who is not an officer, director or employee of the association. For purposes of this section, a competent accountant is a certified public accountant, or an accounting firm licensed and/or registered in New Jersey or approved by the Commissioner. Choice of a competent auditor is the responsibility of the board of directors. If the board fails to provide for the making of a proper audit or if the required audit is not properly made, prepared or filed, the Commissioner is charged with the duty of making such audit or causing the same to be made.

3:29-1.2 Scope of audit

The auditor shall set forth the scope of his work in the audit report. In general, audit procedure will be acceptable if based on the audit program prepared for audit of savings and loan associations by the American Institute of Certified Public Accountants. A copy of this program can be obtained from the American Institute of Certified Public Accountants, Inc., 1211 Avenue of the Americas, New York, New York 10036.

3:29-1.3 Statements in audit report

(a) The following statements are required to be part of the audit report provided by all State chartered associations including associations which are wholly owned subsidiaries:

1. Comparative statements of condition;
2. Comparative statements of operations;
3. Reconciliation of retained earnings;
4. Reconciliation of equity capital; and
5. Statements of cash flows.

3:29-1.4 Minimum verification; mail communications

Audits of insured associations shall include verifications to the extent required of banks and savings banks pursuant to N.J.A.C. 3:7-3.3 through 3.6.

3:29-1.6 Comments

(a) The auditor shall comment on pertinent matters affecting the association, either in a separate report or as part of the report upon review of the association's internal accounting control. As a guide, the following are suggested as appropriate subjects for comment:

1. Investment on which no income is received;
2. Summary of changes in other real estate; and
3. Insufficient surety bond coverage and other insurance.

3:29-1.7 Time of audit

At least one such audit shall be made in each calendar year, and it is not necessary that the audit coincide with a fiscal year. The audit may be made on a "surprise" basis so that preliminary or interim work, such as branch audits, may be accomplished at any time. The auditor shall cover the period from the previous audit to the date the present audit is started.

3:29-1.8 Audit report must be certified

(a) The audit report must be certified to or sworn to by the person making such audit. Such certification shall include:

1. A statement that the audit was made in accordance with the provisions of N.J.S.A. 17:12B-176 and the rules of the Commissioner of Banking of this State of New Jersey;
2. A statement that the audit was made in accordance with the recommendations of the Committee on Savings and Loan Auditing of the American Institute of Certified Public Accountants; and
3. A statement that the financial statements contained in the audit report present fairly the financial position of the association at the audit date and its operations for the periods reported upon.

(b) The statements required by (a)1 and 2 above may be submitted in a separate report or made a part of the report upon review of the association's internal accounting control, so long as the statements are submitted within 14 calendar days after submission of the report.

COMMUNITY AFFAIRS

(b)

NEW JERSEY HOUSING AND MORTGAGE FINANCE AGENCY

Actions Regarding Housing Sponsors

Adopted Amendment: N.J.A.C. 5:80-2.2

Proposed: December 17, 1990 at 23 N.J.R. 3669(b).
Adopted: July 11, 1991 by the New Jersey Housing and Mortgage Finance Agency, Kevin Quince, Executive Director.
Filed: July 11, 1991 as R.1991 d.408, **without change.**

Authority: N.J.S.A. 55:14K-5g.

Effective Date: August 5, 1991.
Expiration Date: April 20, 1995.

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

Full text of the adoption follows.

5:80-2.2 Consultation with housing sponsors

(a) Prior to the adoption, amendment, or repeal of any rule governing the operation of Agency-financed housing projects, the Agency shall:

1. Submit a proposed form of the rule to be adopted, amended or repealed to the Office of Administrative Law for publication in the New Jersey Register for a 30 day public comment period, in

accordance with the Administrative Procedure Act, N.J.S.A. 52:14B-1 et. seq.; and

2. Give housing sponsors or their agent(s) written notice of the proposed rule to be adopted, amended or repealed. The notice shall be given prior to or simultaneously with the date the proposed rule will be published in the New Jersey Register for public comment.

(b) The notice to housing sponsors shall consist of a copy of the proposed rule to be adopted, amended or repealed and shall indicate the date the 30-day public comment period expires, as published in the New Jersey Register.

(c) Any housing sponsor wishing to submit data, views, or arguments concerning the proposed rule may do so in writing prior to the expiration of the public comment period as established in the New Jersey Register.

(d) The Agency will consider all timely submitted data, views or arguments from housing sponsors before taking final action on the rule to be adopted, amended or repealed.

(e) The Agency shall respond in writing to each housing sponsor, submitting data, views, or arguments concerning the proposed rule.

(f) No rule governing the operation of a housing project shall be effective unless adopted in substantial compliance with N.J.A.C. 5:80-2.

(g) Upon substantial compliance with N.J.A.C. 5:80-2, the Agency may approve the proposed rule for final adoption. Once the Agency approves the final version of the rule, it will be submitted to the Office of Administrative Law for publication and adoption in the New Jersey Register.

(h) The Agency also shall give direct notice concerning the adoption, amendment or repeal of any rules to any interested party who annually files a request for such information with the Executive Director.

(i) Whenever feasible, the Agency will circulate to housing sponsors notices of proposed changes in Federal Regulations that would affect the operation of Agency financed housing projects on which the Agency intends to rely. The sponsor may submit comments or opinions on any proposed changes to the Executive Director of the Agency for possible inclusion in the Agency comments. All comments will be forwarded to the office or the individual that the Federal Government designates in the notice.

(a)

NEW JERSEY COUNCIL ON AFFORDABLE HOUSING

Credits Without Controls

Adopted Amendments: N.J.A.C. 5:92-1.3, 6.1 and 14.4

Adopted New Rules: N.J.A.C. 5:92-6.2 and 6.3

Proposed: May 20, 1991 at 23 N.J.R. 1488(a).

Adopted: July 12, 1991 by the New Jersey Council on Affordable Housing, Charles Griffiths, Chairman.

Filed: July 12, 1991, as R.1991 d.412, with a **technical change** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 52:27D-301 et seq., specifically 52:27D-307.

Effective Date: August 5, 1991.

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.

Edward J. Buzak, Esq.
David Kinsey, Kinsey & Hand
Jeffrey R. Surenian, Esq.; Lomell, Muccifori, Adler, Ravaschiere, Amabile & Pehlivanian
Stephen Eisdorfer, Esq., Department of the Public Advocate, Div. of Public Interest Advocacy

COMMENT: COAH should not grant credits for units that lack a legal restriction unless it determines that the unit is or was actually affordable to the household in residence. To demonstrate affordability, municipalities that seek this credit should provide calculations and data to prove that each unit was theoretically affordable when it was first purchased or rented.

RESPONSE: The Appellate Division decision that elicited this rule proposal stated that the Council had exceeded its authority in requiring a legal restriction for a credit. The language in the decision permitted, but did not require, the Council to "otherwise insure that housing which qualifies for credits be more than temporarily available for low and moderate income families."

The decision discussed the possibility that municipalities that "were farsighted and civic-minded enough to see that conforming housing was voluntarily built to satisfy its entire present and future need for low and moderate income housing" could be penalized by the Council's requirement for a "contractual or legal restriction to low income families." Given the decision, the Council believes that communities that "were farsighted and civic-minded" enough to create housing opportunities between April 1, 1980 and the Council's rules should receive a credit. The Council considered an affordability test prior to proposing this rule. However, the Council determined that the presence of low and moderate income households in units that were created between April 1, 1980 and December 15, 1986 was proof enough that the municipality had created opportunities for low and moderate income households.

COMMENT: The proposed rule should be less ambiguous. The Council should not qualify requirements with the words "in general." The rules already provide for waivers. This rule should define clearly what information municipalities shall submit to demonstrate that credits are warranted.

RESPONSE: The Council recognizes that rules should be as clear as possible. The Council could delete the words "in general" from the crediting documentation requirements and require a waiver from any deviation. The alternative is to allow deviations from the general requirements for good reasons. Legally, there is little difference in the two approaches. In either case, the Council will require compelling reasons to deviate from the general requirements.

COMMENT: The Council should revise the proposed rule to limit the number of credits for new, post-1980 construction of senior citizen units to the same maximum percentage as COAH applies to fair share plans, that is, 25 percent.

RESPONSE: The Council's philosophy on credits has been to recognize good faith efforts to create low and moderate income housing that occurred between April 1, 1980 and the Council's rules. Municipalities that created housing opportunities during that period could not anticipate that the Council would impose restrictions on age restricted units. Therefore, the Council does not believe that it is reasonable to impose such a requirement at this time.

COMMENT: The Council should accept income certifications from branches of government that supply benefits, in lieu of Federal tax returns. The Council should also accept certifications from private citizens regarding their income. Failure of the Council to rely on certifications deprives municipalities of the credits to which they are entitled. To illustrate, if a municipality issued certificates of occupancy for 1,000 market condominiums, presumably no less than 394 of these units would be occupied by lower income households. This conclusion is premised upon the Supreme Court's assumption that 39.4 percent of the families in the State qualify as lower income. Yet, the Council effectively guaranteees that municipalities will not be able to receive credit by requiring a tax return. Households are not likely to provide such a document.

RESPONSE: The Council believes that the Federal tax return is the most objective and unbiased measure of a household's income. The tax return is used to qualify households for low and moderate income units and the Council believes that the same standard is appropriate for credit.

The commenter correctly notes that in 1980, 39.4 percent of New Jersey's households qualified as low and moderate income. However, the assumption that 39.4 percent of all housing units in any municipality are occupied by low and moderate income households is flawed. If there were such an equal distribution of the poor, it is suggested that there would have been no need for the Supreme Court's intervention in the field of exclusionary zoning.

COMMENT: There appears to be a conflict between the proposed rule and its summary statement. The summary statement indicates that a Federal tax return is not necessarily required; however, the rule specifies the need to secure a tax return.

RESPONSE: The Council understands that there is a threshold income that must be earned before the Federal government requires a

tax return. In such a situation, the Council will entertain a certification from an appropriate government agency. However, in most situations, a tax return shall be required.

COMMENT: N.J.A.C. 5:91-6.3(b) provides that municipalities that have already received substantive certification prior to the effective date of this rule can apply for and have credits applied to their next low and moderate income housing obligation. It would seem that a municipality which might not have as yet approved sufficient developments to satisfy its housing need, should be allowed to amend its fair share plan to include these additional credits, especially if this results in the satisfaction of the full obligation of the municipality, without approving any additional developments.

RESPONSE: The Council considered an approach consistent with the commenter's suggestion prior to proposing this rule. Given the time and resources expended in receiving substantive certification, the Council determined that entertaining a plan amendment for these credits during the substantive certification period would be contrary to the goal of producing low and moderate income units. The Council determined that it was reasonable to allow communities that had received substantive certification prior to this rule proposal to receive credits against their next allocation of housing need.

COMMENT: The Council should eliminate any minimum dollar expenditure requirements for rehabilitation credits. The present requirements discourage communities from addressing substandard units until their condition worsens to the point that they warrant the Council imposed standard.

RESPONSE: The minimum dollar expenditure requirements for rehabilitation credits are not new to this rule proposal. The Council shall consider this comment with others it has received on rehabilitation as it undergoes a comprehensive review of all its rules. This review should result in a comprehensive proposal of the Council's rules in 1992.

COMMENT: The proposed rules should require that units receiving credit be affordable to low and moderate income households. The absence of such a requirement violates the Fair Housing Act's definitions of low and moderate income housing. It also unconstitutionally dilutes the need for low and moderate income housing. The type of standards now proposed by the Council were considered by the courts, and considered difficult to constitutionally sustain.

RESPONSE: As indicated in a previous comment, the Council considered an affordability requirement prior to the rule's proposal and determined that the presence of a low and moderate income household within a unit created between April 1, 1980 and December 15, 1986 was sufficient evidence that the municipality had created an opportunity for lower income households. The Council does not agree with the conclusion that the proposal violates the Fair Housing Act. The Council contends that the proposal is totally consistent with the Fair Housing Act and the Appellate Decision.

Also, since these credits will only be available for units created between April 1, 1980 and December 15, 1986, the Council does not believe there will be an unconstitutional dilution of the housing need. In previous cases, the court was responding to the possibility of crediting any lower income units created prior to the 1980 census.

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

5:92-1.3 Definitions

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

...

"Rehabilitation component" means the result of subtracting spontaneous rehabilitation from indigenous need.

...

5:92-6.1 Credits

(a) Municipal present and prospective fair share shall be determined after crediting, on a one to one basis, those housing units created or rehabilitated after April 1, 1980 that meet the criteria in N.J.A.C. 5:92-6.2 and 6.3.

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

5:92-6.2 Rehabilitation

(a) Credits for rehabilitation shall not exceed the rehabilitation component and shall only be credited against the rehabilitation component.

(b) Units shall be eligible for crediting if rehabilitated up to applicable code standard between April 1, 1980 and the publication date of the petition for substantive certification, provided that:

1. Between April 1, 1980 and July 5, 1988, at least $4,500 in capital costs was expended on a rehabilitated housing unit;

2. After July 5, 1988, an average of at least $8,000 in capital costs was expended on a rehabilitated housing unit; and

3. The unit is currently occupied by the occupants who resided within the units at the time of rehabilitation, or by another eligible low or moderate income household as defined in N.J.A.C. 5:92-1.3.

5:92-6.3 New construction

(a) A housing unit created and occupied between April 1, 1980 and December 15, 1986 shall receive a credit if it is in sound condition and currently occupied by a low or moderate income household. In general, municipalities shall:

1. Document the date of construction with a certificate of occupancy date;

2. Verify the condition of the unit by an exterior inspection performed by a licensed building inspector; and

3. Document household income with the most recent Federal tax return.

(b) Municipalities that have received substantive certification prior to *[the effective date of this rule]* ***August 5, 1991*** may apply and receive credit for housing units satisfying the criteria outlined above. These credits shall be applied to the municipality's next low and moderate income housing obligation.

(c) After December 15, 1986, a housing unit shall be eligible for a credit when a unit's occupancy is restricted to low or moderate income households and when the municipality has implemented adequate assurances for continued affordability consistent with N.J.A.C. 5:92-12, Controls on Affordability. All housing units that received preliminary approval after December 15, 1986 shall also conform to the requirements of N.J.A.C. 5:92-14 in order to receive a credit.

(d) A housing unit created and occupied after April 1, 1980 is also eligible for a credit when it has been developed under the auspices of a government-funded financed or otherwise assisted housing program designed specifically for households whose income does not exceed 80 percent of median income where the units if governed by controls on affordability that are substantially the same as those set forth in N.J.A.C. 5:92-12, Controls on Affordability.

5:92-14.4 Rental housing

(a) A municipality's housing element shall contain a rental housing component if the municipal fair share obligation, as calculated in the following formula, is 125 or more:

Precredited Need–Adjustment–Credits–(Rehabilitation Component) = Municipal Fair Share Obligation

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

(d) All municipalities, including those not required to develop a rental housing component, shall receive a one and a third unit credit, for each rental unit constructed and occupied in their municipality, until such time that the constructed rental housing units are in excess of 20 percent of the municipal fair share calculated after crediting, after adjustments and after subtracting the rehabilitation component. The Council may grant municipalities the one and a third unit credit when it determines that the municipality has provided or received a firm commitment for the construction of low and moderate income rental units that includes a construction timetable coinciding with the period of substantive certification.

(e) No municipality shall be required to construct rental housing that is in excess of 20 percent of its fair share, after crediting, after adjustments and after subtracting the rehabilitation component.

(f) (No change.)

HUMAN SERVICES

(a)

DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES

Manual For Chiropractic Services

Readoption with Amendments: N.J.A.C. 10:68

Proposed: May 6, 1991 at 23 N.J.R. 1327(a).
Adopted: June 28, 1991 by Alan J. Gibbs, Commissioner, Department of Human Services.
Filed: June 28, 1991 as R.1991 d.377, without change.
Authority: N.J.S.A. 30:4D-6b(a); 7, 7a, b and c; 30:4D-12; 42 C.F.R. 440.60.
Effective Date: June 28, 1991, Readoption;
August 5, 1991, Amendments.
Expiration Date: June 28, 1996.

Summary of Public Comments and Agency Responses:

There was one comment submitted by Albert R. Widmer, D.C., Chiropractic Health Care Center, Englewood, New Jersey. The commenter has two concerns which are summarized and responded to below. Both concerns pertained to the overall issue of the scope of chiropractic practice in New Jersey. The Division's stated policy is that jurisdiction over chiropractic practice rests with the State Board of Chiropractic Examiners, pursuant to N.J.S.A. 45:9-41.17 et seq. The basic intent of this manual (N.J.A.C. 10:68) is to define the scope of services which are available and are reimbursed under Title XIX (Medicaid) program.

COMMENT: The commenter was concerned about the use of the term "manual manipulation" of the spine which appeared in the definition of the HCPCS code in the proposal (reference is made to N.J.A.C. 10:68-1.4(a)). The commenter inquired whether chiropractors could use mechanical devices which are permitted within the scope of chiropractic practice.

RESPONSE: The agency's response is that the proposed terminology "manual manipulation" of the spine is not to be read literally but is broad enough to encompass those treatments allowed under State law.

The agency remains in compliance with Federal regulations which define chiropractic services as "treatment by means of manual manipulation of the spine that the chiropractor is legally authorized by the State to perform." (42 CFR 440.60 (b)).

When the Federal regulation is read as a whole there is no intent to limit chiropractic service to just "manual manipulation." The basic intention is to allow chiropractors to function in the manner prescribed by State law.

The agency's position is that it agrees with the Federal regulation and will reimburse for services performed within the scope of chiropractic services as defined by State law.

COMMENT: In the same context, the commenter was also concerned about the provision of "physician examinations, X-rays, and various adjunctive physical therapies, and supports, etc."

RESPONSE: The agency's response is that a chiropractor is not precluded from providing the services listed above that are within the scope of chiropractic practice. However, the New Jersey Medicaid Program currently only pays for manual manipulation of the spine (Procedure Code A2000).

Full text of the readoption can be found in the New Jersey Administrative Code at N.J.A.C. 10:68.

Full text of the adopted amendment follows.

10:68-1.1 Definitions

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

"Chiropractor" means a doctor of chiropractic licensed to practice chiropractic within the limits of his license by the New Jersey State Board of Chiropractic Examiners and fulfills those qualification requirements for certification as an eligible provider under Title XVIII of the Social Security Act. Chiropractors practicing in states other than New Jersey are not eligible for reimbursement under the New Jersey Health Services Program.

. . . .

10:68-1.4 Basis of payment

(a) Chiropractors shall use HCPCS Code A2000—manual manipulation of the spine—when submitting a claim to the New Jersey Medicaid Program. (Reference is made to N.J.A.C. 10:54-4.)

(b) In no event shall the charge to the program exceed the charge by the provider for identical services to other governmental agencies, or groups or individuals in the community. If a patient receives care from more than one member of a partnership or corporation in the same discipline, the maximum payment allowance would be the same as that of a single attending chiropractor.

1. Reimbursement for chiropractic services shall be made only for periods when eligibility is current.

2. Reimbursment is not made for, and recipients may not be asked to pay for, broken appointments.

(b)

DIVISION OF YOUTH AND FAMILY SERVICES

Administration

Readoption with Amendments: N.J.A.C. 10:120

Proposed: May 20, 1991 at 23 N.J.R. 1658(a).
Adopted: July 8, 1991 by Alan J. Gibbs, Commissioner, Department of Human Services.
Filed: July 9, 1991 as R.1991 d.397, **without change.**
Authority: N.J.S.A. 30:1-9 and 52:14B(b).
Effective Date: July 9, 1991, Readoption;
August 5, 1991, Amendments.
Expiration Date: July 9, 1996.

Summary of Public Comments and Agency Responses:

No comments received.

Full text of the readoption can be found in the New Jersey Administrative Code at N.J.A.C. 10:120.

Full text of the adopted amendments follows.

SUBCHAPTER 1. ORGANIZATION OF THE DIVISION OF YOUTH AND FAMILY SERVICES

10:120-1.1 Purpose

(a) The Division of Youth and Family Services (DYFS) serves as the State's comprehensive social services agency for children and families in New Jersey. Its primary goals are to preserve and strengthen the family unit and to protect children from abuse and neglect, by providing a wide range of supportive and reinforcing services designed to encourage and maintain family stability and self-sufficiency.

(b) The Division of Youth and Family Services is responsible for the investigation of abuse and neglect complaints involving children. The Division provides a wide range of services and programs that address the protective service needs of children. These services include, but are not limited to: foster care, residential treatment, adoption, family preservation, day care, counseling, advocacy, and case management.

10:120-1.2 Scope

(a) The Division of Youth and Family Services is responsible for the implementation of programs to preserve families and protect children from abuse and neglect in New Jersey. The Division is responsible for investigating allegations of child abuse and neglect occurring in families and institutions. The Division is mandated to license and regulate publicly and privately operated facilities and programs serving children and families, including, but not limited to: child care centers, children's residential treatment facilities, children's group homes, children's and families'-in-crisis shelters and homes, and adoption agencies. The Division regulates the State's voluntary family day care registration program, which utilizes local

family day care sponsoring organizations to assist in registering day care home providers. The Division is also responsible for supervising the social service units of the county welfare agencies, which include the adult protective services program and the personal attendant services program.

(b) Services of the Division are provided through a regional structure. Each regional office is headed by an administrator responsible for supervising DYFS local district offices, community social service providers under contract with the Division, and county welfare agency social services units in the counties comprising that region. The Division also operates adoption resource centers, children's residential treatment centers and children's day care centers.

(c) The Division's central office in Trenton provides support functions to the regional and district offices. These functions include, but are not limited to: policy and procedure development and publication, research and evaluation, management and fiscal services, monitoring residential placement facilities, quality assurance and accountability, regulatory and legislative services, and supervision of staff training.

(d) The Division of Youth and Family Services provides a variety of services to children and families directly. These services include, but are not limited to: protective services for abused and neglected children, foster and group home placements, residential placements, day care centers, adoption placement centers, counseling, advocacy, and case management.

(e) The Division administers services to vulnerable adults through the social service units of the county welfare agencies, and by contracting with county offices on aging and with community providers. These services, within available resources, include, but are not limited to: services to residents of rooming houses, boarding homes, and residential health care providers, services to handicapped individuals living at home, and services to families whose level of functioning is marginal.

(f) The Division contracts with community social service providers for services DYFS does not provide directly. These services include, but are not limited to: day care for children, protective services for victims of domestic violence, services to the homeless, family planning, mental health therapy and counseling, housing-related services and legal services in non-criminal matters.

(g) The policies and procedures of the Division of Youth and Family Services are formalized in DYFS Field Operations and Provider Manuals. The DYFS Field Operations and Provider Manuals are available in the DYFS central, regional and district offices for examination or review during regular office hours on regular work days. DYFS issues these manuals and revises them as necessary.

CORRECTIONS

(a)

THE COMMISSIONER

Fiscal Management

Reporting Loss of Funds

Adopted New Rules: N.J.A.C. 10A:2-5

Proposed: May 20, 1991 at 23 N.J.R. 1510(a).
Adopted: June 21, 1991 by William H. Fauver, Commissioner, Department of Corrections.
Filed: June 26, 1991 as R.1991 d.373, **without change.**

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

Effective Date: August 5, 1991.
Expiration Date: February 5, 1995.

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

Full text of the adoption follows.

SUBCHAPTER 5. REPORTING LOSS OF FUNDS

10A:2-5.1 Definition

The following term, when used in this subchapter, shall have the following meaning unless the context clearly indicates otherwise.

"Loss of funds" means funds received by a correctional facility or an administrative unit, from any source, which are unaccounted for as a result of theft, larceny, embezzlement or mysterious disappearance.

10A:2-5.2 Reporting loss of funds

(a) Loss of funds shall immediately be reported to the Superintendent or administrative unit head.

(b) The Superintendent or administrative unit head or his or her designee shall contact the Internal Affairs Unit immediately to investigate the loss.

(c) Pursuant to N.J.A.C. 10A:21-5.4, the Internal Affairs Unit, at the direction of the Superintendent, shall serve as the liaison to all outside law enforcement agencies.

10A:2-5.3 Reporting the loss of funds to Office of Institutional Support Services (O.I.S.S.)

(a) Within 48 hours after the loss is discovered, a written report of the loss shall be submitted to the Director, Office of Institutional Support Services (O.I.S.S.), with a copy to the Office of the Commissioner.

(b) The Office of Institutional Support Services (O.I.S.S.) shall prepare and submit a request to the Bureau of Risk Management, Department of Treasury, for appropriate reimbursement.

10A:2-5.4 Referral of loss to Assistant Commissioner, Division of Administration

If the loss is not covered by the Bureau of Risk Management, Department of Treasury, the loss shall be referred to the Assistant Commissioner, Division of Administration, who will determine the appropriate source of funds to dispose of the loss claim.

(b)

THE COMMISSIONER

Fiscal Management

Financial Aid Upon Release from Correctional Facilities

Adopted New Rules: N.J.A.C. 10A:2-8

Proposed: May 20, 1991 at 23 N.J.R. 1511(a).
Adopted: June 21, 1991 by William H. Fauver, Commissioner, Department of Corrections.
Filed: June 26, 1991 as R.1991 d.372, **without change.**

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

Effective Date: August 5, 1991.
Expiration Date: February 5, 1995.

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

Full text of the adoption follows.

SUBCHAPTER 8. FINANCIAL AID UPON RELEASE FROM CORRECTIONAL FACILITIES

10A:2-8.1 Provision of financial aid

(a) A limited amount of financial aid may be provided, upon request, to persons released:

1. To parole supervision;

2. To preparole status in the Electronically Monitored Home Confinement Program; or

3. Upon expiration of a sentence.

(b) Financial aid may be provided to the types of persons listed in (a) above if they can satisfy the criteria of eligibility and if there is a demonstrated need.

10A:2-8.2 Eligibility for financial aid

(a) Inmates released at expiration of their maximum sentences or paroled from the following correctional facilities or programs are eligible for consideration for financial aid:

1. Juvenile facilities, Department of Corrections;
2. Adult facilities, Department of Corrections;
3. State sentenced inmates released from or paroled from county facilities;
4. State sentenced inmates released from or paroled from Community Residential Centers;
5. Inmates sentenced in other states who have been paroled to New Jersey during the period these persons are under parole supervision;
6. State sentenced inmates released or paroled to bench warrants or commitment detainers, if released to the community, after or while awaiting disposition of charges; and
7. County sentenced inmates released to parole supervision, during the period these persons are under parole supervision.

(b) State sentenced inmates placed in the community prior to parole and subject to the Electronically Monitored Home Confinement Program are eligible for consideration for financial aid.

10A:2-8.3 Criteria for grant of financial aid

(a) Persons with the circumstances listed below who may be considered when determining grant eligibility and the amount of the grant include, but are not limited to:

1. Persons who initially have no alternate funds available;
2. Persons without family or friends;
3. Persons from families with marginal incomes; or
4. Persons with other circumstances deemed sufficient to justify a grant.

(b) In reaching a decision to grant financial aid, the District Parole Supervisor or the Institutional Parole Officer (I.P.O.) shall consider the following factors:

1. The urgency and amount of the request;
2. The circumstances or facts which support the legitimacy of the request;
3. The availability of funds from any alternative source, such as:
   i. Family members;
   ii. Employers; or
   iii. Other state or local agencies; and
4. Whether sufficient budgeted funds are available.

10A:2-8.4 Responsibility for determination of financial aid grant

(a) The District Parole Supervisor shall determine financial aid for the following:

1. Persons paroled from juvenile and adult facilities of the New Jersey Department of Corrections;
2. Persons paroled from county correctional facilities on State or county sentences;
3. Persons placed on preparole status in the Electronically Monitored Home Confinement Program;
4. State sentenced persons released at expiration of sentence from county correctional facilities;
5. Persons released at expiration of sentence from juvenile and adult facilities of the New Jersey Department of Corrections; and
6. Persons, sentenced in other states, who have been paroled to New Jersey and are under the active supervision of the Bureau of Parole, Department of Corrections.

(b) The Institutional Parole Officer (I.P.O.) shall be responsible for assessing the financial needs of:

1. Persons to be released at expiration of sentence from juvenile and adult facilities of the New Jersey Department of Corrections, including satellite units; and
2. Persons paroled from juvenile and adult facilities of the Department of Corrections to out-of-State plans.

10A:2-8.5 Amount of financial aid; periods of availability

(a) State sentenced inmates who are released from correctional facilities upon expiration of their maximum sentences are eligible for consideration to receive a single grant of up to $100.00 in financial aid, limited to the six month period following release.

(b) During the 12 month period following release to parole or home confinement, a maximum of $300.00 may be provided to applicants who remain under parole supervision (see N.J.A.C. 10A:2-8.4(a)). The installments may be as follows:

1. An initial grant of up to $100.00 upon release from the correctional facility;
2. An additional grant up to $100.00 within the first 30 days following release; and
3. An additional grant(s) up to $100.00 within 12 months following release.

(c) The Chief or Assistant Chief, Bureau of Parole, may give written approval for financial aid in excess of the $100.00 initial grant or of the $300.00 within the 12 month period in exceptional circumstances or hardship, as for example:

1. Persons who have a good probability of obtaining steady employment;
2. Juveniles without families;
3. Juveniles from families with marginal incomes; or
4. Other circumstances deemed sufficient to justify an additional grant of financial aid.

(d) An additional grant(s) up to $300.00 may be provided in any 12 month period following the first 12 months of release if an urgent need and the lack of an alternate source(s) of funds can be demonstrated.

10A:2-8.6 Maintenance of accounts and records

(a) Complete records shall be maintained on every transaction, and these records shall include, but not be limited to:

1. An ongoing account balance;
2. The numbered check stubs;
3. A photocopy of every check issued;
4. A signed receipt for each check issued;
5. The voided checks;
6. A monthly reconciled bank statement;
7. The cancelled checks; and
8. Form 814.07 REQUEST FOR REPLENISHMENT OF FUNDS.

10A:2-8.7 Reimbursement

(a) Persons receiving financial aid may reimburse the State of New Jersey for all or part of any financial aid.

(b) Reimbursements are voluntary and shall be noted in the record of the person who received financial aid grant.

(c) If the person receiving financial aid is under active parole supervision, an entry of both the grant and any reimbursement shall be made in the chronological parole supervision report.

(d) Reimbursements by check or money order should be made out to "Treasurer, State of New Jersey." An explanatory memo along with the check or money order shall be forwarded by the Bureau of Parole Unit receiving the reimbursement to the New Jersey Department of Corrections, Central Office Business Office, with a copy to the Assistant Chief of Administration, Bureau of Parole.

(e) Reimbursments of cash shall be receipted and deposited within 24 hours of receipt into a local bank which maintains an account established and specifically approved by the Department of the Treasury as a depository for these funds. The deposit slip, together with an explanatory memo shall be forwarded to the New Jersey Department of Corrections, Central Office Business Office, with a copy to the Assistant Chief of Administration, Bureau of Parole. The Bureau of Parole shall be responsible for implementing and maintaining adequate controls to safeguard the reimbursements of cash from theft or misuse, and providing an appropriate accounting for all funds received.

10A:2-8.8 Monthly report

(a) No later than the fifth working day of each month, the District Parole Supervisor or his or her designee in each District Office, the Institutional Parole Officer (I.P.O.), and the Central Office Designee shall prepare and forward a report to the Assistant Chief of Administration, Bureau of Parole.

(b) The monthly report shall include, but not be limited to:

1. The total amount of funds disbursed during the preceding month; and

2. The number of grants issued.

(b) Within 15 days following the end of each month, the District Parole Supervisors, Institutional Parole Officers, and the Central Office Designee shall prepare and submit a report to the New Jersey Department of Corrections, Central Office Business Office, on Form 814.08 FINANCIAL AID ACCOUNT.

10A:2-8.9 Forms

(a) The following forms related to Financial Aid Upon Release From Correctional Facilities shall be obtained from the Bureau of Parole, New Jersey Department of Corrections:

1. 814.06 FINANCIAL AID PROGRAM RECEIPT;
2. 814.07 REQUEST FOR REPLENISHMENT OF FUNDS; and
3. 814.08 FINANCIAL AID ACCOUNT.

(a)

THE COMMISSIONER

Mail, Visits and Telephone

Inspection of Outgoing Correspondence

Adopted Amendments: N.J.A.C. 10A:18-1.3 and 2.7

Proposed: June 3, 1991 at 23 N.J.R. 1758(a).
Adopted: July 10, 1991 by William H. Fauver, Commissioner, Department of Corrections.
Filed: July 15, 1991 as R.1991 d.413, **without change.**

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

Effective Date: August 5, 1991.
Expiration Date: July 6, 1992.

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

Full text of the adoption follows.

10A:18-1.3 Definitions

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

. . .

"Legitimate public official" means the following:

1. An elected or appointed national, state or municipal government official; or
2. A director of a national, state or municipal government agency.

"News media representative" means a person whose principal employment is to gather or report news for:

1. A newspaper which qualifies as a general circulation newspaper in the community in which it is published. A newspaper is one of "general circulation" if it circulates among the general public and if it publishes news of a general character of general interest to the public such as news of political, religious, commercial or social affairs. A key test to determine whether a newspaper qualifies as a "general circulation" newspaper is to determine whether the paper qualifies for the purpose of publishing legal notices in the community in which it is located or the area to which it distributes;
2. A news magazine which has a national circulation and is sold by news-stands and by mail subscription to the general public;
3. A national or international news service; or
4. A radio or television news program, whose primary purpose is to report the news, of a station holding a Federal Communications Commission license.

. . .

10A:18-2.7 Inspection of outgoing correspondence

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

(c) Outgoing mail from inmates to public officials, governmental agency officials and news media representatives may be held, for a maximum of 72 hours, in order to verify that the addressee is a legitimate public official, governmental agency official or news media representative.

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

(b)

THE COMMISSIONER

Records

Availability of Information to Correctional Facility Personnel

Adopted Amendment: N.J.A.C. 10A:22-2.5

Proposed: May 20, 1991 at 23 N.J.R. 1512(a).
Adopted: June 11, 1991 by William H. Fauver, Commissioner, Department of Corrections.
Filed: July 15, 1991 as R.1991 d.415, **without change.**

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

Effective Date: August 5, 1991.
Expiration Date: July 5, 1993.

Summary of Public Comments and Agency Responses:

The Department of Corrections received one comment in response to the proposed amendment. A summary of the comment and the agency response follows:

COMMENT: Robert Fagella, an attorney with the Zazzali, Zazzali, Fagella and Norwak Law Firm, complained that the proposed amendment is unacceptable because it is overly restrictive. He provided several examples of situations in which he believes that corrections officers need to know relevant medical, psychiatric or other information concerning an inmate who is being transported. These examples include information which would indicate that an inmate is asthmatic or epileptic; that an inmate is escape prone or particularly violent; or that an inmate has a contagious disease.

RESPONSE: The amendment, as proposed, provides for information to be shared with staff on a "need to know" basis. Decisions on the information to be provided will, therefore, be made by administrative or medical staff depending on the type of situation presented. Corrections officers will be advised of particular conditions under which inmates are to be transported, both for security and for medical reasons, and the type and level of precautions which the corrections officers are to take in each case.

Full text of the adoption follows.

10A:22-2.5 Availability of information to correctional facility personnel

(a) Information from inmate and parolee records shall be provided to correctional facility personnel on a limited basis.

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

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

1. The complete file shall be available to medical or psychological treatment staff, involved in treating the inmate and/or drafting reports concerning his or her condition; and
2. Medical or psychiatric/psychological information may be made available to those staff persons, to whom the information is relevant in connection with the staff person's need to make a decision concerning the inmate (for example, job placement, discipline, parole etc.). Only that amount of information that is necessary to permit proper exercise of discretion shall be provided.

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

COMMERCE AND ECONOMIC DEVELOPMENT

(a)

NEW JERSEY DEVELOPMENT AUTHORITY FOR SMALL BUSINESSES, MINORITIES' AND WOMEN'S ENTERPRISES

Micro-Loan Program

Adopted Amendments: N.J.A.C. 12A:31-1

Proposed: March 18, 1991 at 23 N.J.R. 828(a).
Adopted: June 25, 1991 by the New Jersey Development Authority for Small Businesses, Minorities' and Women's Enterprises, Yvonne Bonitto-Doggett, Chairman.
Filed: July 5, 1991 as R.1991 d.393, **without change.**

Authority: N.J.S.A. 34:16-47 et seq., specifically 34:16-59(t).

Effective Date: August 5, 1991.
Expiration Date: July 16, 1991.

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

Full text of the adoption follows.

SUBCHAPTER 1. MICRO-LOAN PROGRAM

12A:31-1.1 Applicability and scope

(a) The rules in this subchapter are promulgated by the New Jersey Development Authority for Small Businesses, Minorities' and Women's Enterprises to implement a micro-loan program for eligible businesses to use for working capital, contract financing or the acquisition of fixed assets.

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

12A:31-1.2 Definitions

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

...

"Loan Review Committee" means a committee established by the Chairman of the Board, consisting of not more than four board members, which shall review applications.

"Micro-loan" or "ML" means a short term loan or line of credit, or other non-grant financing instrument or structure approved by the Board and advanced by the Authority to an eligible business for the purpose of fixed asset acquisition, working capital or contract financing.

...

"Women" means females, regardless of race.

...

12A:31-1.3 Application for a micro-loan

(a) (No change.)

(b) Each application for a ML shall be accompanied by written evidence that the applicant has been unable to acquire financing similar to that sought from the Authority.

(c) Each application for a ML shall be accompanied by a business plan, including financial projections, for three years or for the term of the loan, whichever is less, provided in a format as determined by the Authority.

(d) Each application for a ML shall be accompanied by the following items:

1.-3. (No change.)

4. The financial and operating statements of the applicant for the past three years and the financial statements of the principals of the applicant business for the past three years;

5. Any proof of certification by a public entity which certifies that the business is at least 51 percent beneficially owned by and that the majority of the management are minorities or women; and

6. Any other information that the Authority and/or the Executive Director may, in the exercise of their discretion, deem necessary.

12A:31-1.4 Allocation of micro-loan assistance

(a) Of the financial assistance allocated by the Authority from the funds made available pursuant to the provisions of section 33 of P.L. 1984, c.218 (N.J.S.A. 5:12-181), 50 percent shall be made available to women, and 50 percent shall be made available to minorities and all such funds shall be invested in accordance with geographic restrictions established by that act.

(b) Of the financial assistance allocated by the Authority from sources other than those funds made available by the provisions of section 33 of P.L. 1984, c.218 (N.J.S.A. 5:12-181), 50 percent shall be made available to small businesses, 25 percent shall be made available to minorities, and 25 percent shall be made available to women.

(c) (No change.)

12A:31-1.6 Evaluation of applications for micro-loans

(a) The Executive Director shall evaluate each application for a ML considering the following factors:

1.-3. (No change.)

4. The length of time that the applicant has been in existence as well as the success and growth potential of the applicant.

(b) After evaluation of the application by the Executive Director, the Executive Director shall forward the application to the Loan Review Committee for its consideration.

(c) After evaluation of the application by the Loan Review Committee, the Loan Review Committee shall forward the application to the Board for their consideration.

(d) The Authority shall have 120 days in which to review the application and advise the applicant that:

1.-3. (No change.)

4. The application is continuing to be considered pending receipt of additional information.

(e) No micro-loan approved by the Authority shall be disbursed to an eligible business until that business has forwarded to the Authority a commitment fee of one-half of one percent of the total amount of the micro-loan which has been approved by the Board or $100.00, whichever is greater and a closing fee of one-half of one percent of the total amount of the micro-loan which has been approved by the Board. In the case of a line of credit, the fees shall be computed based on the maximum amount of the line of credit.

12A:31-1.7 Reporting and compliance

(a) Upon receipt of a ML from the Authority, the loan recipient shall be required to submit a report to the Authority every year which shall include the following:

1.-3. (No change.)

4. Any other information which the Authority and/or the Executive Director may, in the exercise of their discretion, require.

(b) Upon receipt of a ML from the Authority, the loan recipient shall be required to submit an annual audit prepared by a public accountant utilizing GAAP.

(c) (No change.)

12A:31-1.8 Rescission of a micro-loan

(a) The Authority may, at its discretion, rescind all or part of an ML commitment prior to closing when it has become reasonably evident that:

1. (No change.)

2. The loan recipient is no longer capable of meeting any financial obligations made to the Authority;

3. The loan recipient has supplied false or incorrect information, or has misrepresented information of a material matter, whether oral or written, upon which the Authority relied when approving the ML.

4. The loan recipient is not of good moral character. Lack of good moral character shall include, but is not limited to, convictions of offenses or crimes.

(b) Upon determination by the Authority that a ML shall be rescinded, the Authority shall send a certified letter, return receipt requested, to the loan recipient informing it of the rescission.

12A:31-1.9 Information confidentiality

(a) All records of the Authority such as minutes, annual reports, program guidelines, regulations, applications for financial assistance

and other information not classified as non-public information shall be deemed public information available for examination and copying upon request. If the above information is requested by the public and is not readily available and must be photocopied or otherwise reproduced by the Authority, the Authority shall charge a fee of $.50 for pages 1 to 10, $.25 for pages 11 to 20 and $.10 for pages 21 and above. The public may obtain general information concerning Authority programs by contacting the Executive Director of the New Jersey Development Authority for Small Businesses, Minorities' and Women's Enterprise at the Mary G. Roebling Building, 20 West State Street, CN 836, Trenton, New Jersey 08625.

(b) The following shall not be deemed to be public records subject to inspection, examination and available for copying pursuant to N.J.S.A. 47:1A-1 et seq.:

1. All confidential reports, executive memoranda and evaluations submitted to the Authority, the directors, or to any other state agency or instrumentality;
2. All personnel records;
3. All records concerning applications for employment with the Authority;
4. All records concerning financial or proprietary information submitted by applicants for Authority assistance;
5. All records concerning financial or proprietary information submitted by individuals, corporations, partnerships and other entities doing or seeking to do business with the Authority;
6. All reports, correspondence and other documents or data provided or discussed in executive session at a meeting held by the Board of Directors, except that any action taken or other information required to be disclosed to the public pursuant to N.J.S.A. 10:4-6 et seq. shall not be deemed to be non-public records within the scope of this section; and
7. Any other reports, correspondence or other documents or data which the Authority in its discretion deems to be non-public pursuant to N.J.S.A. 47:1A-1 et seq.

(a)

NEW JERSEY DEVELOPMENT AUTHORITY FOR SMALL BUSINESSES, MINORITIES' AND WOMEN'S ENTERPRISES

Loan Guarantee Program

Adopted Amendments: N.J.A.C. 12A:31-2

Proposed: March 18, 1991 at 23 N.J.R. 830(a).
Adopted: June 25, 1991 by the New Jersey Development Authority for Small Businesses, Minorities' and Women's Enterprises, Yvonne Bonitto-Doggett, Chairman.
Filed: July 5, 1991 as R.1991 d.394, **without change.**

Authority: N.J.S.A. 34:16-47 et seq., specifically 34:16-50(t).

Effective Date: August 5, 1991.
Expiration Date: July 16, 1995.

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

Full text of the adoption follows.

SUBCHAPTER 2. LOAN GUARANTEE PROGRAM

12A:31-2.1 Applicablility and scope

(a) The rules in this subchapter are promulgated by the New Jersey Development Authority for Small Businesses, Minorities' and Women's Enterprises to implement a loan guarantee program for eligible businesses to help those businesses acquire private sector financing that would not otherwise be available without a guarantor for the loan.

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

12A:31-2.2 Definitions

(a) The words and terms in this subchapter shall have the following meanings, unless the context clearly indicates otherwise:

...

"Loan guarantee" means a guarantee for the repayment of commercial private source loans, which guarantee does not exceed 90 percent of the outstanding loan balance.

...

"Loan Review Committee" means a committee established by the Chairman of the Board consisting of not more than four Board members, which shall review applications.

...

"Women" means females, regardless of race.

...

12A:31-2.3 Application for loan guarantee

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

(c) Each application for a loan guarantee shall be accompanied by a business plan, including financial projections, for three years or for the term of the loan, whichever is less, provided in a format as determined by the Authority.

(d) Each application for a loan guarantee shall be accompanied by the following items:

1.-3. (No change.)

4. The financial and operating statements of the applicant for the past three years and the financial statements of the principals of the applicant business for the past three years;
5. Any proof of certification by a public entity which certifies that the business is beneficially owned by, and that the majority of the management are, minorities or women; and
6. Any other information that the Authority and/or the Executive Director may, in the exercise of their discretion, deem necessary.

12A:31-2.4 Allocation of loan guarantee assistance

(a) Of the financial assistance allocated by the Authority from the funds made available pursuant to the provisions of section 33 of P.L. 1984, c. 218 (N.J.S.A. 5:12-181), 50 percent shall be made available to women, and 50 percent shall be made available to minorities and all such funds shall be invested in accordance with geographic restrictions established by the act.

(b) Of the financial assistance allocated by the Authority from sources other than those funds made available pursuant to the provisions of section 33 of P.L. 1984, c. 218 (N.J.S.A. 5:12-181), 50 percent shall be made available to small businesses, 25 percent shall be made available to minorities, and 25 percent shall be made available to women.

(c) The Authority may provide loan guarantees to an eligible business in the following manners:

1. For the purpose of fixed asset acquisition for an eligible business at Authority designated rates. Term of the loan guarantee shall not exceed a period of 10 years. The maximum amount of the guarantee shall not exceed $1,000,000 or 90 percent of the loan balance, whichever is less.
2. For the purpose of acquiring working capital for an eligible business at Authority designated rates. Term of the loan guarantee shall not exceed a period of 10 years. The maximum amount of the guarantee shall not exceed $600,000 or 90 percent of the loan balance, whichever is less.

12A:31-2.6 Evaluation of applications for loan guarantees

(a) The Executive Director shall evaluate each application for a loan guarantee considering the following factors:

1.-3. (No change.)

4. The length of time that the applicant has been in business as well as the success and growth potential of the applicant.

(b) After evaluation of the application by the Executive Director, the Executive Director shall forward the application to the Loan Review Committee for their review.

(c) After review of the application by the Loan Review Committee, the Loan Review Committee shall forward the application to the Board for its consideration.

(d) The Authority shall review the application and advise the applicant that:

1.-3. (No change.)

4. The application is continuing to be considered pending receipt of additional information.

(e) No loan guarantee approved by the Authority shall be granted to an eligible business until it has forwarded to the Authority a commitment fee of one-half of one percent of the total amount of the loan guarantee and a guarantee fee of one half of one percent of the total amount of the loan guarantee times the number of years that the guarantee is to be in effect.

12A:31-2.7 Reporting and compliance

(a) Upon receipt of a loan guarantee, the loan guarantee recipient shall be required to submit a report to the Authority every year which shall include the following:

1.-3. (No change.)

4. Any other information which the Authority and/or the Executive Director may, in the exercise of their discretion, require.

(b) Upon receipt of a loan guarantee from the Authority, the loan guarantee recipient shall be required to submit an annual audit prepared by a public accountant utilizing GAAP.

(c) (No change.)

12A:31-2.8 Rescission of a loan guarantee

(a) The Authority may, at its discretion, rescind all or part of a loan guarantee commitment prior to closing when it has become reasonably evident that:

1. Other commitments of financial resources made to the loan guarantee recipient have been withdrawn or have been amended in such a manner so as to undermine the ability of the loan guarantee recipient to utilize the loan guarantee in the manner it proposed to the Authority;

2. The loan guarantee recipient is no longer capable of meeting any financial obligations made to the Authority;

3. The loan guarantee recipient has supplied false or incorrect information, or has misrepresented information on a material matter, whether written or oral, upon which the Authority relied when issuing the loan guarantee; or

4. The loan guarantee recipient is not of good moral character. Lack of good moral character shall include, but is not limited to, convictions of offenses or crimes.

(b) Upon determination by the Authority that a loan guarantee shall be rescinded, the Authority shall send a certified letter, return receipt requested, to the loan recipient informing it of the rescission.

12A:31-2.9 Information confidentiality

(a) All records of the Authority such as minutes, annual reports, program guidelines, regulations, applications for financial assistance and other information not classified as nonpublic information shall be deemed public information available for examination and copying upon request. If the above information is requested by the public and is not readily available and must be photocopied or otherwise reproduced by the Authority, the Authority shall charge a fee of $.50 for pages 1 to 10, $.25 for pages 11 to 20 and $.10 for pages 21 and above. The public may obtain general information concerning Authority programs by contacting the Executive Director of the New Jersey Development Authority for Small Businesses, Minorities' and Women's Enterprise at the Mary G. Roebling Building, 20 W. State Street, CN 836, Trenton, New Jersey 08625.

(b) The following shall not be deemed to be public records subject to inspection, examination and available for copying pursuant to N.J.S.A. 47:1A-1 et seq.:

1. All confidential reports, executive memoranda and evaluations submitted to the Authority, the directors, or to any other state agency or instrumentality;

2. All personnel records;

3. All records concerning applications for employment with the Authority;

4. All records concerning financial or proprietary information submitted by applicants for Authority assistance;

5. All records concerning financial or proprietary information submitted by individuals, corporations, partnerships and other entities doing or seeking to do business with the Authority;

6. All reports, correspondence and other documents or data provided or discussed in executive session at a meeting held by the Board of Directors, except that any action taken or other information required to be disclosed to the public pursuant to N.J.S.A. 10:4-6 et seq. shall not be deemed to be nonpublic records within the scope of this section; and

7. Any other reports, correspondence or other documents or data which the Authority in its discretion deems to be nonpublic pursuant to N.J.S.A. 47:1A-1 et seq.

(a)

NEW JERSEY DEVELOPMENT AUTHORITY FOR SMALL BUSINESSES, MINORITIES' AND WOMEN'S ENTERPRISES

Direct Loans

Adopted Amendments: N.J.A.C. 12A:31-3

Proposed: March 18, 1991 at 23 N.J.R. 832(a).
Adopted: June 25, 1991 by the New Jersey Development Authority for Small Businesses, Minorities' and Women's Enterprises, Yvonne Bonitto-Doggett, Chairman.
Filed: July 5, 1991 as R.1991 d.395, **without change.**

Authority: N.J.S.A. 34:16-47 et seq., specifically 34:16-50(t).

Effective Date: August 5, 1991.
Expiration Date: July 16, 1995.

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

Full text of the adoption follows.

SUBCHAPTER 3. DIRECT LOANS

12A:31-3.1 Applicability and scope

(a) The rules in this subchapter are promulgated by the New Jersey Development Authority for Small Businesses, Minorities' and Women's Enterprises to implement a direct loan program for eligible businesses to use for real estate acquisition, fixed asset acquisition or working capital.

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

12A:31-3.2 Definitions

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

...

"Direct loan" means a loan, line of credit, or other non-grant financing instrument or structure approved by the Board, advanced by the Authority to an eligible business for the purpose of real estate acquisition, fixed asset acquisition, or working capital.

...

"Loan Review Committee" means a committee established by the Chairman of the Board, consisting of not more than four Board members, which shall review applications.

...

"Women means females, regardless of race.

...

12A:31-3.3 Applications for a direct loan.

(a) (No change.)

(b) Each application for a direct loan shall be accompanied by written evidence that the applicant has been unable to acquire financing similar to that sought from the Authority.

(c) Each application for a direct loan shall be accompanied by a business plan, including financial projections, for three years or for the term of the loan, whichever is less, provided in a format as determined by the Authority.

(d) Each application for a direct loan shall be accompanied by the following items:

1.-3. (No change.)

4. The financial and operating statements of the applicant for the past three years and the financial statements of the principals of the applicant business for the past three years; and

5. Any proof of certification by a public entity which certifies that the business is at least 51 percent beneficially owned by, and that the majority of the management are, minorities and women; and

6. Any other information that the Authority and/or the Executive Director may, in the exercise of their discretion, deem necessary.

12A:31-3.4 Allocation of direct loan assistance

(a) Of the financial assistance allocated by the Authority from the funds made available pursuant to the provisions of section 33 of P.L. 1984, c.218 (N.J.S.A. 5:12-181), 50 percent shall be made available to women, and 50 percent shall be made available to minorities, and all such funds shall be invested in accordance with geographic restrictions established by that act.

(b) Of the financial assistance allocated by the Authority from sources other than those funds made available pursuant to the provisions of section 33 of P.L. 1984, c.218 (N.J.S.A. 5:12-181), 50 percent shall be made available to small businesses, 25 percent shall be made available to minorities, and 25 percent shall be made available to women.

(c) The Authority may provide direct loans to an eligible business in the following manners:

1. Permanent mortgage financing for an eligible business at Authority designated rates. Terms of the loan shall not exceed a period of 15 years. The maximum amount of loan shall not exceed $200,000. The minimum amount of the loan shall be $50,000.

2. Fixed asset acquisition for an eligible business at Authority designated rates. Terms of the loan shall not exceed a period of 10 years. The maximum amount of the loan shall not exceed $200,000. The minimum amount of the loan shall be $50,000.

12A:31-3.6 Evaluation of applications for direct loans

(a) The Executive Director shall evaluate each application for a direct loan considering the following factors:

1.-4. (No change.)

5. The length of time that the applicant has been in business as well as the success and growth potential of the business.

(b) After the evaluation of the application by the Executive Director, the Executive Director will forward the application to the Loan Review Committee for their consideration.

(c) After evaluation of the application by the Loan Review Committee, the Loan Review Committee shall forward the application to the Board for their consideration.

(d) The Authority shall have 120 days in which to review the application and advise the applicant that:

1.-3. (No change.)

4. The application is continuing to be considered pending receipt of additional information.

(e) No direct loans approved by the Authority shall be disbursed to an eligible business until that business has forwarded to the Authority a commitment fee of one-half of one percent of the total amount of the loan approved by the board and a closing fee of one-half of one percent of the total amount of the loan approved by the Board. In the case of a line of credit, the fees shall be computed based on the maximum amount of the line of credit.

12A:31-3.7 Reporting and compliance

(a) Upon the receipt of a direct loan from the Authority, the loan recipient shall be required to submit a report to the Authority every year which shall include the following:

1.-2. (No change.)

3. Any other information which the Authority and/or the Executive Director may, in the exercise of their discretion, require.

(b) Upon receipt of a direct loan from the Authority, the loan recipient shall be required to submit an annual audit prepared by a public accountant utilizing GAAP.

(c) (No change)

12A:31-3.8 Rescission of a direct loan

(a) The Authority may, at its discretion, rescind all or part of a direct loan commitment prior to closing when it has become reasonably evident that:

1. (No change)

2. The loan recipient is no longer capable of meeting any financial obligations made to the Authority;

3. The loan recipient has supplied false or incorrect information, or has misrepresented information on a material matter, whether written or oral, upon which the Authority relied when issuing the loan; or

4. The loan recipient is not of good moral character. Lack of good moral character shall include, but is not limited to, convictions of offenses or crimes.

(b) Upon determination by the Authority that a direct loan shall be rescinded, the Authority shall send a certified letter, return receipt requested, to the loan recipient informing it of the rescission.

12A:31-3.9 Information confidentiality

(a) All records of the Authority such as minutes, annual reports, program guidelines, regulations, applications for financial assistance and other information not classified as non-public information shall be deemed public information available for examination and copying upon request. If the above information is requested by the public and is not readily available and must be photocopied or otherwise reproduced by the Authority shall charge a fee of $.50 for pages 1 to 10, $.25 for pages 11 to 20 and $.10 for pages 21 and above. The public may obtain general information concerning Authority programs by contacting the Executive Director of the New Jersey Development Authority for Small Businesses, Minorities' and Women's Enterprise at the Mary G. Roebling Building, 20 West State Street, CN 836, Trenton, New Jersey 08625.

(b) The following shall not be deemed to be public records subject to inspection, examination and available for copying pursuant to N.J.S.A. 47:1A-1 et seq.

1. All confidential reports, executive memoranda and evaluations submitted to the Authority, the directors, or to any other state agency or instrumentality;

2. All personnel records;

3. All records concerning applications for employment with the Authority;

4. All records concerning financial or proprietary information submitted by applicants for Authority assistance;

5. All records concerning financial or proprietary information submitted by individuals, corporations, partnerships and other entities doing or seeking to do business with the Authority;

6. All reports, correspondence and other documents or data provided or discussed in executive session at a meeting held by the Board of Directors, except than any action taken or other information required to be disclosed to the public pursuant to N.J.S.A. 10:4-6 et seq. shall not be deemed to be non-public records within the scope of this section; and

7. Any other reports, correspondence or other documents or data which the Authority in its discretion deems to be non-public pursuant to N.J.S.A. 47:1A-1 et seq.

LAW AND PUBLIC SAFETY

(a)

DIVISION OF CONSUMER AFFAIRS ADVISORY BOARD OF PUBLIC MOVERS AND WAREHOUSEMEN

Fees

Adopted New Rule: N.J.A.C. 13:44D-2.4

Proposed: April 15, 1991 at 23 N.J.R. 1066(b).

Adopted: June 21, 1991 by Patricia A. Royer, Director, Division of Consumer Affairs.

Filed: June 27, 1991 as R.1991 d.376, **without change.**

Authority: N.J.S.A. 45:14D-15.

Effective Date: August 5, 1991.

Expiration Date: August 7, 1994.

The Division of Consumer Affairs afforded all interested parties an opportunity to comment on the proposed new rule, N.J.A.C. 13:44D-2.4, relating to fees. The official comment period ended on May 15, 1991. Announcement of the opportunity to respond appeared in the New Jersey Register on April 15, 1991, at 23 N.J.R. 1066(b). Announcements were also forwarded to the Star Ledger, the Trenton Times, the New

Jersey Warehousemen and Movers Association, the New Jersey Movers Tariff Bureau, Inc., Movers News and to other interested parties and professional associations.

A full record of this opportunity to be heard can be inspected by contacting the Advisory Board of Public Movers and Warehousemen, Post Office Box 45018, Newark, New Jersey, 07101.

Summary of Public Comments and Agency Responses:

The Division received 44 letters and one petition containing 57 signatures. All of those responding were public movers and/or warehousemen who are opposed to increased fees. The commenters and their affiliations, if any, are:

J.W. McGrath, Executive Director
N.J. Warehousemen and Movers Association

Stuart J. Novy, President
N.J. Warehousemen and Movers Association

Thomas J. O'Hara, President
Fisher/O'Hara, Inc.

Catherine P. Rush, Secretary
Rimback Storage Co.

Stuart J. Novy, President
Allstate Moving & Transfer Co., Inc.

Nicholas Cioppettini, President
Flexible Warehousing

Luigi Tramontana, President
Ware's Van & Storage Co., Inc.

Jini Bangert
Valu Moving & Storage

William P. Moynihan, Vice President
Lincoln Storage Warehouses

Douglas Padia, Chairman
North Jersey Chapter, N.J. Warehouse & Movers Assn.

Edward Gorski
Majestic Moving & Installation, Inc.

John T. Crawford, President
John Moving, Inc.

Agnes Lentzsch

Robert D. Meelheim, President
Meelheim's Transfer & Storage, Inc.

Douglas Padia, President
W. Booth Movers

Dennis Sorhagen, Chief Executive Officer
Crofutt & Smith Moving & Storage, Inc.

Robert J. Russo, President
American Movers

David W. Budd, President
Budd Moving Systems

Donald J. Lusardi, Sr., Chief Executive Officer
Liberty Transportation and Storage Co., Inc.

Steven Lattanzi, President
All Muscle Moving, Inc.

Jack Simonik, Vice President
Simonik Moving & Storage, Inc.

Peter A. Thomson
Peter A. Thomson Van Line

Bernard McClain, Vice President
Anchor Moving & Storage, Inc.

Tom Treweeke, President
B & T Van Lines, Inc.

John H. Seydak, President
Bond Moving & Storage Co., Inc.

Thomas E. Dougherty, Manager
N.J. Coast Transfer Company

Edward Laub, President
Hoffman Moving & Storage, Inc.

Jim Mahon, President
Jim Mahon's Moving and Trucking

Nicholas Paglione, President
Nick's Movers

Donald J. Budd
D.J. Budd Moving Services

Ralph J. Libone, President
Connell Storage & Moving Co., Inc.

Harry Haft
Sam Haft & Son

J. Fishman & Son, Inc.

Randy Kelly, President
Kelly Movers, Inc.

Richard E. Visceglia, President
Park Avenue Storage Corp.

James F. McColley, Chairman
Ideal Way Movers, Inc.

Al Smith, President
Al Smith Moving and Furniture Co., Inc.

Anonymous
Arthur Telles
A-Greater NJ Movers, Inc.

Edward Laub, President
Hoffman Moving & Storage, Inc.

Ed Odell, President
Wade, Odell, Wade

Robert Ziemkiewicz, Owner
Bob Plaza Movers

Isaac King, National Account Manager
Brantley Bros. Moving & Storage Co., Inc.

Tony Baumer
B.D. Movers

Bruce Pearson
A.B.C. Moving & Storage Co.

Frank Malatesta, President
Frank Malatesta Moving & Storage

A summary of the issues raised by these commenters as well as the Division's responses follows.

COMMENT: The concern expressed by almost all of the commenters as well as the petition signers is that the moving industry has been particularly hard hit by the current economic recession and therefore cannot absorb additional increases. The commenters cited such hardships as increases in fuel, tolls, health insurance, employee benefits, sales taxes, and disposal fees; a greatly reduced market; and mandatory drug testing.

RESPONSE: The Division recognizes the adverse impact of rising costs on businesses today and notes that the Advisory Board of Public Movers has also experienced increases in many of its administrative costs. However, pursuant to N.J.S.A. 45:1-3.2, each board is required to be self-funding; that is, operating costs must be met through licensing and other fees. The statute also requires the agency to assess fees which are estimated not to exceed the amount required. The Division is confident that the estimate of fees required by the Advisory Board in order to continue its operations complies with this statutory requirement. In the event excess funds are raised, they will be carried over for the benefit of the Board. In short, while the Division is aware of the financial hardships faced by many movers and warehousemen today, it has no alternative but to increase fees in order to prevent a fiscal loss to the Board, which is required by statute to cover its expenses.

COMMENT: One commenter asked how these fees compare with other boards.

RESPONSE: As stated, each Board is required to meet its operating costs through licensing and other fees. Since licensing fees are based upon the number of licensees, boards with a smaller number of licensees will pay proportionately higher fees in order to meet their administrative expenses. The Advisory Board of Public Movers and Warehousemen, with only approximately 400 licensees, must of necessity charge a higher licensing fee than a Board with a greater number of licensees.

COMMENT: Seven commenters requested justification for the increased fees and asked for a copy of the Board's budget and proposed expenses.

RESPONSE: The justification for the fee increases is set forth both in the Notice of Proposal and in the response to the first comment above. Specific financial information concerning the Advisory Board of Public Movers and Warehousemen is included within the State of New Jersey Budget for each fiscal year, a public record which is available in the State library as well as in many local libraries.

COMMENT: Two commenters asked whether the funds generated by the fee increases will result in additions to the Board's staff such as more investigators.

RESPONSE: There will be no additions to the Board's staff. In fact, a staff reduction is planned because the Division's method of accomplishing investigations has been adjusted and all investigations will now be conducted by the Enforcement Bureau.

COMMENT: Five commenters recommended higher fees for new licensees.

RESPONSE: The Division believes charging new licensees higher fees would be anti-competitive and result in fewer licensing applications. Fewer licensing applications, in turn, would result in higher costs to licensees.

COMMENT: One commenter suggested phasing in the increase over a three-to-five year period, and one commenter suggested deferring approval of the increases until economic conditions improve.

RESPONSE: The Board cannot delay charging increased fees because the increases are intended to be used to offset Board expenses for the next fiscal year. As required by N.J.S.A. 45:1-3.2, the fee increases proposed have been estimated to produce the minimum amount of funds which will enable the Board to meet its expenses. Without the increases the Board would be unable to continue its operations.

COMMENT: Three commenters stated that higher licensing fees will cause an increase in illegal operators because licensees will not renew their licenses.

RESPONSE: The Board intends to continue its investigation efforts and will continue to penalize individuals who operate without a license.

COMMENT: Several commenters stated that an increase in fees will cause movers to leave the State.

RESPONSE: The Division does not view this as likely, particularly in the case of long-established New Jersey movers.

COMMENT: Five commenters stated that movers would pass the fee increases on to the consumer by raising prices.

RESPONSE: The Division cannot predict with certainty whether higher licensing fees will cause movers to raise their prices. When the expenses of any business increase, there is always the possibility that the business will pass the increases on to the consumer by raising prices. For the reasons previously stated, however, the Division has no choice but to raise fees at this time in order to continue its operations and to continue to fulfill its statutory duty to protect the consumer.

COMMENT: Three commenters suggested that the Board's administrative costs should be offset not by licensing fee increases but by better prosecution of unlicensed operators.

RESPONSE: The Advisory Board's enforcement efforts, which include actions against unlicensed operators, have, in fact, been at a consistently high level—approximately 100 cases are scheduled for court appearances each year. The Division is confident that the funds provided by increased licensing fees will enable the Board to maintain its effectiveness with regard to prosecuting unlicensed operators.

COMMENT: A formal hearing was requested by two commenters.

RESPONSE: The Division believes it has adequately addressed all comments received regarding licensing fee increases and that no fact dispute is involved which would warrant a public hearing.

COMMENT: One commenter stated that rather than raising fees, the State should become less involved in the operation of moving companies, thereby enabling the Board to reduce its budget significantly.

RESPONSE: The Division has a statutory mandate to regulate persons and corporations engaged in the business of public moving and storage in order to protect the interests of the consumer. Among its specific duties pursuant to the Public Movers and Warehousemen Licensing Act, N.J.S.A. 45:14D-1 et seq., the Division is required to: examine and pass on the qualifications of applicants for licensure; establish professional standards for licensees; conduct hearings and proceedings to enforce the provisions of the Act; annually publish a list of names, addresses and tariffs of all licensees; establish reasonable requirements with respect to proper and adequate movers' and warehousemen's services and the furnishing of estimates, and prescribe a uniform system of accounts, records and reports; and adopt and promulgate rules and regulations to protect the interests of the consumer. Reduced Division involvement in the operation of moving companies is not warranted under the statute nor is it in the best interests of the consumer.

COMMENT: It was suggested by one commenter that licensing fee increases would have an adverse impact on small movers, who could not absorb the increases as easily as large-scale movers.

RESPONSE: While the Division recognizes the special problems of smaller companies, it notes that the annual licensing fee for a small mover is, in fact, less than the licensing fee for a large-scale mover, who must pay an additional fee for each license copy.

COMMENT: One commenter stated the belief that the State should fund this agency and that fines for violations should be increased.

RESPONSE: The manner in which the Advisory Board of Public Movers and Warehousemen is funded as well as penalty amounts are established by statute (see N.J.S.A. 45:1-3.2 and 45:14D-16). Any change in either of these areas can only be effected by the Legislature.

Full text of the adoption follows.

13:44D-2.4 Fees

(a) Fees for initial licenses, renewal licenses and copies of licenses shall be as follows:

1. Initial license	$400.00
2. Renewal license (one year)	$400.00
3. Copy of license:	
i. First and second copy	$ 50.00
ii. Third and each additional copy	$ 20.00
4. Late renewal fee	$200.00
5. Reinstatement fee	$200.00

plus the initial license fee.

(a)

NEW JERSEY RACING COMMISSION

Thoroughbred Rules

Appeals

Adopted Amendments: N.J.A.C. 13:70-13A.1, 13A.2, 13A.3 and 13A.7

Adopted Repeal and New Rule: N.J.A.C. 13:70-13A.5

Proposed: May 6, 1990 at 23 N.J.R. 1281(a).

Adopted: June 24, 1991 by the New Jersey Racing Commission, Bruce H. Garland, Executive Director.

Filed: July 1, 1991 as R.1991 d.379, **without change.**

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

Effective Date: August 5, 1991.

Expiration Date: January 25, 1995.

Summary of Public Comments and Agency Responses:

No comments received.

Full text of the adoption follows.

13:70-13A.1 Right of Appeal

Any person disciplined by the stewards or any official representing the Commission pursuant to the laws of New Jersey or rules of the Commission may appeal said penalty to the Commission and request a hearing.

13:70-13A.2 Imposition of penalty; Commission

The Commission may directly impose any disciplinary action provided for in its rules.

13:70-13A.3 Nature of proceedings

All hearings before the Stewards will be de novo proceedings and shall be accompanied by notice and an opportunity to be heard.

13:70-13A.5 Hearings

(a) Hearings in any appeal to the Commission shall be conducted pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B and 52:14F, and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.

(b) If a license has been suspended pending hearing, the hearing shall be expedited.

13:70-13A.7 Hearing; costs

The applicant shall be responsible for any costs incurred in connection with any hearing held pursuant to this subchapter.

(a)

NEW JERSEY RACING COMMISSION

Harness Rules
Appeals
Adopted Amendments: N.J.A.C. 13:71-3.1, 3.2, 3.4 and 3.7
Adopted Repeals and New Rule: N.J.A.C. 13:71-3.3 and 3.5
Adopted Repeals: N.J.A.C. 13:71-3.4 and 3.8

Proposed: May 6, 1990 at 23 N.J.R. 1282(a).
Adopted: June 24, 1991 by the New Jersey Racing Commission, Bruce H. Garland, Executive Director.
Filed: July 1, 1991 as R.1991 d.380, **without change.**

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

Effective Date: August 5, 1991.
Expiration Date: January 25, 1995.

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

Full text of the adoption follows.

13:71-3.1 Right of appeal
Any person disciplined by the board of judges, State steward or any official representing the Commission may appeal the penalty pursuant to the procedures of this subchapter.

13:71-3.2 Imposition of penalty; Commission
The Commission may directly impose any disciplinary action provided for in its rules.

13:71-3.3 Stewards hearing
(a) All appeals from decisions of the board of judges shall be considered by the State steward. Such appeal hearing shall be a de novo proceeding and the steward may modify any penalty imposed by the board of judges upon notice and opportunity to be heard afforded to the affected person or persons.
(b) The decision of the State steward shall be final unless an appeal is filed with the Commission.

13:71-3.4 Appeal procedure
Any appeal must be filed in writing at the office of the Commission within three days of the date of imposition of penalty by the Commission, State steward or board of judges.

13:71-3.5 Hearings
(a) Hearings in any appeal to the Commission shall be conducted pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B and 52:14F, and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.
(b) If a license has been suspended pending hearing, the hearing shall be expedited.

13:71-3.6 Frivolous appeals
(No change in text.)

13:71-3.7 Hearing; costs
The applicant shall be responsible for any costs incurred in connection with any hearing held pursuant to this subchapter.

13:71-3.8 Stay pending appeals
(No change in text.)

TRANSPORTATION

(b)

DIVISION OF TRAFFIC ENGINEERING AND LOCAL AID
BUREAU OF TRAFFIC ENGINEERING AND SAFETY PROGRAMS

Restricted Parking and Stopping Along Any U.S. or N.J. Route
Adopted New Rule: N.J.A.C. 16:28A-1A.1

Proposed: May 20, 1991 at 23 N.J.R. 1524(a).
Adopted: June 25, 1991, by Edward Baker, Acting Director, Division of Traffic Engineering and Local Aid.
Filed: July 9, 1991 as R.1991 d.398, **with a technical change** not requiring additional public notice or comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 27:1A-5, 27:1A-6, 27:3A-1, 27:3A-2, 27:3A-3 and 39:4-98.

Effective Date: August 5, 1991.
Expiration Date: June 1, 1993.

Summary of Public Comments and Agency Responses:
No comments received. An appropriate heading for subchapter 1A has been added upon adoption.

Full text of the adoption follows (addition to proposal indicated in boldface with asterisks ***thus***).

SUBCHAPTER 1A. RESTRICTED PARKING AND STOPPING ON ROADS UNDER RECONSTRUCTION OR REPAIR

16:28A-1A.1 "No stopping or standing" zones on roads under reconstruction or repair
(a) "No stopping or standing" zones may be established along either side of a portion of any U.S. or N.J. Route undergoing reconstruction or repair within the State of New Jersey, including all ramps and connections under the jurisdiction of the Commissioner of Transportation.
(b) Such restrictions shall be imposed as needed, after the Department conducts an engineering and traffic investigation. Signs prohibiting stopping or standing will be erected by the Department of Transportation or its agent.
(c) The "no stopping or standing" zone signs installed under this procedure shall supersede any existing rules. Previously existing signs which are in conflict with the temporary restrictions shall be covered or removed temporarily by the appropriate authority.
(d) The temporary "no stopping or standing" zones shall cease to be effective when the construction activity has ended and the signs have been removed by the Department or its agent. At that time, the restrictions shall revert to those established prior to the posting of the "no stopping or standing" zone signs authorized by this rule.

(c)

DIVISION OF TRAFFIC ENGINEERING AND LOCAL AID
BUREAU OF TRAFFIC ENGINEERING AND SAFETY PROGRAMS

Turn Prohibitions
Route N.J. 88 in Ocean County
Adopted Repeal and New Rule: N.J.A.C. 16:31-1.6

Proposed: May 20, 1991 at 23 N.J.R. 1524(b).
Adopted: June 25, 1991, by Edward Baker, Acting Director, Division of Traffic Engineering and Local Aid.
Filed: July 9, 1991 as R.1991 d.399, **without change.**

Authority: N.J.S.A. 27:1A-5, 27:1A-6, 39:4-123 and 39:4-183.6.

Effective Date: August 5, 1991.
Expiration Date: June 1, 1993.

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

Full text of the adoption follows.

16:31-1.6 Route 88

(a) Turning movements of traffic on the certain parts of State highway Route N.J. 88 described in this subsection are regulated as follows:

1. In Ocean County:

i. Brick Township:

(1) No left turns from east on Route 88 to north into the westerly driveway of the Laurel Square Plaza.

ii. Point Pleasant Borough:

(1) No left turns from east on Route N.J. 88 to north on Bradford Drive.

(2) No left turns from east on Route N.J. 88 to north on Benedict Street.

(3) No left turns from east on Route N.J. 88 to north on Oakland Street.

TREASURY-TAXATION

(a)

DIVISION OF TAXATION

Transfer Inheritance and Estate Tax Assessment and Valuation; Returns

Adopted Amendments: N.J.A.C. 18:26-1.1, 2.14, 2.15, 3.4, 3.10, 7.10, 8.2, 8.3, 8.8, 8.9, 8.11, 8.21, 9.1, 9.3, 9.4, 9.5, 9.6, 9.10, 10.12, 11.4, 11.8, 11.15 and 11.16

Adopted Repeals: N.J.A.C. 18:26-8.1 and 8.7

Adopted Repeals and New Rules: N.J.A.C. 18:26-8.6 and 10.1

Proposed: January 22, 1991 at 23 N.J.R. 188(b).
Adopted: July 2, 1991 by Leslie A. Thompson, Director, Division of Taxation.
Filed: July 2, 1991 as R.1991 d.384, **with substantive changes** not requiring additional public notice (See N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 54:50-1.

Effective Date: August 5, 1991.
Expiration Date: June 7, 1993.

Summary of Public Comments and Agency Responses:

COMMENT: James R. Silkensen, Executive Vice President of the New Jersey Savings League, submitted several comments. First, it was suggested that the Division include in the rules a 15-day deadline in which the Division would either issue a release or a notification that an inventory would be conducted. A second concern related to the lack of a definition of the "proper representative of the decedent's estate" for purposes of the rule.

RESPONSE: The Division responded that it anticipated prompt issuance of the release or notification and that a 15-day time restriction was unnecessary. The Division agreed, however, that a definition of the "proper representative of the estate" was advisable and, accordingly, an amendment to the definitions section, N.J.A.C. 18:6-1.1 has been added to clarify this point.

COMMENT: Mary Lou Parker, Esq., proposed a revision to N.J.A.C. 18:26-7.10(d)2 to allow the deduction for both executor's or administrator's commissions on real estate that is actually sold by the executor or administrator to include commissions on real estate that is expressly directed to be sold by the terms of the decedent's will. Ms. Parker pointed out that property may have been listed for sale but not be "actually sold" by the time the inheritance tax return is filed.

Ms. Parker also proposed that N.J.A.C. 18:26-7.10 be amended to allow a deduction for commissions paid to additional executors or administrators whether or not there is a court accounting and court judgment on additional commissions.

RESPONSE: The Division agreed with the first change suggested by Ms. Parker 18:26-7.10(d)2 has been changed to allow a deduction for commissions on real estate actually sold or directed to be sold by the terms of the will. The requirement that the real estate be sold by the executor or administrator and not by the beneficiary is retained. With regard to the second change suggested, the Division advised that the suggestion is under study and may be addressed at a future date.

Summary of Changes Upon Adoption

A definition of the "proper representative of the estate" has been added in N.J.A.C. 18:26-1.1.

N.J.A.C. 18:26-7.10(d)2 has been amended to allow a deduction for commissions to executors or administrators on real estate actually sold or directed to be sold by the terms of the will.

The Division, on its own initiative, has made a technical amendment to N.J.A.C. 18:26-9.1(a) to correct an erroneous reference to the State Uniform Tax Procedure Law. The rule has been amended to refer to the penalties provided in N.J.S.A. 54:35-3, the penalty provision in the inheritance tax statute rather than the State Uniform Tax Procedure Law, N.J.S.A. 54:49-3 et seq. N.J.A.C. 18:26-9.4(a)4 has also been corrected to specify that Form L-9 is an application filed by the representative of an estate rather than by the resident decedent.

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

18:26-1.1 Definitions

The following words and terms, when used in this *[Chapter]* ***chapter***, shall have the following meanings, unless the context clearly indicates otherwise:

...

"Proper representative of the estate" means the appropriate representative as determined under the estate administration statutes, N.J.S.A. 3B:1-1 et seq.

...

18:26-2.14 Composition of taxes on certain transfers

(a) In the case of a transfer or transfers made subject to a contingency or condition which renders a definite determination of the transfer inheritance tax due impossible, the Transfer Inheritance Tax Branch may enter into a composition or compromise of the tax based upon the immediate payment and final disposition of the tax.

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

18:26-2.15 Bond in lieu of payment

(a) If settlement through a compromise of the tax fails, a bond in double the highest amount of tax must be filed with the Inheritance Tax Branch, executed by the executor, administrator, trustee, or other property representative, as principal, and a surety company licensed to operate in New Jersey as surety, until the contingency or condition occurs and the tax due becomes definite.

(b) Upon the happening of the contingency or condition to which a transfer is subject, the executor, administrator, trustee or other proper representative shall notify the Transfer Inheritance Tax Branch of the date the occurrence took place and a computation of the tax due shall then be made. (See N.J.A.C. 18:26-9.13.)

(c) (No change.)

18:26-3.4 Additions or reductions to estate tax

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

(c) The amount of the estate tax due New Jersey, if any, cannot be determined in any case until the Federal government has definitely determined the amount of Federal estate tax chargeable on final assessment.

1. Notice to the estate of final assessment usually takes the form of a letter from the District Director, Internal Revenue Service, indicating the amount of Federal estate tax chargeable, and the amount of the allowable credit.

2. If any adjustments have been made, this letter is accompanied by a detailed statement of the changes made in each schedule of the Federal estate tax return. If an appeal from the Director's findings is taken, the final notice will be the order of the appellate court in this respect.

3. The New Jersey Inheritance Tax Branch requires a photostatic copy of all determinations, final and intermediate, of the Internal

Revenue Service, with all supporting statements. Photostatic copies of receipts for payment of succession or estate taxes to any state, other than New Jersey, territory, possession, or the District of Columbia are also required.

4. Form of return for New Jersey estate tax purposes may be obtained from the Transfer Inheritance Tax Branch, CN-249, Trenton, N.J. 08646-0249.

18:26-3.10 Appeals

Any executor, administrator, trustee, person or corporation liable for the payment of the estate tax and aggrieved by any decision, order, finding or assessment of the Director, may appeal to the Tax Court of New Jersey for a review thereof within 90 days of the date of notice assessing the tax complained of, in accordance with pertinent provisions of the State Tax Uniform Procedure Law, N.J.S.A. 54:51A-13 et seq.

18:26-7.10 Executor's and administrator's expenses

(a) (No change.)

(b) Where a formal account is filed and the amount allowed by the court for executor's or administrator's commissions is greater than the amount previously fixed by the Branch, the fiduciary is to forward a plain copy of the judgment allowing commissions and upon revision of the assessment there shall be applied the rate used by the court to the value, as of the date of death as determined by the Inheritance Tax Branch of the property on which the allowance of the court is based, but the value of any property excluded from the New Jersey Transfer Inheritance Tax shall be excluded from the computation.

(c) (No change.)

(d) Executor's or administrator's commissions are allowed on real estate that is actually sold by the executor or administrator ***or which is expressly directed to be sold by the terms of the decedent's will***. The real estate must be sold by the representative and not the beneficiary(s) in order to qualify.

(e) (No change.)

18:26-8.1 (Reserved)

18:26-8.2 Appointment of appraisers

(a) (No change.)

(b) The appraisal of all intangible personal property is made by an auditor at the Inheritance Tax Branch.

18:26-8.3 Notice of appraisal; evidence; report

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

(d) Upon completion of the examination for any property and attainment of any information solicited from witnesses, the appraiser is required to make a report and file the same with the Inheritance Tax Branch.

18:26-8.6 Final assessment

Upon receipt of the return and payment of any applicable tax, the Branch will advise the estate representative as to whether the return filed by the estate and the tax calculation are accepted, in which case the Branch's notification will be the assessment. In the event that the Branch decides to further examine the return, it will subsequently notify the estate representative as to the amount of tax assessed.

18:26-8.7 (Reserved)

18:26-8.8 Time limit for assessment

Upon the expiration of a period of 15 years after the date of death of a decedent, no proceeding may be instituted to assess or collect any tax, interest or penalties due this State for Inheritance Tax purposes against any estate, executor, administrator, trustee, grantee, donee, vendee, devisee, legatee, heir, next of kin or beneficiary. However, this does not affect any rights to collection which this State has by reason of filing with the Clerk of the Superior Court, a Certificate of Debt, Decree of Judgment for the New Jersey Inheritance Tax, including any interest and penalties; nor does the period of limitation affect the rights of this State to assess and collect the New Jersey Inheritance Tax including any interest and penalties under the terms of a bond or their agreement securing the payment of such tax, interest and penalties.

18:26-8.9 Appeals from assessment

Any interested person dissatisfied with an appraisement or assessment made by the Inheritance Tax Branch may appeal to the Tax Court within 90 days after the making and entering of the assessment, in accordance with pertinent provisions of the State Tax Uniform Procedure Law, N.J.S.A. 54:51A-13 et seq.

18:26-8.11 Fractional interest in real property

(a) The appraisal of real estate in which a decedent owned a fractional interest, in cases where the estate contends that a discounted value is in order, is conducted by a representative of the Inheritance Tax Branch.

(b) A determination shall then be made by a representative of the Inheritance Tax Branch as to whether a discount in value is warranted, and, if so, the amount of the discount to be allowed.

18:26-8.21 Contingent or defeasible estates

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

(c) Where a number of years have elapsed between the date of death and the date of initial assessment, the Branch will inquire as to the amounts and dates of any payments to, or withdrawals by the beneficiary. If such payments or withdrawals have been made a contingent assessment, based upon the amount of corpus paid less any vested life estate value or discounted value will be completed.

(d) (No change.)

18:26-9.1 Date return due

(a) All inheritance tax returns must be filed, together with payment of the tax, within eight months following the death of the decedent. Failure of the personal representative, heir-at-law or next-of-kin, surviving joint tenant, trustee or transferee to file a return within the time prescribed subjects such party responsible for such filing to the penalties *[provided in the State Tax Uniform Procedure Law, N.J.S.A. 54:49-3 et seq]* ***provided in N.J.S.A. 54:35-3***.

(b) (No change.)

18:26-9.3 Form of returns

Returns are required to be made on forms IT-R (Resident) and IT-NR (Non-Resident) approved by the Director which may be obtained by writing to the Transfer Inheritance Tax Branch, CN-249, Trenton, New Jersey 08646-0249.

18:26-9.4 Resident decedents' returns

(a) In the case of a resident decedent, all returns must be filed and tax computed on one of the following forms and accompanied by payment of tax, a copy of the decedent's will, if such decedent died testate, as well as a copy of the decedent's income tax return (form 1040 or 1040A) filed with the Internal Revenue Service for the last full year preceding his or her date of death*[.]**:*

1. Form IT-R (Resident): Must be used in all resident estates.

2. Form L-4: Preliminary affidavit to be used in making application for consents to transfer prior to completion of the original return. The Branch will retain in every case control over a sufficient portion of the assets to assure collection of the tax, even though a payment on account may have been made. The Branch will not issue consents to transfer all the personal property and depends upon real property as security for the tax. The only exception to the procedure is where a bank, trust company, or similar institution has been named executor and guarantees in writing, payment of tax.

3. Form L-8: Self-executing waiver for use in permitting a transfer of assets to a Class "A" beneficiary.

4. Form L-9: Application by ***the representative of the estate of*** a resident decedent for issuance of a waiver permitting a transfer of real estate to a Class "A" beneficiary.

18:26-9.5 Nonresident returns

(a) In the case of a nonresident decedent, a return must be filed and tax computed on Form IT-NR (Non-Resident) or, where the representative or beneficiary of such estate agrees to the use of a flat tax rate a flat tax rate affidavit, either of which must be accompanied by payment of tax, and a certified copy of the decedent's will, if such decedent dies testate.

(b) A flat tax may be paid in lieu of filing the information required in Form IT-NR, if the representative or beneficiary of a nonresident estate files an affidavit containing the following information:

1.-5. (No change.)

(c) (No change.)

18:26-9.6 Amendment to original return

In the case of both resident and nonresident estates, any assets and liabilities not disclosed in the original return and all supplemental data requested by the Branch is to be filed in affidavit form on legal size paper and attested to by the duly authorized statutory representative of the estate, next of kin, or beneficiary certifying in detail a description of the asset, real or personal and/or the liability and the reasons for failure to disclose same in the original return and filed directly with the Transfer Inheritance Tax Branch, CN-249, Trenton, New Jersey 08646-0249.

18:26-9.10 How tax is payable

(a) A certified or cashiers check in full payment of the tax and interest, if any, must be filed together with the return directly with the Inheritance Tax Branch, CN-249, Trenton, New Jersey 08646-0249.

(b) Where interest has accrued at the time of any payment, such payment is first credited in satisfaction of the accrued interest, and the excess credited in payment of the tax chargeable. The interest shall continue to accrue on any remaining balance from the date of said payment to the date of final adjustment.

(c) Payment on account of any transfer inheritance tax may be made in advance of the actual assessment. Any payment on account will also be accepted to cover any compounded, contingent or compromise assessment.

18:26-10.1 Levy of tax; resident and nonresident decedents

Resident and nonresident decedents' returns must be filed together with a certified or cashier's check in full payment of the tax and interest, if any, directly with the Inheritance Tax Branch, CN-249, Trenton, New Jersey 08646-0249. Upon the filing of a return and payment of the tax, the Branch will issue a notice of assessment showing the amount of tax due, the amount paid, and whether interest is due or a refund is to be issued (see N.J.A.C. 18:26-8.6, 9.4, 9.9 and 9.10).

18:26-10.12 Time and manner of making application for refund

(a) (No change.)

(b) Such application is to be made by means of an affidavit on legal size paper, setting forth in detail all of the facts upon which the claim for refund is based, including a copy of a Court Order, if a court of competent jurisdiction has made a final determination upon which the refund is based, signed by the executor, administrator, trustee, heir-at-law, or surviving joint tenant and filed directly with the Transfer Inheritance Tax Branch, CN-249, Trenton, New Jersey 08646-0249.

18:26-11.4 Real and personal property of resident and nonresident decedents

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

(c) Waivers are necessary to transfer any real property located in New Jersey belonging to a nonresident decedent. Such waivers are issued after the nonresident decedent return is filed with the Transfer Inheritance Tax Branch and the tax, if any, is adjusted and paid.

18:26-11.8 Transfers to savings accounts without a waiver

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

(d) The transfers permitted in (a)-(c) above are subject to the requirement that the banking institution promptly file a notice with the Transfer Inheritance Tax Branch, CN-249, Trenton, New Jersey 08646-0249, containing the following information:

1.-4. (No change.)

(e) (No change.)

18:26-11.15 Certain small estates not subject to waiver

(a) (No change.)

(b) Form 0-83, used by a spouse, or Form 0-80, used by any other applicant, is to be obtained only from a bank, savings institution or savings and loan association and executed concurrently with the release of any funds. Every bank institution or association is required to obtain such forms directly from the Transfer Inheritance Tax Branch, CN-249, Trenton, New Jersey 08646-0249, and is further required to obtain the following information from each applicant before the release of any funds to be assured that the total assets of the estate are less than $5,000 or $200.00 as the case may be:

1.-5. (No change.)

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

18:26-11.16 Blanket waiver

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

(c) In addition to the amount permitted to be released by an institution, association, organization, corporation or person mentioned in this section, institutions, associations, organizations, corporations, or persons may, without written consent of the Director:

1. (No change.)

2. Pay any checks in any amount for which there are sufficient funds held in deposit, drawn on any account owned by a decedent individually, jointly or otherwise, representing full or partial payment of any New Jersey Transfer Inheritance Taxes and made payable to the New Jersey Inheritance Tax Branch;

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

OTHER AGENCIES

(a)

CASINO CONTROL COMMISSION

Applications
Reapplication After Denial or Revocation
Adopted Amendment: N.J.A.C. 19:41-8.8

Proposed: May 6, 1991 at 23 N.J.R. 1301(a).

Adopted: June 27, 1991 by the Casino Control Commission, Steven P. Perskie, Chairman.

Filed: July 1, 1991 as R.1991 d.382 **without change.**

Authority: N.J.S.A. 5:12-63(c), 5:12-69(a) and 5:12-70(a).

Effective Date: August 5, 1991.

Expiration Date: May 12, 1993.

Summary of Public Comments and Agency Responses:

Comments were received from the Sands Hotel, Casino and Country Club (the Sands) and the Division of Gaming Enforcement (Division).

COMMENT: The Sands commented that, while it prefers the current practice of submitting reapplication petitions to the Chairman, it has no objections to the proposed amendment.

RESPONSE: The Commission believes that the proposed amendments to the reapplication procedures are consistent with Commission practice regarding other types of licensing decisions.

COMMENT: The Division stated that it would not be opposed to the proposed amendment.

RESPONSE: The Commission agrees, as evidenced by its adoption of the proposed amendment.

Full text of the adoption follows.

19:41-8.8 Reapplication by natural person after denial or revocation

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

(c) Any natural person whose licensure, qualification or approval has been denied or revoked on the basis of one or more of the enumerated statutory and regulatory provisions set forth in (b) above may reapply for such licensure, qualification or approval as follows:

1. Prior to reapplication, said person shall submit a verified petition, with supporting affidavits, requesting that such reapplication be permitted, and showing with particularity the satisfaction of the condition precedent to reapplication specified in (b) above.

2. The Commission may deny the petition or grant the petition and issue an order authorizing reapplication.

3. The Commission shall grant the petition only upon a showing that the condition precedent specified in (b) above has been satisfied in accordance with the provisions of this regulation.

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

(f) Any person whose licensure, qualification or approval has been denied or revoked on the basis of any statutory or regulatory provision which has been subsequently repealed or modified in such a manner so as to obviate the grounds for such denial or revocation may petition the Commission, in accordance with the procedures set forth in (c) above, to be permitted to reapply. The petition shall specify with particularity the repeal or modification of the statutory or regulatory provision at issue and the circumstances of the prior denial or revocation which warrant the allowance of such reapplication. The Commission shall grant the petition only upon a showing that the repeal or modification of the statutory or regulatory provision which was the basis of such denial or revocation justifies the conclusion that the prior decision should be modified.

(g) Any natural person whose licensure, qualification or approval has been denied or revoked and who is barred from reapplication for five years by (a), (b)5 or (b)7 above may petition the Commission to permit early reapplication at any time. The petition shall be verified and supported by affidavits and shall include written argument for the relief sought. It shall state with particularity any grounds upon which revocation or denial was based, and the facts and circumstances which warrant early reapplication. Upon receipt of such petition, the Commission shall offer the Division an opportunity to state its position in writing. Based upon the petition and any written submission from the Division, the Commission may deny the petition or, if it finds that there exist extraordinary facts and circumstances warranting early reapplication, grant the petition.

(a)

CASINO CONTROL COMMISSION

Accounting and Internal Controls
Casino Licensee's Organization; Surveillance Department Transfer Restrictions

Adopted Amendments: N.J.A.C. 19:45-1.1, 1.3, 1.10, 1.11 and 1.12.

Proposed: May 6, 1991 at 23 N.J.R. 1302(a).

Adopted: June 27, 1991, by the Casino Control Commission, Steven P. Perskie, Chairman.

Filed: July 1, 1991 as R.1991 d.381, **with a substantive change** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3), and **with the proposed amendments at N.J.A.C. 19:45-1.11(b)3 not adopted at this time.**

Authority: N.J.S.A. 5:12-63(c), 5:12-69(a), 5:12-70(j) and 5:12-99.

Effective Date: August 5, 1991.

Expiration Date: March 24, 1993.

For reasons described in the following Summary of Public Comments and Agency Responses, the Casino Control Commission has determined to reserve decision on that portion of the proposal which was codified as N.J.A.C. 19:45-1.11(b)3. The Commission is continuing its review of the proposed amendment which would require the creation of a Management Information Systems department and may determine to adopt or repropose this portion of the proposal at a later time.

Summary of Public Comments and Agency Responses:

Comments were received from the Division of Gaming Enforcement (Division), the Sands Hotel, Casino and Country Club (Sands), TropWorld Casino and Entertainment Resort (TropWorld) and the Casino Association of New Jersey (CANJ).

COMMENT: The Sands, TropWorld and CANJ each suggested that the Commission should repeal N.J.A.C. 19:45-1.3(d), which currently requires the initial pre-opening internal control submission of a casino licensee to be accompanied by a report of an independent certified public accountant stating that the submitted internal controls conform to the requirements of the Casino Control Act and the Commission's regulations. According to the commenters, this requirement is costly and unnecessary given the numerous reviews that these submissions undergo by the submitting casino licensees and regulatory authorities.

CANJ also requested the deletion of those provisions in N.J.A.C. 19:45-1.3(a) and (c) which require that a copy of internal control submissions be provided to the Division, as well as the language in subsection (b) of that section which directs that the Commission shall review such submissions "with the advice of the Division." According to CANJ, the Division has no statutory authority to be involved in the review of internal control submissions and the regulatory requirements at issue only serve to increase the cost and delay the processing of such submissions.

Finally, TropWorld submitted a comment suggesting that N.J.A.C. 19:45-1.3 be specifically limited to gaming submissions, in order to conform the rule to proposed amendments to the Casino Control Act which are currently pending before the Legislature. These amendments, if enacted, would establish separate filing requirements for non-gaming submissions.

RESPONSE: The amendments requested by these commenters were not part of the proposal which was published by the Commission and therefore cannot be considered at this time. The Commission will, however, take each of the comments under review and determine whether the suggested amendments to N.J.A.C. 19:45-1.3 should be included in a future proposal.

COMMENT: Both TropWorld and CANJ objected to the wording of one of the criteria listed in N.J.A.C. 19:45-1.11(a) (as amended) which would be used to evaluate each casino licensee's particular table of organization. More specifically, each commenter stated that the proposed wording of the provision requiring the segregation of incompatible functions expanded the current standard by requiring a casino licensee's table of organization to be designed to prevent the commission of errors. According to the commenters, no internal control system can prevent the commission of errors; rather, the segregation of incompatible functions is intended to assure that once an error has been committed, the perpetrator of the error is not in a position to conceal the error. Therefore, the commenters request that the words "commit an error" be deleted from the proposal.

RESPONSE: The Commission disagrees with the commenters' premise that the proposal has modified or expanded the Commission's previous rule governing the segregation of incompatible functions. The prior version of the rule, N.J.A.C. 19:45-1.11(b)2, required the "segregation of incompatible functions so that no employee is in a position **to perpetrate and conceal errors** or irregularities in the normal course of his duties" (emphasis supplied). The amended language requires that no employee be in a position **"to commit an error** or to perpetrate a fraud **and to conceal the error** or fraud in the normal course of his or her duties" (emphasis supplied). The Commission perceives no substantive difference between these two standards; the change in wording was made simply to conform the wording of the regulatory standard more closely to that of the Generally Accepted Auditing Standard from which it was derived. Parenthetically, the Commission would note that, despite the fact that human errors are inevitable, functions are segregated in an internal control system to minimize both the commission of errors of their concealment. The Commission has, however, in response to the comments of TropWorld and CANJ, adopted a technical amendment to N.J.A.C. 19:45-1.11(a)2 to clarify its interpretation of this language.

COMMENT: TropWorld opposed the adoption of the proposal on the basis that the rules should not mandate any particular operating departments. TropWorld believes that each casino licensee should be permitted to establish its own table of organization through internal control submissions, including those departments directly involved in casino operations.

RESPONSE: The Commission rejected this comment. The Casino Control Act, pursuant to N.J.S.A. 5:12-70j and 99(a)3, requires the Commission to adopt rules prescribing the procedures, forms and methods of management controls utilized by casino licensees, including supervisory tables of organization and responsibility. Although the Commission, as evidenced by this proposal, believes that casino licensees should be given the greatest possible latitude in establishing those aspects of their organizational structure concerned with the formulation of policy or non-gaming matters, the mandatory casino operating departments listed in N.J.A.C. 19:45-1.11 are considered essential to the implementation of the detailed accounting and operational internal controls which are required by the Act to assure the integrity of casino gaming operations. Uniformity of these controls at the operational level is essential to the regulatory authority's ability to effectively and efficiently fulfill its statutory obligation to strictly regulate all persons, locations and

practices related to the operation of licensed casino enterprises. N.J.S.A. 5:12-1(b)6.

COMMENT: CANJ, while not opposing the creation of a mandatory Management Information Systems (MIS) department, requested that amendments be made to this portion of the proposal to narrow the scope of authority of the MIS department. The commenter maintained that, contrary to the requirements of the proposal, most casino MIS departments do not generally have total control over a casino operation's computer hardware and software. Therefore, CANJ suggested that the relevant portion of the proposal, N.J.S.A. 19:45-1.11(b)3, be amended to limit the MIS department's authority to computer hardware and software involving a casino licensee's main-frame computer.

RESPONSE: To the Commission's knowledge, only one casino licensee currently uses a main-frame computer in its casino operations. Therefore, the Commission cannot endorse the amendatory language suggested by CANJ. The Commission acknowledges, however, that CANJ has raised a legitimate issue as to the actual scope of control of the typical MIS Department over the casino-related computer operations of a casino licensee. Although it is possible that the Commission may want to mandate such authority if it does not currently exist, the Commission has concluded that further study of this issue would be appropriate. Therefore, the Commission has reserved decision on this subsection of the proposal until additional information about current MIS casino operations can be obtained. Upon further review, the Commission may act to either adopt the current proposal or repropose new amendments concerning the scope of the MIS department's authority and responsibility over casino-related computer operations.

COMMENT: The Division, the Sands and CANJ, except as otherwise noted, generally supported the adoption of the proposed amendments as published.

RESPONSE: These comments were accepted by the Commission as evidenced by its adoption of the proposal.

Summary of Agency-Initiated Changes:

The Casino Control Commission, upon adoption of the proposal, made one change to N.J.A.C. 19:45-1.11(a) on its own motion. Specifically, in order to clarify that the amendments concerning the organizational requirements of casino licensees contained in N.J.A.C. 19:45-1.11 were not intended to override the specific organizational requirements concerning the casino's equal employment officer contained in N.J.A.C. 19:53-1.13, an explicit reference to these latter requirements was added to N.J.A.C. 19:45-1.11(a).

Full text of the adoption follows (additions to proposal indicated in boldface with asterisks ***thus***).

19:45-1.1 Definitions

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

...

"Chief executive officer" means the natural person located at a casino hotel facility who is ultimately responsible for the daily conduct of an applicant's or casino licensee's hotel and gaming business, regardless of the applicant's or casino licensee's form of business association or the particular title which the person holds.

19:45-1.3 Licensee's system of internal controls

(a) Each casino licensee shall submit to the Commission and Division a description of its system of internal procedures and administrative and accounting controls in accordance with section 99 of the Act. Such submission shall be made at least 60 days before gaming operations are to commence, unless otherwise directed by the Commission. Each such submission shall contain both narrative and diagrammatic representations of the internal control system to be utilized by the licensee and shall include, without limitation, the following:

1. Administrative controls which include, without limitation, the procedures and records that are concerned with the decision making processes leading to management's authorization of transactions; and

2. Accounting controls which have as their primary objectives the safeguarding of assets and the reliability of financial records and are consequently designed to provide reasonable assurance that:

i. Transactions are executed in accordance with management's general and specific authorization;

ii. Transactions are recorded as necessary to permit preparation of financial statements in conformity with generally accepted accounting principles and N.J.A.C. 19:45-1.6, and to maintain accountability for assets;

iii. Access to assets is permitted only in accordance with management authorization; and

iv. The recorded accountability for assets is compared with existing assets at reasonable intervals and appropriate action is taken with respect to any differences.

(b) The Commission shall review each submission required by (a) above and with the advice of the Division shall determine whether it conforms to the requirements of the Act and the Commission's rules and whether the system submitted provides adequate and effective controls for the operations of the casino licensee. If the Commission finds any insufficiencies, it shall specify such insufficiencies in writing to the casino licensee, which shall make appropriate alterations. When the Commission determines a submission to be adequate in all respects, it shall so notify the casino licensee. No casino licensee shall commence gaming operations unless and until its system of internal controls is approved by the Commission.

(c) Each casino licensee shall submit to the Commission and the Divsion any changes to its system of internal procedures and administrative and accounting controls previously determined by the Commission in (b) above to be adequate in all respects at least 60 days before the changes are to become effective, unless otherwise directed by the Commission. The proposed changes may be approved or disapproved by the Commission consistent with the standards contained in (b) above. No casino licensee shall alter its internal controls unless and until such changes are approved. However, the Commission shall make a determination concerning a submission for changes in previously submitted control plans no later than 60 days following receipt of the changes unless the Commission and the casino licensee agree to extend the period for making such a determination. If there is no determination made within 60 days and there is no agreement to extend the period for making such a determination, then the changes shall be deemed to be approved.

(d) The submission required by (a) above shall be accompanied by a report of an independent certified public accountant licensed to practice in New Jersey stating that the submitted system conforms in all respects to the standards of internal control set forth in the Act and the Commission's rules or in what respects the system does not conform.

19:45-1.10 Closed circuit television system; surveillance department control; surveillance department restrictions

(a) (No change.)

(b) The closed circuit television system shall include, but need not be limited to, the following:

1.-3. (No change.)

4. One or more monitoring rooms in the establishment which shall be in use at all times by the employees or agents of the surveillance department of the licensee assigned to monitor the activities in the casino and to be used as necessary by the inspectors and agents of the Commission and Division.

5. (No change.)

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

(g) Surveillance department employees or agents of the licensee assigned to monitor the activities shall be independent of all other departments. In addition to any other restrictions contained in the Act and the rules promulgated thereunder, no present or former surveillance department employee shall accept employment as a casino key employee or casino employee with the same casino hotel or prospective casino hotel in which the surveillance department employee was previously employed or within any other casino hotel or prospective casino hotel whose surveillance department is under the operational control of the same person who controlled the surveillance department in which the surveillance department employee had been previously employed, unless one year has passed since the former surveillance department employee worked in the surveillance department.

(h) (No change.)

19:45-1.11 Casino licensee's organization

(a) Each casino licensee's system of internal controls shall, in accordance with the provisions of N.J.A.C. 19:45-1.11A, include tables of organization. Each casino licensee shall be permitted, except as otherwise provided in this section ***and N.J.A.C. 19:53-1.13***, to tailor its organizational structure to meet the needs or policies of its own particular management philosophy. The proposed organizational structure of each casino licensee shall be approved by the Commission in the absence of a conflict between the organizational structure and the criteria listed below, which criteria are designed to maintain the integrity of casino operations. Each casino licensee's tables of organization shall provide for:

1. A system of personnel and chain of command which permits management and supervisory personnel to be held accountable for actions or omissions within their areas of responsibility;

2. The segregation of incompatible functions so that no employee is in a position ***both*** to commit an error or to perpetrate a fraud and to conceal the error or fraud in the normal course of his or her duties;

3. Primary and secondary supervisory positions which permit the authorization or supervision of necessary transactions at all relevant times; and

4. Areas of responsibility which are not so extensive as to be impractical for one person to monitor.

(b) In addition to satisfying the requirements of (a) above, each casino licensee's system of internal controls shall include, at a minimum, the following departments and supervisory positions. Each of these departments and supervisors shall be required to cooperate with, yet perform independently of, all other departments and supervisors. Mandatory departments are as follows:

1. A surveillance department supervised by a casino key employee holding a license endorsed with the position of director of surveillance. The supervisor of the surveillance department shall be subject to the reporting requirements specified in (c) below. The surveillance department shall be responsible for, without limitation, the following:

i.-vii. (No change.)

viii. The communication in writing to the supervisor of the credit department of accurate and verifiable information which may be relevant in determining a patron's credit worthiness.

2. An internal audit department supervised by a casino key employee holding a license endorsed with the position of audit department executive. The supervisor of the internal audit department shall be subject to the reporting requirements specified in (c) below. The internal audit department shall be responsible for, without limitation, the following:

i.-v. (No change.)

3. ***(Reserved)***

4. A table games department supervised by a casino key employee holding a license endorsed with the position of casino manager. The table games department shall be responsible for the operation and conduct of the following games:

i.-vi. (No change.)

5. A slot department supervised by a casino key employee holding a license endorsed with the position of slot department manager. The slot department shall be responsible for the operation of the slot machines and bill changers.

6. A credit department supervised by a casino key employee holding a license endorsed with the position of credit manager. The credit department shall be responsible for the credit function including, without limitation, the following:

i.-iii. (No change.)

iv. The communication in writing of the names and addresses of casino patrons with newly approved credit limits to the supervisors of the security and surveillance departments on a daily basis in accordance with the casino licensee's approved procedures.

7. A security department supervised by a casino key employee holding a license endorsed with the position of director of security. The security department shall be responsible for the overall security of the establishment including, without limitation, the following:

i.-viii. (No change.)

ix. The communication in writing to the supervisor of the credit department of accurate and verifiable information which may be relevant in determining a patron's credit worthiness.

8. A casino accounting department supervised by a casino key employee holding a license endorsed with the position of controller. The supervisor of the casino accounting department shall also be responsible for the control and supervision of the cashier's cage. The casino accounting department shall be responsible for, without limitation, the following:

i. Accounting controls;

ii. The preparation and control of records and data; and

iii. The control of stored data, the supply of unused forms, and the accounting for and comparing of forms used in operating the casino.

9. A cashier's cage supervised by a casino key employee holding a license endorsed with the position of cage manager. The supervisor of the cashiers' cage shall report to the supervisor of the casino accounting department and shall be responsible for the control and supervision of cage and slot cashiers, change persons and casino clerks. The cashiers' cage may be separated into independent operations for table games and slot machines. If a casino licensee elects to operate both a table games cage and a slot machine cage, each independent cage operation shall be supervised by a casino key employee holding a license endorsed with the position of cage manager. The cashiers' cage shall be responsible for, without limitation, the following:

i. (No change.)

ii. The approval, exchange, redemption and consolidation of patron checks received for the purposes of gaming;

iii. The receipt, distribution and redemption of gaming chips and plaques; and

iv. Such other functions normally associated with the operation of a cashiers' cage.

(c) The supervisors of the surveillance and internal audit departments required by (b) above shall comply with the following reporting requirements:

1. Each supervisor shall report directly to the chief executive officer of the casino licensee regarding administrative matters and daily operations; provided, however, a casino licensee may allow each of these supervisors to report directly to a management executive of the licensee other than the chief executive officer if that executive reports directly to the chief executive officer.

2. Each supervisor shall report directly to one of the following persons or entities regarding matters of policy, purpose, responsibility and authority. The hiring, termination and salary of each supervisor shall also be controlled by one of the following persons or entities:

i. The independent audit committee of the casino licensee's board of directors;

ii. The independent audit committee of the board of directors of any holding company of the casino licensee which has absolute authority to direct the operations of the casino licensee;

iii. The senior surveillance or internal audit executive of any holding company included in (c)2ii above if such executive reports directly to the independent audit committee of the board of directors of the holding company; or

iv. For casino licensees or holding companies which are not corporate entities, the non-corporate equivalent of any of the persons or entities listed in (c)2i through iii above.

(d) Each casino licensee shall designate compliance officers in conformity with the following:

1. The compliance officer shall:

i. Have the authority to direct the personnel in each department to comply with the Act, this chapter, and the directives of the Commission and Division; and

ii. Be available in the establishment at all times.

2. (No change.)

(e) The casino licensee's personnel shall be trained in all internal and accounting control practices and procedures relevant to each employee's individual function. Special instructional programs shall be developed by the casino licensee in addition to any on-the-job

instruction sufficient to enable all members of the departments required by this section to be throughly conversant and knowledgeable with the appropriate and required manner of performance of all transactions relating to their functions. A written description of all instructional and on-the-job training to be and being provided shall be submitted to the Commission for review.

(f) Functions described in this section shall be performed only by persons holding the appropriate license and position endorsement required by the casino licensee's approved jobs compendium to perform such functions, or by persons holding the appropriate license and position endorsement to supervise persons performing such functions, subject to the limitations imposed by (a) above.

19:45-1.12 Personnel assigned to the operation and conduct of gaming and slot machines

(a) Each casino licensee shall be required to employ the following personnel in the operation of its casino, regardless of the position titles assigned to such personnel by the casino licensee in its approved jobs compendium. Functions described in this section shall be performed only by persons holding the appropriate license and position endorsement required by the casino licensee's approved jobs compendium to perform such functions, or by persons holding the appropriate license and position endorsement required by the casino licensee's approved jobs compendium to supervise persons performing such functions, subject to the limitations imposed by N.J.A.C. 19:45-1.11(a).

(b) The following personnel shall be used to operate the table games in an establishment:

1. Casino clerk shall be the person located at a desk in the pit to prepare documentation required for the operation of table games including, without limitation, Requests for Fills, Requests for Credits, and Counter Checks.

2. (No change.)

3. Stickperson shall be the dealer assigned to each craps table to control the dice and may be responsible for the proposition wagers made at the craps table.

4. Boxperson shall be the first level supervisor assigned the responsibility of directly participating in and supervising the operation and conduct of the craps game.

5. Floorperson shall be:

i.-iv. (No change.)

6.-7. (No change.)

8. Casino manager shall be the executive assigned the responsibility and authority for the supervision and management of the overall operation of casino licensee's table games including, without limitation, the hiring and terminating of all casino personnel, and the creation of high employee morale and good customer relations, all in accordance with the policies and practices established by the casino licensee's board of directors or non-corporate equivalent.

9. Each casino licensee shall staff its craps tables with at least three dealers and one boxperson per table and at least one floorperson supervising no more than two craps tables at all times while those tables are open for gaming. There shall also be at least one additional supervisor in each pit for every two craps tables at which patrons are playing. This additional supervisor shall either be a boxperson or floorperson and shall be assigned the responsibility of supervising craps tables within a pit as directed by casino management. A pit is defined as not more than eight craps tables under the supervision of a common pit boss. Examples:

i.-ii. (No change.)

(c) The following personnel shall be used to operate the slot department in an establishment:

1.-4. (No change.)

5. Slot department manager shall be the executive assigned the responsibility and authority for the supervision and management of the overall operation of the casino licensee's slot machines and bill changers including, without limitation, the hiring and terminating of all slot department personnel and the creation of high employee morale and good customer relations, all in accordance with the policies and practices established by the casino licensee's board of directors or non-corporate equivalent.

(d) (No change.)

(a)

DELAWARE RIVER BASIN COMMISSION

Notice of Administrative Correction

Amendment of Comprehensive Plan, Water Code of the Delaware River Basin and Administrative Manual—Part III Water Quality Regulations: "Swimmable" Water Use Classifications and Standards

Take notice that the notice of adoption of the above-entitled resolution, which was adopted by the Delaware River Basin Commission and effective May 22, 1991 (see R.1991 d.316), and was published in the July 1, 1991 New Jersey Register at 23 N.J.R. 2027(c), was not correctly titled. The correct title, and subject matter of the resolution, is as set forth above in this notice of administrative correction, published pursuant to N.J.A.C. 1:30-2.7.

(b)

DELAWARE RIVER BASIN COMMISSION

Comprehensive Plan and Water Code of the Delaware River Basin: Water Conservation Performance Standards for Plumbing Fixtures and Fittings: Revision of Effective Date

Adopted: June 19, 1991 by the Delaware River Basin Commission, Michael F. Catania, Chairman pro tem.

Filed: June 24, 1991 as R.1991 d.369.

Effective Date: July 1, 1991.

Full text of the adoption follows:

NO. 88-2 (Revision No. 2)

A RESOLUTION to amend the Comprehensive Plan and Water Code of the Delaware River Basin in relation to water conservation performance standards for plumbing fixtures and fittings.

WHEREAS, the Commission adopted Resolution No. 88-2 on January 13, 1988; and

WHEREAS, Section (4) of Resolution No. 88-2 required the Executive Director to conduct an initial review of the performance standards by January 13, 1989 to consider the revision of the standard for water closets to require low-consumption water closets effective January 1, 1990; and

WHEREAS, a final report documenting the results of the initial review of the standards was prepared by Commission staff in accordance with the directives of the Water Conservation Advisory Committee; and

WHEREAS, the Committee recommended on November 17, 1988 that the Commission amend Resolution No. 88-2 to require low-consumption water closets in new construction and renovation beginning January 1, 1991, and to modify the timetables for state and local compliance with performance standards to January 1, 1991; and

WHEREAS, the Commission revised Resolution No. 88-2 on May 24, 1989 to require low-consumption water closets effective January 1, 1991; and

WHEREAS, the Commission suspended temporarily the enforcement of Resolution No. 88-2 (Revised) until July 1, 1991 in recognition of the fact that the necessary changes in plumbing codes, regulations, and statutes had not been fully implemented despite substantial progress toward compliance by the signatory states; and

WHEREAS, the Commission desired to coordinate the effective date of the Commission's rule with the amendatory changes at the state level; and

WHEREAS, the Commission held a public hearing on June 19, 1991 regarding the modification of Resolution No. 88-2 (Revised) and has received and considered testimony from the public, plumbing industry and other interested parties; now therefore

BE IT RESOLVED by the Delaware River Basin Commission:

1. The Comprehensive Plan and Article 2 of the Water Code of the Delaware River Basin are hereby amended by the substitution of a new subsection 2.1.5 to read as follows:

2.1.5 Water conservation performance standards for plumbing fixtures and fittings

(1)(a) All water conservation performance standards for plumbing fixtures and fittings adopted by any signatory state or political subdivision within the Delaware River Basin shall comply with the following minimum standards:

(i) for sink and lavatory faucets, maximum flow shall not exceed three gallons of water per minute when tested in accordance with American National Standards Institute (ANSI) A112.18.1M; and

(ii) for shower heads, maximum flow shall not exceed three gallons of water per minute when tested in accordance with ANSI A112.18.1M; and

(iii) for water closets and associated flushing mechanism, maximum volume shall not exceed an average of one and six-tenths gallons per flushing cycle when tested in accordance with the hydraulic performance requirements of ANSI A112.19.2M and ANSI A112.19.6M; and

(iv) for urinals and associated flushing mechanism, maximum flow shall not exceed one and one-half gallons of water per flush when tested in accordance with the hydraulic performance requirements of ANSI A112.19.2M and ANSI A112.19.6M.

(b) Any water conservation performance standards adopted prior to the effective date of this regulation that are not in compliance with the provisions of (a) shall be amended or revised to comply with the provisions of (a) by July 1, 1991.

(c) The Commonwealth of Pennsylvania is encouraged to adopt water conservation performance standards for plumbing fixtures and fittings that comply with the provisions of (a) by July 1, 1991. The Commission shall notify all municipalities within the Pennsylvania portion of the Basin of the requirement to adopt and enforce local regulations that comply with the provisions of (a) if Pennsylvania has not adopted such standards. Upon notification by the Commission, municipalities shall have one year to adopt such local regulations.

(2)(a) The performance standards of subsection (1) shall apply to plumbing fixtures and fittings installed in new construction and, where provided in state or local regulations, in existing structures undergoing renovations involving replacement of such fixtures and fittings.

(b) The performance standards of subsection (1) shall not apply to fixtures and fittings such as emergency showers, aspirator faucets, and blowout fixtures that, in order to perform a specialized function, cannot meet the standards specified in subsection (1).

(3) To be acceptable for use in the Basin, plumbing fixtures and fittings shall be certified and labeled by the manufacturer as meeting the water conservation performance standards specified in subsection (1). Certification shall be based on independent test results. Plumbing fixtures and fittings shall be labeled in accordance with ANSI A112.18.1M and ANSI A112.19.2M.

(4) The Executive Director shall periodically review the performance standards and testing requirements set forth in subsection (1) to determine their adequacy in light of advances in technology for water conservation fixtures and fittings. The results of such reviews, including any recommendations for more stringent water conservation performance standards, shall be presented to the Commission.

(5) Municipalities of the Commonwealth of Pennsylvania seeking permit approval or renewal under Section 3.8 of the Compact for water supply or wastewater discharge projects shall document that regulations consistent with subsection (1) have been adopted within their area of jurisdiction. Such documentation shall be a condition for permit approval or renewal.

2. This resolution shall be effective July 1, 1991.

/s/ Michael F. Catania
Michael F. Catania,
Chairman pro tem

/s/ Susan M. Weisman
Susan M. Weisman, Secretary

ADOPTED: June 19, 1991

I hereby certify that this is a true copy of Resolution No. 88-2 (Revision No. 2) adopted by the Delaware River Basin Commission on June 19, 1991.

Susan M. Weisman, Secretary

(a)

DELAWARE RIVER BASIN COMMISSION

Comprehensive Plan, Water Code of the Delaware River Basin and Administrative Manual—Rules of Practice and Procedure: Transfer of Water and Wastewater to and from the Delaware River Basin

Adopted: June 19, 1991 by the Delaware River Basin Commission, Michael F. Catania, Chairman Pro Tem.

Filed: June 26, 1991 as R.1991 d.374.

Effective Date: June 19, 1991.

Full text of the adoption follows.

NO. 91-9

A RESOLUTION to amend the Comprehensive Plan, Water Code of the Delaware River Basin, and Administrative Manual—Rules of Practice and Procedure by the addition of policy and implementing regulations relating to the transfer of water and wastewater to and from the Delaware River Basin.

WHEREAS, the Delaware River Basin Commission (DRBC) recognizes the water and related resources of the Delaware River Basin as regional assets vested with local, State, and national interests, for which the signatory parties of the DRBC have a joint responsibility; and

WHEREAS, the conservation, utilization, development, management, and control of the water resources of the Delaware River Basin are specified as purposes of the Compact to provide for the common interest of the people of the Basin; and

WHEREAS, demands upon the waters and related resources of the Basin have steadily increased and are projected to continue to increase even with implementation of significant conservation measures; and

WHEREAS, the potential for construction of additional water supply storage is limited and costly; and

WHEREAS, the waste assimilative capacity of the Basin waters is limited, and reductions in streamflow or any additions of wastewater would increase the burden placed on Basin users; and

WHEREAS, the Commission held a public hearing on May 22, 1991 on the proposed amendments and has received and considered testimony from interested parties; now therefore

BE IT RESOLVED by the Delaware River Basin Commission:

I. The Comprehensive Plan and Article 2 of the Water Code of the Delaware River Basin are amended by the addition of a new section to read as follows:

2.30 IMPORTATIONS AND EXPORTATIONS OF WATER

2.30.1 Definitions

An importation of water is water conveyed or transferred into the Delaware River Basin from a source outside the drainage area of the Delaware River and its tributaries, including the Delaware Bay. The water is then used, depleted, or discharged within the Delaware River Basin.

Conversely, an exportation of water is water taken from within the Delaware River Basin and transferred or conveyed to an area outside the drainage area of the Delaware River and its tributaries, including the Delaware Bay, and not returned to the Delaware River Basin.

2.30.2 Policy of Protection and Preservation

The waters of the Delaware River Basin are limited in quantity and the Basin is frequently subject to drought warnings and drought declarations due to limited water supply storage and streamflow during dry periods. Therefore, it shall be the policy of the Com-

mission to discourage the exportation of water from the Delaware River Basin.

However, the Basin waters have limited assimilative capacity and limited capacity to accept conservative substances without significant impacts. Accordingly, it also shall be the policy of the Commission to discourage the importation of wastewater into the Delaware River Basin that would significantly reduce the assimilative capacity of the receiving stream on the basis that the ability of Delaware River Basin streams to accept wastewater discharges should be reserved for users within the Basin.

2.30.3 Safeguard Public Interest

Review and consideration of any public or private project involving the importation or exportation of water shall be conducted pursuant to this policy and shall include assessments of the water resource and economic impacts of the project and of all alternatives to any water exportation or wastewater importation project.

2.30.4 Commission Jurisdiction and Considerations

The Commission shall exercise its jurisdiction over exportations and importations of water as specified in the Administrative Manual—Rules of Practice and Procedure.

All projects involving a transfer of water into or out of the Delaware Basin must be submitted to the Commission for review and determination under Section 3.8 of the Compact, and inclusion within the Comprehensive Plan.

The applicant shall address those of the items listed below as directed by the Executive Director, and the Commission will consider (on a case-by-case basis), the following items in addition to issues that may relate specifically to that project:

1. Efforts to first develop or use and conserve the resources outside of the Delaware River Basin.
2. Water resource impacts of each alternative available including the "no project" alternative.
3. Economic and social impacts of the importation or exportation and each of the available alternatives including the "no project" alternative.
4. Amount, timing and duration of the proposed transfer and its relationship to passing flow requirements and other hydrologic conditions in the Basin, and impact on instream uses and downstream waste assimilation capacity.
5. Benefits that may accrue to the Delaware River Basin as a result of the proposed transfer.
6. Volume of the transfer and its relationship to other specified actions or Resolutions by the Commission.
7. Volume of the transfer and the relationship of that quantity to all other diversions.
8. Any other significant benefit or impairment which might be incurred to the Delaware River Basin as a result of the proposed transfer.

2.30.5 Water Charges

All water transferred from the Delaware Basin will be subject to the consumptive water charges in effect at the time of transfer and in accordance with the Resolution No. 74-6, as amended. In addition, the project sponsor of each and every new exportation shall enter into a contract with the Commission for the purchase of Basin waters.

2.30.6 Wastewater Treatment Requirements

It is the policy of the Commission to give no credit toward meeting wastewater treatment requirements for wastewater imported into the Delaware Basin. Wasteload allocations assigned to dischargers shall not include loadings attributable to any importation of wastewater.

2.30.7 Existing Allocations

It is the policy of the Commission to charge all water transferred from the Basin against any special regional allocation or any depletive use allocation as may exist at the time of receipt of a completed application for transfer.

2.30.8 Conservation Requirements

It is the policy of the Commission that all applications involving out-of-the-Basin transfers indicate the conservation measures which have been taken to forestall the need for a transfer of Delaware River Basin water.

2.30.9 Prior Approvals

All importations and exportations of water and wastewater approved by DRBC prior to the adoption of this policy and importations and exportations existing prior to enactment of the Compact shall be exempt from its provisions. Nothing herein shall modify the rights and obligations of the parties to the U.S. Supreme Court Decree of 1954.

II. The Administrative Manual—Rules of Practice and Procedure are amended as follows:

(1) Section 2-3.5(a)(17) through (19) are added to read as follows:

Section 2-3.5 Classification of Projects for Review under Section 3.8 of the Compact

(a) ***

(17) The diversion or transfer of water from the Delaware River Basin (exportation) whenever the design capacity is less than a daily average rate of 100,000 gallons.

(18) The diversion or transfer of water into the Delaware River Basin (importation) whenever the design capacity is less than a daily average rate of 100,000 gallons except when the imported water is wastewater.

(19) The diversion or transfer of wastewater into the Delaware River Basin (importation) whenever the design capacity is less than a daily average rate of 50,000 gallons.

III. This resolution shall become effective immediately.

/s/ Micahel F. Catania
Michael F. Catania,
Chairman pro tem

/s/ Susan M. Weisman
Susan M. Weisman, Secretary

ADOPTED: June 19, 1991

I hereby certify that this is a true copy of Resolution No. 91-9 adopted by the Delaware River Basin Commission on June 19, 1991.

Susan M. Weisman, Secretary

AGRICULTURE

(a)

DIVISION OF PLANT INDUSTRY

Nursery Inspection Fees

Adopted New Rules: N.J.A.C. 2:18

Proposed: May 6, 1991 at 23 N.J.R. 1230(b).
Adopted: July 10, 1991 by State Board of Agriculture, Arthur R. Brown, Jr., Secretary of Agriculture.
Filed: July 11, 1991 as R.1991 d.407, **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. 4:7-21.

Effective Date: August 5, 1991.
Expiration Date: August 5, 1996.

The following nurserymen submitted comments:
James Brown
Franklin E. Carr
Kathrine Collins
James H. Taylor
Robert Weaks
Edwin & Lester Schwartzman
Dick E. den Breejen
Carl Long
Herman Mens
J. Santillo
Wendy Vermeullen Halls

The following Christmas tree growers submitted comments:
Peter P. Lucca
Francis J. Pariso
The following agencies submitted comments:
Roy Gaventa, Gloucester County Board of Agriculture
Charles F. Runge, Hunterdon County Board of Agriculture
Maria T. Bohle, Atlantic County Board of Agriculture

Summary of Public Comments and Agency Responses:

COMMENT: Six letters were received stating objection to any fees or that the fees proposed were too excessive.

RESPONSE: Resulting from severe budget restrictions and loss of personnel it has become necessary that some of the economic burden be shifted to those who directly benefit from the nursery inspection program. As required by State statutes, all nursery stock offered for sale within the State is required to be inspected for injurious insects and plant diseases, thus, benefitting the nurserymen through the identification of plant pest and disease problems. Nursery and dealer inspection and issuance of certification also enables certified nurserymen and dealers to ship plant materials to other states as required by regulations of those entities. Resulting from these fees, the New Jersey Department of Agriculture will be able to maintain its inspection services and hopefully be more efficient in the enforcement of its statutory responsibilities.

COMMENT: Eight letters were received from small nurserymen stating the inequality in the fee schedule and that the fees were too excessive.

RESPONSE: The fee schedule for small nurserymen is warranted considering the cost for State travel and inspection time of the inspector. Most often there are two inspections a year and sometimes a third inspection resulting from a required reinspection if an insect or disease problem is identified within the nursery.

COMMENT: One letter was received requesting clarification of fees for the issuance of Federal Phytosanitary Certificates.

RESPONSE: Fees for Federal and State Phytosanitary Certificates are based on inspection, and not for the issuance of the certificate(s). For example, should a nurseryman request the issuance of more than one certificate on the same day, a single inspection fee is all that is required.

COMMENT: Two letters were received from Christmas tree growers requesting clarification as to the need for certification.

RESPONSE: Cut Christmas trees, not being live plants, do not require certification. However, those Christmas tree growers who sell dug trees do require certification. It is possible for the growers who dig only a small number of trees and offer those trees for sale to request a special inspection and be issued a special State certificate on inspection. For the grower who permits the public to dig their trees it would be required that the entire tree planting be inspected and a fee charged according to the acreage category.

Summary of Changes Upon Adoption:

Technical changes were made to N.J.A.C. 2:18-1.1 to correct spelling errors.

A substantive change not requiring additional public comment was made to N.J.A.C. 2:18-1.6: "(a) There shall be a single inspection fee per year for each nursery and dealers place of business." This change was made solely to clarify that inspection fees are to be charged annually.

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 18

NURSERY INSPECTION FEES

SUBCHAPTER 1. FEES

2:18-1.1 Definitions

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

"Dealer" means a person who purchases nursery stock from other certified nurserymen and offers such stock for sale at a retail outlet or through landscaping services.

"Federal phytosanitary inspection" means the examination of plant materials to determine freedom of plant pest and diseases for those persons desiring to ship plants or plant products to other countries and the issuance of a United States Department of Agriculture, Animal Plant Health Inspection Service, Plant Pest Quarantine inspection certificate.

"Nursery" includes all lands, premises and buildings upon, on or in which plants, trees, shrubs or vines of any kind, whether for fruit, shade or ornament, are grown for sale within the State or for shipment to other states or countries.

"Nursery stock" includes all plants, shrubs, trees and vines grown for sale, as well as buds, grafts, stocks, *[cions]* ***scions*** and other parts of plants, shrubs, trees and vines that may be sold for *[propogation]* ***propagation***; but shall not include herbaceous annuals or plants, flowers, vines or cuttings grown under glass and commonly known as florists stock.

"Nurseryman" includes any person, firm, co-partnership or corporation growing plants, trees, shrubs or vines for sale or dealing in such stock, whether he/she or they be owners, lessees or tenants of or on the premises upon which the stock is grown or offered for sale.

"Special inspection" is the examination of plant materials to determine freedom of plant pests and diseases and issuance of a special State certificate for those persons who do not possess a nursery or dealers certificate and who desire to ship plant materials to another state.

2:18-1.2 Nursery inspection fees

(a) The following fee schedule shall apply to all nursery inspections conducted by the New Jersey Department of Agriculture:

Acres	Fee
0 to 1.99	$50.00
2.00 to 9.99	$100.00
10.00 to 49.99	$150.00
50.00 to 99.99	$250.00
100.00 to 200.00	$350.00
over 200.00	$350.00 plus $1.00/acre for each acre or part thereof, over 200 acres.

(b) Determination of nursery acreage fees is based only on those lands on which nursery stock is actually growing or on lands where are placed containers with growing plants, including, but not limited to walkways.

2:18-1.3 Dealer fee

Fees for inspection of dealers shall be $50.00. Dealers with more than one place of business in the State shall be charged an additional $50.00 for each location.

2:18-1.4 Federal phytosanitary inspection fee

There shall be a $35.00 fee for each inspection necessary for the issuance of a Federal phytosanitary certificate.

2:18-1.5 Special inspection fee

There shall be a $20.00 fee for each special inspection necessary for the issuance of a special State certificate.

2:18-1.6 Fees due; method of payment

(a) There shall be a single inspection fee per year for each nursery and dealers place of business.

*[(a)]***(b)* All nursery fees shall be payable on October 1 of each year. Failure to pay the fee shall result in the assesssment of penalties pursuant to N.J.S.A. 4:7-26 and the revocation of nursery certification.

*[(b)]***(c)* All dealer fees shall be payable on March 1 of each year. Failure to pay the fee shall result in the assessment of penalties pursuant to N.J.S.A. 4:7-26 and the revocation of dealer certification.

*[(c)]***(d)* All fees for Federal phytosanitary inspections and special inspections shall be collected at the time of inspection and issuance of certification.

*[(d)]***(e)* All fees shall be paid to the New Jersey Department of Agriculture, Division of Plant Industry, CN 330, Trenton, New Jersey 08625-0330.

(a)

DIVISION OF PLANT INDUSTRY

Seed Control

Fees for Seed Testing

Adopted Amendments: N.J.A.C. 2:21-7

Proposed: May 6, 1991 at 23 N.J.R. 1231(a).
Adopted: July 3, 1991 by Arthur R. Brown, Jr., Secretary, Department of Agriculture, and State Board of Agriculture.
Filed: July 10, 1991 as R.1991 d.400, **without change.**

Authority: N.J.S.A. 4:8-17.13 et seq., specifically 4:8-17.23 and 17.24.

Effective Date: August 5, 1991.
Expiration Date: August 5, 1996.

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

Full text of the adoption follows.

2:21-7.1 Free testing for New Jersey residents

Any New Jersey resident will be allowed $25.00 free testing by the State Seed Laboratory each fiscal year July 1 to June 30.

2:21-7.2 Charges for testing; seed dealers and conditioners charges

For all samples in excess of $25.00 and for all samples submitted by dealers and conditioners the following charges will be assessed.

Kind of Seed	Quantity of Seed Needed for Purity Analysis	Purity Analysis (including New Jersey State Noxious Weed Seed Exam.)	Germination Test
Alfalfa	3 ozs.	$ 6.00	$6.00
Bentgrasses	2 ozs.	$15.00	$8.00
Bermuda grass	2 ozs.	$12.00	$7.00
Birdsfoot trefoil	3 ozs.	$ 7.00	$6.00
Bluegrasses	2 ozs.	$15.00	$8.00
Bromegrass	3 ozs.	$12.00	$7.00
Buckwheat	2 lbs.	$ 7.00	$6.00
Cereals	2 lbs.	$ 7.00	$6.00
Clovers	3 ozs.	$ 7.00	$6.00
Corn, field	2 lbs.	$ 6.00	$6.00
Dallis grass	3 ozs.	$15.00	$8.00
Deertongue	3 ozs.	$15.00	$8.00
Fescues	3 ozs.	$12.00	$7.00
Millets	¼ lb.	$ 7.00	$7.00
Orchard grass	3 ozs.	$15.00	$8.00
Rape	3 ozs.	$ 7.00	$6.00
Redtop	2 ozs.	$15.00	$8.00
Reed Canary Grass	3 ozs.	$12.00	$7.00
Ryegrass inc. fluor.	3 ozs.	$15.00	
Ryegrass, germination	3 ozs.		$8.00
Sorghums	½ lb.	$ 7.00	$6.00
Soybeans	2 lbs.	$ 8.00	$7.00
Sudan Grass	½ lb.	$ 8.00	$6.00
Timothy	3 ozs.	$ 7.00	$6.00
Vetches	2 lbs.	$ 7.00	$6.00
Vegetables			
Beans, garden	2 lbs.	$6.00	$7.00
Beans, Lima	2 lbs.	$6.00	$8.00
Peas	2 lbs.	$6.00	$7.00
Sweet corn	2 lbs.	$6.00	$7.00
Other vegetables	¼ lb.	$6.00	$6.00
Flowers		$7.00	
Trees and shrubs		$8.00	$9.00

2:21-7.3 Charges for seed mixtures and other tests

(a) Purity charges for seed mixtures shall be the fee for the single component with the highest charge plus one-half the fees charged for each other component. Germination charges shall be the same as for individual kinds.

(b) Germination only charges for seed mixtures shall be one-half the purity charge for the component with the highest fee for separation plus the regular germination fee for each component.

(c) Charges for noxious weed examinations for quantities specified in Association of Official Seed Analysts Rules for Testing Seed are as follows:

1. New Jersey noxious weed examination ..... $ 5.00
2. New Jersey noxious weed examination plus undesirable grasses examination $12.00
3. All states noxious weed (except HA and AK) $10.00
4. All states noxious weed (except HA and AK) with undesirable grasses $17.00

(d) The charge for all-contaminants check on Kentucky bluegrass, 25 grams includes 10 gram check for Poa annua, shall be $30.00

(e) Charges for vigor tests are as follows:

1. Cold test $10.00
2. Accelerated aging including regular germination test $15.00
3. Tetrazolium $12.00

(f) Charges for other procedures such as: identification, special procedures, uncleaned samples and flower seed purities shall be $15.00/hour.

(g) The rush surcharge for immediate germination shall be $4.00.

(h) For kinds not listed, the charge will be the same as for a similar kind. Any special test will be charged according to time consumed.

(i) At the discretion of the State Seed Analyst, fees for testing may be waived for Federal or State agencies, local municipalities and park commissions.

2:21-7.4 Fees due; method of payment

(a) (No change.)

(b) Additional tests shall not be made for persons who have not paid for previous testing services promptly.

EDUCATION

(b)

STATE BOARD OF EDUCATION

Adult Education; Dates for Reporting and Adjusting Reporting of Enrollments

Adopted Amendments: N.J.A.C. 6:30-4.4 and 4.5

Proposed: May 6, 1991 at 23 N.J.R. 1243(a).
Adopted: July 3, 1991 by the State Board of Education, John Ellis, Secretary, State Board of Education and Commissioner, Department of Education.
Filed: July 10, 1991 as R.1991 d.401, **without change.**

Authority: N.J.S.A. 18A:1-1, 18A:4-15, 18A:7C-1 et seq., 18A:48-1, 18A:49-1 through 18A:50-12, 13 and 14, and the Adult Education Act, 20 U.S.C. 1201 et seq.

Effective Date: August 5, 1991.
Expiration Date: July 5, 1993.

Summary of Public Comments and Agency Responses:

On May 15, 1991 a public testimony session was provided by the State Board of Education. At the session **no comments were received** regarding the proposal.

No written comments were received.

Full text of the adoption follows.

6:30-4.4 Evaluation elements and indicators

(a) The monitoring team shall examine the essential elements of the educational process in the program using prescribed indicators of acceptable performance and documentation as follows:

1.-9. (No change.)

10. The financial administration element will be rated as acceptable upon documentation of performance in the two indicators as follows:

i. The district board of education shall receive accurate and timely fiscal and statistical reports from the adult high school pursuant to law and rule. Documentation shall include a budget account established solely for adult high school financial reporting purposes. Documentation shall also include the timely filing, prior to November 15, of adjustments to the Application for State School Aid, October 15 report.

ii. (No change.)

6:30-4.5 Eligibility for enrollment and State aid

(a) (No change.)

(b) To qualify for State aid a person shall:

1.-2. (No change.)

3. Have met the following attendance requirements:

i. Be enrolled and on the school register as of October 15 of the current school year; and

ii. Be in attendance at least once from October 16 through October 31, unless excused by the adult high school principal for reasonable cause.

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

(a)

STATE BOARD OF EDUCATION

Statewide Assessment; Early Warning Test

Adopted Amendments: N.J.A.C. 6:39-1.3 and 1.4

Proposed: May 6, 1991 at 23 N.J.R. 1244(a).

Adopted: July 3, 1991 by State Board of Education, John Ellis, Secretary, State Board of Education and Commissioner, Department of Education.

Filed: July 10, 1991 as R.1991 d.402, **without change.**

Authority: N.J.S.A. 18A:4-15, 18A:4-24, 18A:7A-1 et seq. and 18A:7C-6.2.

Effective Date: August 5, 1991.

Expiration Date: August 14, 1994.

Summary of Public Comments and Agency Responses:

A public testimony session was held by the State Board of Education on May 15, 1991, at which time **no comments** on this proposal **were received. No written comments were received.**

Full text of the adoption follows.

6:39-1.3 Core course proficiencies assessment

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

(e) A pupil with an educational disability must meet all State and local high school graduation requirements unless exempted in his or her individualized education program in order to receive a State-endorsed high school diploma pursuant to the provisions established under N.J.A.C. 6:28.

6:39-1.4 Dissemination of information

(a) Dissemination of information procedures relative to basic skills proficiency in reading, writing, and mathematics as measured by the High School Proficiency Test (HSPT) and the Early Warning Test (EWT) shall be as follows:

1.-9. (No change.)

(b) (No change.)

(b)

STATE BOARD OF EDUCATION

Advisory Council, Management Services, Professional Services, Occupational Research Development, Urban Education and Manpower Training and Residential Schools

Adopted Repeals: N.J.A.C. 6:41, 6:47, 6:48, 6:49, 6:50 and 6:52

Proposed: May 6, 1991 at 23 N.J.R. 1244(b).

Repealed: July 3, 1991 by State Board of Education, John Ellis, Secretary, State Board of Education and Commissioner, Department of Education.

Filed: July 10, 1991 as R.1991 d.403, **without change.**

Authority: N.J.S.A. 18A:1.1, 18A:4-10, 18A:4-15, 18A:7A-1.1 et seq. and 18A:54-1.1 et seq.

Effective Date: August 5, 1991.

Summary of Public Comments and Agency Responses:

A public testimony was held on May 15, 1991, at which time **no comments were received** regarding this proposal. **No written comments were received.**

Full text of the adopted repeals may be found in the New Jersey Administrative Code at N.J.A.C. 6:41, 6:47, 6:48, 6:49, 6:50 and 6:52.

(c)

STATE BOARD OF EDUCATION

Vocational and Technical Education Programs and Standards

Adopted Amendments: N.J.A.C. 6:43-1.1, 1.2, 3.3, 7.1 and 8.1

Proposed: May 6, 1991 at 23 N.J.R. 1246(a).

Adopted: July 3, 1991 by the State Board of Education, John Ellis, Secretary, State Board of Education and Commissioner, Department of Education.

Filed: July 10, 1991 as R.1991 d.404, **without change.**

Authority: N.J.S.A. 18A:1-1, 18A:4-10, 18A:4-15, 18A:4-16, 18A:4-24, 18A:4-25, 18A:7A-1 et seq., 18A:54:1 et seq., N.J.S.A. 34:2-21 et seq., 29 C.F.R. Subpart C of Part 570, P.L. 1989, c. 295, P.L. 97-300 and P.L. 101-392.

Effective Date: August 5, 1991.

Expiration Date: August 10, 1995.

Summary of Public Comments and Agency Responses:

A public testimony session was held by the State Board of Education on May 15, 1991, at which time **no comments were received** on this proposal.

Written comments received from the following:

William E. Adams, Ed.D., Vice President
New Jersey Council of County Vocational-Technical Administrators and Superintendent
Salem County Vocational-Technical Schools
Ms. Jean Paashaus

COMMENT: A commenter supported the Department's proposal for establishing minimum standards for instructional time in trade and industrial education programs at N.J.A.C. 6:43-3.3(c). The commenter also encouraged the Department to consider similar requirements for all occupational programs.

RESPONSE: The Department appreciates support for this proposal and, while there are currently no plans to apply minimum time standards to every other occupational program, this issue will be reexamined within one year because the Division of Vocational Education will reexamine the issue of what occupational-technical programs will be needed to provide a quality workforce for New Jersey's business and industry. The review will be conducted in conjunction with the Occupational Education Task Force of the State Employment and Training Commission.

COMMENT: A commenter suggested that the terms "competency-based applied learning, problem solving skills" and "higher-order reasoning" which are included in the definition of "vocational education" were unclear and also needed to be redefined.

RESPONSE: The Department declines to further clarify terms used in the definition of "vocational education." The definition is being expanded so as to be more consistent with the definition of "vocational education" contained in the Carl D. Perkins Vocational and Applied Technology Education Act (P.L. 101-392). The Federal definition also includes those terms.

Full text of the adoption follows.

6:43-1.1 Scope and purpose

This chapter specifies standards and procedures regarding vocational and technical education programs, specifically in the areas of: instruction; contracting between district boards of education; programs and services for handicapped pupils and for pupils whose achievement in vocational education programs is limited because of temporary academic or economic factors; private nonprofit school pupil participation; an accountability system including competencies, testing and job placement standards; improved planning; and program and course approval. To assure standards and procedures, the Commissioner of Education and the State Board of Education have developed these rules in conformity with relevant Federal and State statutes concerning public education, vocational education, county vocational schools, child labor, private industry councils and the State Employment and Training Commission.

6:43-1.2 Words and phrases defined

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

"Academically or economically limited pupil" means a pupil (other than a handicapped pupil) who, because of economic or academic reasons, requires temporary special services and assistance in order to succeed in vocational education programs, including:

1.-3. (No change.)

4. Pupils who are dropouts from, or who are identified as potential dropouts from, secondary schools.

"Act" means the Carl D. Perkins Vocational and Applied Technology Education Act, P.L. 101-392.

...

"Career orientation education" means programs such as employment orientation, industrial arts/technology education and other programs which assist students to clarify career goals, explore career possibilities, develop employability skills and make the transition between school and work. Emphasis is on awareness of self, careers, technology, problem solving, consumerism and preparation for appropriate career and education-related decision making.

...

"Handicapped individual" means a pupil who requires special education and related services and who cannot succeed in the regular vocational education program without special educational assistance.

...

"State Council" means the New Jersey Council on Vocational Education established in accordance with the Carl D. Perkins Vocational and Applied Technology Education Act, P.L. 101-392.

"State Employment and Training Commission" means the State commission established under P.L.1989, c.295 to develop and assist in the implementation of a State employment and training policy with the goal of creating a coherent, integrated system of employment and training programs and services which, in concert with the efforts of the private sector, will provide each citizen of the State with equal access to the learning opportunities needed to attain and maintain high levels of productivity and earning power.

...

"Vocational education" means organized educational programs offering a sequence of courses which are directly related to the preparation of individuals for paid or unpaid employment in current or emerging occupations in such fields as agriculture/agribusiness, business occupations, health occupations, home economics, marketing occupations, technical occupations, and trade and industrial occupations or for additional preparation for a career in such fields and in other occupations requiring less than a baccalaureate or advanced degree. Vocational education programs include competency-based applied learning which contributes to a pupil's academic knowledge, higher-order reasoning and problem-solving skills, work attitudes, general employability skills, and the occupationally-specific skills necessary for economic independence as a productive and contributing member of society. Vocational student organization activities are an integral part of the programs.

...

6:43-3.3 Advanced, skilled vocational and technical education

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

(c) An approved secondary trade and industrial education program is conducted a minimum of 600 minutes per week for three consecutive instructional periods per day and includes:

1. A minimum of 200 minutes of trade and industrial related instruction, including scientific principles and practices applicable to the occupation; and

2. 400 minutes of competency-based applied occupational training.

6:43-7.1 Establishing job placement standards

(a) (No change.)

(b) Prior to establishing minimum job placement standards, the Commissioner shall seek job market placement data recommendations from the State Employment and Training Commission.

(c) (No change.)

6:43-8.1 Vocational education program review panel

(a) The Commissioner shall establish and appoint a review panel to be known as the Vocational Education Program Review Panel to assess the State's needs for programs based upon local, regional and Statewide labor market supply and demand, to review requests for approval or disapproval of those programs not meeting job placement standards and to advise the Assistant Commissioner for Vocational Education of Statewide occupational supply and demand which could be used by district boards of education for planning purposes.

1. (No change.)

2. The Vocational Education Program Review Panel shall include three representatives from business and industry and one representative from each of the following:

i. The New Jersey Occupational Information Coordinating Committee;

ii. The New Jersey Department of Commerce and Economic Development;

iii. The New Jersey Department of Labor;

iv. The New Jersey Department of Higher Education;

v. County vocational schools;

vi. Comprehensive high schools;

vii. The Governor's Office of Management and Planning;

viii. The State Employment and Training Commission; and

ix. The New Jersey Department of Corrections.

(a)

STATE BOARD OF EDUCATION

Local Area Vocational School Districts

Adopted Amendment: N.J.A.C. 6:46-1.1
Adopted Repeal: N.J.A.C. 6:46-2

Proposed: May 6, 1991 at 23 N.J.R. 1247(a).

Adopted: July 3, 1991 by State Board of Education, John Ellis, Secretary, State Board of Education and Commissioner, Department of Education.

Filed: July 10, 1991 as R.1991 d.405, **without change.**

Authority: N.J.S.A. 18A:1-1, 18A:4-10, 18A:4-15, 18A:4-16, 18A:4-24, 18A:4-25, 18A:7A-1 et seq., 18A:54-1 et seq., 18A:69-1 et seq. and N.J.S.A. 34:1A-38.

Effective Date: August 5, 1991.
Expiration Date: October 5, 1992.

Summary of Public Comments and Agency Responses:

A public testimony session was held by the State Board of Education on May 15, 1991, at which time **no comments were received** regarding this proposal.

Written comment was received from: Mr. Robert M. Nogueira, Principal, Red Bank Regional High School District.

COMMENT: The commenter requested that the local area vocational school district (LAVSD) designation process be continued even though comprehensive high schools, under the Quality Education Act (P.L. 1990, c. 52), will no longer receive State categorical aid for vocational education programs.

RESPONSE: The Department declines to continue the LAVSD designation process given the current State budget situation and staff reductions. The Department cannot afford the staff time needed to review courses of study, applications, prepare evaluations and other paperwork involved in redesignation of the 18 LAVSDs. If funding is not the issue, there is no reason why the comprehensive high schools cannot continue to offer vocational education programs to meet the needs of pupils in their districts.

Full text of the adopted amendment follows.

CHAPTER 46
PRIVATE VOCATIONAL SCHOOLS

6:46-1.1 Words and phrases defined

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

. . .

"Apprentice training" means a program of adult vocational education requiring a written training agreement between full-time paid apprentices and their apprentice sponsors. The program must include a component of related instruction which is coordinated by an individual who holds a current administrative certificate of Coordinator: Apprentice Programs.

SUBCHAPTER 2. (RESERVED)

(a)

STATE BOARD OF EDUCATION

Administration and Organization of Vocational and Technical Education

Adopted Amendment: N.J.A.C. 6:51

Proposed: May 6, 1991 at 23 N.J.R. 1250(a).
Adopted: July 3, 1991 by State Board of Education, John Ellis, Secretary, State Board of Education and Commissioner, Department of Education.
Filed: July 3, 1991 as R.1991 d.406, **without change.**

Authority: N.J.S.A. 18A:1-1, 18A:4-10, 18A:4-15, 18A:4-22, 18A:4-25 through 18A:4-27, 18A:4-32, 18A:4-34, 18A:6-9, 18A:7A-1 et seq., 18A:54-1 et seq., 18A:59-5 and P.L. 101-392.

Effective Date: August 5, 1991.
Expiration Date: August 5, 1996.

Summary of Public Comments and Agency Responses:

A public testimony session was held by the State Board of Education on May 15, 1991, at which time **no comments were received** regarding this proposal. **No written comments were received.**

Full text of the adoption follows.

SUBCHAPTER 1. AUTHORITY FOR ADMINISTRATION AND ORGANIZATION OF VOCATIONAL AND TECHNICAL EDUCATION

6:51-1.1 State Board for Vocational Education

(a) (No change.)

(b) The State Board is the sole agency responsible for the administration of the State Plan for Vocational and Technical Education in New Jersey and has all the necessary power to cooperate with the United States Department of Education in the administration of the State Plan. The State Board is empowered to supervise the administration of the State Plan by district boards of education.

6:51-1.2 Executive officer designation

(a) The Commissioner of Education is the chief executive and administrative officer of the Department of Education and the official agent of the State Board for all purposes.

(b) The State Director of Vocational Education in New Jersey or his or her duly designated representative is the Assistant Commissioner of Education in charge of the Division of Vocational Education. The Assistant Commissioner of Education is directly responsible to the Commissioner for all vocational and technical education activities under the State Board. Specific responsibilities of the Assistant Commissioner include providing administrative and professional leadership for vocational and technical education, directing and coordinating the work of the Division of Vocational Education staff, maintaining an appropriate system of statistical and financial records and reports, and the performance of such other duties as may be necessary for the maintenance, expansion, improvement, modernization and development of quality vocational and technical education programs in accordance with the State Plan and State Board policies.

6:51-1.3 Authority of State Board

The State Board, as the sole agency responsible for the administration of the State Plan for Vocational Education in New Jersey, shall do all that is appropriate in the administration of vocational and technical education programs and services. The administration shall include effective cooperative arrangements between the State Board and other agencies and institutions for the continuing improvement of vocational and technical education programs.

6:51-1.4 County system of vocational and technical education

In a county system of vocational and technical education, the county vocational school chief administrator has complete responsibility, subject to the rules of the State Board and the Commissioner, for a county vocational and technical school district in those areas in which the county board of vocational education has direct responsibilities. The county vocational school chief administrator is directly responsible to a county board for vocational education. The county system shall embrace those day and evening programs of vocational education identified by the county board as needed, as well as programs pursuant to P.L. 101-392 and N.J.A.C. 6:43-8, Vocational Education Program and Course Approval.

6:51-1.5 Administrative, instructional and educational services personnel

Administrative, instructional and educational service personnel shall meet certification requirements as set forth in N.J.A.C. 6:11, Teacher Preparation and Certification.

6:51-1.6 Evaluation personnel

(a) Responsibility for program evaluation shall rest with the following personnel within various levels:

1. District level. Evaluation of programs shall be the responsibility of district administrators, supervisors, teachers and/or other designated personnel within the district who are qualified to evaluate vocational and technical education programs.

2. State level. The responsibility for evaluation of vocational and technical education programs is assigned to the Assistant Commissioner, Division of Vocational Education.

3. The State Council on Vocational Education shall conduct program evaluations in accordance with P.L. 101-392.

6:51-1.7 Review and modification of personnel qualification standards

The State Board is the legal authority responsible for establishing, reviewing and modifying certification requirements for administrative, instructional and educational services personnel employed in public schools in the State as set forth in N.J.A.C. 6:11, Teacher Preparation and Certification. The Assistant Commissioner of Vocational Education shall periodically review the qualification standards of personnel engaged in vocational and technical education and submit to the State Board any recommendations for modifications or revisions of those standards which are not adequately meeting the instructional needs of vocational and technical education programs in the State or which are inconsistent with the administration of vocational and technical education as mandated under P.L. 101-392.

6:51-1.8 Program evaluation

(a) State and local programs, services and activities will be evaluated pursuant to State and Federal regulations in order that the State Board may effectively carry out its functions and fulfill the purposes of the Act, according to the following provisions:

1. The State Board shall give due consideration to evaluations made by the State Council on Vocational Education and such other evaluations conducted cooperatively by the staff of the Division of Vocational Education and the Department.

2. The Department or a district board of education may contract with other agencies for the evaluation of vocational programs, services and activities.

3. Evaluation reports, whether under contract or conducted by the district board of education for self-evaluation purposes, shall be submitted to the Commissioner on forms provided by the Department.

4. Each project application submitted for approval shall contain the evaluative procedures employed to measure objectives and to assure as far as possible the effectiveness of the proposed programs, services and activities.

5. Evaluation reports shall describe in measurable terms the extent to which local program objectives were achieved and evaluation data shall be used by the Department as criteria for continued funding support.

6:51-1.9 State reports

The State Board shall prepare and submit to the U.S. Secretary of Education such reports as may be required under P.L. 101-392.

SUBCHAPTER 2. COOPERATIVE ARRANGEMENTS

6:51-2.1 Interagency agreements

The State Board may enter into cooperative relationships and agreements with other agencies of State government in New Jersey and in other states for the implementation of vocational and technical education programs.

SUBCHAPTER 3. LOCAL APPLICATIONS

6:51-3.1 Application procedures

(a) District boards of education and other eligible agencies or institutions conducting vocational and technical education programs desiring to participate in grant programs shall make application for funds, pursuant to N.J.A.C. 6:43-8, Vocational Education Program and Course Approval, to the New Jersey State Department of Education on forms provided by the Department.

(b) Applications from district boards of education and other eligible recipients to the Department shall describe:

1. The proposed programs, services and activities for which funds are requested and shall include the following:

i.-ii. (No change.)

iii. A plan for meeting vocational/technical education needs of potential pupils in the area or community to be served;

iv. (No change.)

v. Justification for items in the application and sources of financial support other than vocational/technical education funds;

vi.-vii. (No change.)

(c) The application shall be referred to the proper vocational or technical education program area reviewing committee which shall review and evaluate the application with due consideration to the following:

1. (No change.)

2. Qualifications of personnel designated to carry out the program or project;

3.-6. (No change.)

(d) The applicant shall be notified in writing within 60 days concerning the disposition of the application. If the application is approved, the award letter shall indicate the approved grant and conditions in accordance with State and Federal requirements and availability of State and/or Federal funds.

6:51-3.2 Opportunity for hearings on local applications

(a) The State Board assures that any district board of education and other eligible agency or institution conducting vocational and technical education programs dissatisfied with final action on any applications for funds shall be given reasonable notice and opportunity for a hearing before the State Board or its officially designated officer. The procedures for formal hearing by the State Board shall conform to the following outline:

1.-2. (No change.)

3. Within a period of not more than 60 days following the hearing, the petitioner shall be notified of the decision of the Assistant Commissioner.

4. If the petitioner is dissatisfied with the decision following the hearing, the petitioner may request a formal hearing with the Commissioner who is the State Board's officially designated officer of the Department of Education.

5. Any petitioner may appeal the decision of the Commissioner as set forth in N.J.A.C. 6:2, Appeals.

HEALTH

(a)

PUBLIC HEALTH COUNCIL

Human Bodies

Adopted Repeals: N.J.A.C. 8:9-1.2, 1.4 and 1.5

Proposed: May 20, 1991 at 23 N.J.R. 1508(a).

Adopted: July 8, 1991 by the Public Health Council, Louise Chut, Ph.D., Chairperson.

Filed: July 11, 1991 as R.1991 d.410, **without change.**

Authority: N.J.S.A. 26:1A-7.

Effective Date: August 5, 1991.

Summary of Public Comments and Agency Responses:

A public hearing was held on June 10, 1991 in Trenton, New Jersey. Dr. Louise Chut, Chairperson, Public Health Council, conducted the hearing and accepted the one comment, which is delineated below. The hearing officer recommended the rules be repealed as proposed.

COMMENT: The New Jersey State Funeral Directors Association, Inc. presented a letter to the hearing officer in support of the Department's proposed repeal.

RESPONSE: The Department of Health acknowledges the New Jersey State Funeral Directors Association, Inc. for its support of this rule repeal.

8:9-1.2 (Reserved)

8:9-1.4 (Reserved)

8:9-1.5 (Reserved)

(a)

PARENTAL AND CHILD HEALTH SERVICES
Birth Defects Registry
Live Births; Reporting Requirements
Adopted Amendment: N.J.A.C. 8:20-1.2

Proposed: March 18, 1991 at 23 N.J.R. 820(a).
Adopted: July 12, 1991 by Frances J. Dunston, M.D., M.P.H., Commissioner, Department of Health.
Filed: July 15, 1991 as R.1991 d.414 **without change.**
Authority: N.J.S.A. 26:8-40 et seq., specifically N.J.S.A. 26:8-40.26.
Effective Date: August 5, 1991.
Expiration Date: March 2, 1995.

Summary of Public Comments and Agency Responses:

The Department of Health received written comments from two individuals:

Betsy E. Keyes, President, Medical Record Association of New Jersey and Nicholas R. Scalera, Director, Division of Youth and Family Services, Department of Human Services, through Barbara B. Allen, Director, Office of Legal and Regulatory Liaison, Department of Human Services.

COMMENT: One commenter noted that the rule covering the coding of secondary diagnoses, N.J.A.C. 8:31B-5.1(b)2 does not necessarily cover, and may exclude, in some cases, the abstracting and coding for congenital anomalies. Possible addiitonal staff burden was noted.

RESPONSE: The requirements contained in N.J.A.C. 8:20 for reporting children to the Birth Defects Registry are independent of any requirements governing the coding of secondary diagnoses. The burden on hospitals should be reduced, since there will be fewer children to register.

COMMENT: One commenter was concerned that two diagnoses, "CNS hemorrhage" and "Hydrocephaly; acquired", were no longer to be reported, as they can appear alone and can have a life-long negative impact on a child's health and development.

RESPONSE: The purpose of the amendment is to identify which single occurring minor congenital defects no longer need to be reported. Also included in the exclusion list are some non-congenital conditions often registered, which are, in fact, not covered by the law. The two conditions mentioned in this comment are not congenital. However, as noted in the response, children with these conditions can be registered into the Special Child Health Services confidential Special Needs Registry, where children less than 21 years of age and with handicapping conditions, special needs, or who are at risk for developing problems can be registered.

Full text of adoption follows.

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 Congential 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. Congenital anomalies, including, but not limited to, the following:

(1)-(20) (No change.)

Recodify existing (1)-(9) as (21)-(29) (No change in text.)

ii. Minor conditions, as follows:

Accessory auricle
Accessory nipple (supernumerary nipple, or skin tag)
Anal fissure—never a defect
Anal tags
Bat ear
Bell's Palsy
Bent nose, deviation of septum
Big lips
Blue sclera (babies <2500 grams)
Brachial palsy
Breast Hypertrophy—never a defect
Cafe-au-lait spots (register if five or more)
Caput succedaneum
Cardiac murmur[1]
Cauliflower ear
CNS hemorrhage
Cephalhematoma—never a defect
Cervical rib
Chalasia (gastroesophageal reflux)—never a defect
Clinodactyly (incurving of fifth finger)
Congenital hydrocele
Conjunctivitis—never a defect
Cryptorchidism (undescended testicle)[2]
Darwin's tubercle
Diastasis recti—never a defect
Downward eyeslant (antimongoloid)
Ear tags, preauricular tags
Elfin ear
Epicanthal folds
Epulis—never a defect
Erb's palsy
Erythema toxicum
Esotropia
Exotropia
Facial palsy
Flammeus nevus or port wine stain (<four inches in diameter)
Flat bridge or nose
Fontanel (large or small)
Fractured clavicle
Fused eyelids (not a defect if birth weight is <1001 grams)
Gastroesophageal reflux—never a defect
Gum cysts—includes epulis, ranula, mucocele—never a defect
Hemangioma—<four inches in diameter[3]
Hepatomegaly
Hipclick—without follow-up or therapy—not a defect
Hydrocele
Hydrocephaly; acquired
Hymenal tags
Hypoglycemia, idiopathic
Hypoplastic scrotum
Imperforate hymen
Incurving finger (clinodactyly)
Inguinal hernia in male (Note: do not report in females)
Infant of a diabetic mother; asymptomatic
Intussusception
Lanugo, excessive or persistent
Large fontanel
Laryngomalacia or tracheomalacia—never a defect
Long fingers and/or toes
Lop ear
Low set ears
Macrocheilia (big lips)
Meckel's diverticulum
Meconium peritonitis
Meconium plug
Meconium stained skin or nails—never a defect
Metatarus adductus—never a defect
Metatarus varus
Microcheilia (small lips)
Mongolian spots

Mucocele—never a defect
Nasal lacrimal duct obstruction
Nail defects
Natal teeth
Neonatal acne—never a defect
Nystagmus
Orthopedic positional anomalies[4]
Overlapping toes
Overriding (overlapping) sutures—never a defect
Partial syndactyly second and third toes—web extends <one-third length of second toe
Patent ductus arteriosus (PDA) in infants <2500 grams or resolved prior to or at discharge
Patulous lips (wide lips)
Persistent fetal circulation
Petechiae—never a defect
Phimosis—never a defect
Pilonidal dimple
Pilonidal cyst
Tibial torsion
Tongue-tie
Torsion of spermatic cord
Torsion of testes
Tracheomalacia—never a defect
Umbilical cord atrophy
Umbilical hernias (completely covered by skin)
Undescended testicle[2]
Upturned nose
Upward eyeslant (mongoloid)
Vaginal cysts
Vaginal tags
Webbing of neck
Wide nasal bridge
Widely spaced nipples
Widely spaced first and second toes

[1]Do not register innocent or functional murmurs: register only if there is a definitive cardiac anomaly or register as a rule out condition if the cause of murmur is not identified at the time of discharge.

[2]Register only if there is clinical evidence of cogenital absence.

[3]Register cavernous hemangiomas and multiples of five or more.

[4]Do not register if defect can be corrected passively and does not require casting or bracing.

iii. If a condition or defect listed in (a)1ii above appears as a single defect, a registration form shall not be completed.

iv. If two or more of the conditions listed in (a)1ii above appear, a registration form shall be completed.

v. If a condition or defect listed in (a)1ii above accompanies a condition or defect listed in either Diagnostic Codes 740.00 through 759.90 in the most recent revision of the International Classification of Diseases, Clinical Modification, or in (a)1i above, a registration form shall be completed.

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

(a)

PUBLIC HEALTH COUNCIL

State Sanitary Code
Campgrounds
Readoption with Amendment: N.J.A.C. 8:22

Proposed: May 6, 1991 at 23 N.J.R. 1252(b).
Adopted: July 8, 1991, by the New Jersey Public Health Council, Louise C. Chut, Ph.D., M.P.H., Chairperson.
Filed: July 11, 1991, as R.1991 d.409, **without change.**

Authority: N.J.S.A. 26:1A-7.

Effective Date: July 11, 1991, Readoption;
August 5, 1991, Amendments.
Expiration Date: July 11, 1996.

Summary of Public Comments and Agency Responses:

The proposed readoption without change appeared in the May 6, 1991 New Jersey Register at 23 N.J.R. 1252(b). A notice of publication regarding the proposed readoption of the campground rule was sent to all members of the Campground Regulation Review Committee on April 12, 1991. The committee was comprised of representatives of the New Jersey Campground Association, the New Jersey Health Officers Association, South Jersey Sanitarians Association, the New Jersey Environmental Health Association, municipal officials, the Department of Community Affairs, and concerned citizens from several condominium campgrounds. The proposed readoption notice was also mailed to all local and county health officers in the state. A notice of the Public Hearing was published in three major newspapers in the State of New Jersey, and the hearing was held on June 10, 1991 at the Department of Health Auditorium, in the Health and Agriculture Building in Trenton, with four individuals attending.

Drs. Louise Chut, Milton Prystowsky, and William Frascella served as hearing officers representing the Public Health Council. The hearing officers recommended that all comments be evaluated by the Department's Public Health Sanitation and Safety Program and that each comment receive due consideration. The responses to the comments received during the public hearing have been incorporated in the Summary of Comments and Agency Responses which follows in this document. The record of the hearing may be reviewed by the public at the office of the Department's Administrative Practice Officer, Health and Agriculture Building, Trenton, New Jersey.

The oral commenters were: Mr. and Mrs. William Blaisse and Mr. and Mrs. Sanford Toomin, representing Lazy River Campground in Estell Manor, New Jersey.

In addition to the comments presented at the hearing, the Department received written comments from four individuals and organizations as follows: Margaret Stocks, Oak Ridge Condominium Campground; Atlantic County Health Department; Mr. and Mrs. William Blaisse, Lazy River Campground; and Mr. Joseph J. Przywara, New Jersey Health Officers Association.

The Department of Health (hereafter, the Department) and the Public Health Council (hereafter, the Council) considered all of the comments offered and has decided to readopt N.J.A.C. 8:22 as proposed. The Department will conduct further comprehensive studies of the issues brought out during the public comment period with the intention of proposing necessary revisions subsequent to this rule readoption.

The oral and written comments and the Department's responses follow:

COMMENT: A comment was received suggesting that the Department repeal N.J.A.C. 8:22. The commenter further suggested that N.J.A.C. 8:22, as it stands, is essentially a compilation of numerous rules which can stand by themselves. Many other sections of N.J.A.C. 8:22, such as facility access, service roads, parking areas, campsite locations, campsite density, etc., appear to be the responsibility of local land use planners and/or construction departments. Other sections of N.J.A.C. 8:22 which relate to water supplies and sampling, sewer lines, sewage facilities and solid waste disposal, fall within the jurisdiction of the New Jersey Department of Environmental Protection. Sections relating to bathing places and food facilities are currently regulated by N.J.A.C. 8:26 and N.J.A.C. 8:24 (Chapters IX and XII of the State Sanitary Code). Numerous other sections of the rules relating to fireplaces, fountains, advertising signs, plumbing, electricity, and flammable fuels are under the jurisdiction of the Department of Community Affairs.

RESPONSE: The Department agrees that N.J.A.C. 8:22 is basically a compilation of various rules; however, the Department believes that key safety issues for construction, campsite locations, and densities which are specifically applicable to campgrounds are not addressed in any other rules. For this reason, the Department has determined that it is imperative to pursue the comprehensive study of the problems, hazards, and safety issues relating to the campground industry and will not consider repealing N.J.A.C. 8:22 at this time, since it is considered reasonable and necessary. In addition, the Department also believes that repealing N.J.A.C. 8:22, or even allowing it to expire, would create a void in the regulation of the campground industry. If this should happen, the Department could not ensure a continued safe and sanitary camping environment until new rules can be adopted.

COMMENT: Several commenters recommended that the Department create a separate rule for condominium campgrounds and one for traditional public campgrounds.

RESPONSE: The Department acknowledges the possible existence of several operational, administrative, and enforcement problems associated with the two basic types of campgrounds: condominiums versus commercial. However, the only major difference in this regard is the form of ownership and until the Department, along with sister state agencies, can complete a comprehensive study of these problems, the Department will not modify N.J.A.C. 8:22, nor is it in a position to create new separate rules for condominium campgrounds.

COMMENT: Several commenters requested that the Department reconsider N.J.A.C. 8:22-1.13(b) which prohibits permanent structures on individual campsites. It was recomended that a maximum 8 foot by 12 foot shed for the storage of garden tools, ladders, bicycles, lawn furniture, etc., be incorporated into the proposed rules.

RESPONSE: Accessory structures such as storage sheds would be an issue appropriately covered by the New Jersey Uniform Construction Code. The Department is currently working with the Department of Community Affairs to establish criteria for construction and permitting of these structures and intends to formulate proposed revisions to these rules relative to this issue by the end of 1991.

COMMENT: N.J.A.C. 8:22-1.6. One commenter recommended that park trailers be considered a camping vehicle.

RESPONSE: The Department believes that park trailers currently meet the definition of a camping vehicle, as specified in N.J.A.C. 8:26-1.6. In addition, the American National Standards Institute (ANSI) defines park trailers in Standard 119.5 as "a vehicle intended for use as temporary living quarters in a recreational vehicle park." Therefore, the Department does not see the need to specifically define park trailers in this readoption.

COMMENT: N.J.A.C. 8:22-1.2. One commenter stated that a license should not be required to operate a condominium campground because a condominium is a separate community with their own bylaws and board of directors.

RESPONSE: The proposed rule readoption does not require a campground to be licensed. N.J.A.C. 8:22-1.2 provides for an approval process of the campground's facilities prior to construction, expansion, and operation, by the local health authority and the Department of Environmental Protection. However, townships and boroughs have the authority to enact local ordinances which may include licensing and collection of fees to cover the cost of inspection under existing state statute. (see N.J.S.A. 40A-69a.).

COMMENT: N.J.A.C. 8:22-1.13(b). Several commenters requested that porches, with screens and/or windows, be allowed on individual campsites. They recommended that the size of the porch be restricted to the length of the trailer or park model with a 10 foot width and an attached sealed roof.

RESPONSE: Based on the fact that families have extended their use of campsites to include not only seasonal but year round visits as well, the Department recognizes the need to reevaluate this issue. Since recreational vehicles do not conform to the Federal Manufactured Home and Safety Standards or the New Jersey Uniform Construction Code as dwellings, a building permit could not be issued unless the structure is self-supporting and independent of the recreational camping vehicle. Also, the structure must conform to all of the relevant requirements of the New Jersey Uniform Construction Code. The Department is currently working with the Department of Community Affairs to establish criteria for the construction and permitting of these structures and hopes to formulate proposed rule revisions addressing this issue by the end of 1991.

COMMENT: N.J.A.C. 8:22-1.13(b). A comment was received suggesting that the requirement in the proposed rule to remove all structures from the campsite when the camping unit is removed is a problem for condominium campground owners. If the owner leaves the site and takes the recreational vehicle to Florida for the winter months, then, by law, everything must be removed. In the context of "condo-ownership," the commenter feels that the law should simply state that everything must be removed when the land is sold, unless the new owner agrees to purchase the improvement.

RESPONSE: The Department agrees that this construction issue must be resolved, since permanent structures are currently prohibited at individual campsites. The Department is working with the Department of Community Affairs to resolve these construction issues and intends to formulate proposed rule revisions in this matter by the end of 1991.

COMMENT: One comment was received stating that the subject rules are unenforceable, such as the occupancy limit found at N.J.A.C. 8:22-1.15(b), which restricts such occupancy to a 21 day period from November 1 to April 1. Also, local municipalities have raised objections to this practice because the campers' children use the school system but are not part of the tax structure.

RESPONSE: A campground is defined as a plot of ground upon which two or more campsites are located, established, or maintained for occupancy by camping units of the general public as temporary living quarters for children or adults, or both, for a total of 15 days or more in any calendar year, for recreation, education, or vacation purposes. The occupancy limit as stipulated in N.J.A.C. 8:22-1.15(b) gives the public access to campgrounds on a year round basis for recreational purposes. The practice of making a recreational vehicle a permanent domicile within a campground is not consistent with the original intent of this standard. Clearly, the occupancy standard needs to be studied in greater detail taking into consideration all points of view in this matter. The Department fully intends to continue this analysis and formulate a position with the possible introduction of a rule revision proposed by the end of 1991.

COMMENT: A comment was received suggesting that unsanitary conditions (usually after weekend activities) in the toilet room are a major source of consumer complaints. Busy weekend activities usually prohibit campground managers from attending to toilet areas which consequently become unsightly and hazardous.

RESPONSE: A campground that is experiencing sanitation problems during peak usage times, such as weekends, must address this issue to insure the public's health and safety. The local health official is responsible for substantiating the complaints received and working with management to resolve the violation. Failure of a campground to comply with sanitation standards warrants the initiation of enforcement actions by the local health authority. The Department appreciates and recognizes the point raised by this commenter. However, since this is a rule application and enforcement matter, rather than a rule content matter, no change in this specific rule is warranted.

Full text of the readoption can be found in the New Jersey Administrative Code at N.J.A.C. 8:22.

Full text of the adopted amendment follows.

CHAPTER 22
CAMPGROUNDS

(a)

EPIDEMIOLOGY AND COMMUNICABLE DISEASE CONTROL

Notice of Administrative Correction

Retail Food Establishments and Food and Beverage Vending Machines

Food Supplies

Source; Protection; Wholesomeness; Misbranding

N.J.A.C. 8:24-2.1

Take notice that the Office of Administrative Law has discovered an error in the proposed text of an amendment to N.J.A.C. 8:24-2.1, as published in the January 22, 1991 New Jersey Register at 23 N.J.R. 168(b). The amendment was adopted effective July 15, 1991 in the New Jersey Register of that date at 23 N.J.R. 2124(a). The purpose of this notice is to clarify that, in the proposed text of N.J.A.C. 8:24-2.1, both the new codification "(b)" and the phrase "prepared foods are" should have appeared in boldface, signifying proposed new text. In addition, then-current subsections (b) through (f) should have appeared as proposed for recodification as (c) through (g), with no change in text. This notice of administrative correction is published pursuant to N.J.A.C. 1:30-2.7.

(a)

DRUG UTILIZATION REVIEW COUNCIL

Notice of Administrative Correction Interchangeable Drug Products

N.J.A.C. 8:71

Take notice that the Department has discovered an error in the text of the adopted amendments to N.J.A.C. 8:71 published in the May 20, 1991 New Jersey Register at 23 N.J.R. 1670(a). A number of products were erroneously listed as "not adopted but still pending" listing which were, in actuality, adopted by the Drug Utilization Review Council. This notice of administrative correction is published pursuant to N.J.A.C. 1:30-2.7.

Full text of the product lists, as they should have appeared in the notice of adoption, follows:

The following products and their manufacturer were **adopted**:

Amantadine HCl syrup 50 mg/5 ml	Barre-National
Atropine sulf opht sol 1%	Akorn
Belladonna alk w/phenobarbital tab	Rexar
Benzoyl peroxide gel 5%, 10%	Thames
Carbinoxamine Psuedoephedrine syr 4/60	Cenci
Carbinoxamine pseudoephendrine/DM syr	Cenci
Chloral hydrate liq 500 mg	Cenci
Chloramphenicol opht sol 0.5%	Akorn
Chlorzoxazone tabs 500 mg	Mutual
Dexamethasone opht sol 0.1%	Akorn
Erythromycin EC/ER tabs 333 mg	Abbott
Erythromycin ER caps 250 mg	Abbott
Fluocinonide soln 0.05%	Copley
Fluocinolone cr 0.01, 0.025%	G & W
Fluocinolone oint 0.025%	G & W
Gentamicin Sulf opht sol	Akorn
Hydrocodone/PPM 2.5/12.5 liq	Cenci
Hydrocodone/PPM 5/25 mg liq	Cenci
Hydrocodone/phenylpropanolamine 2.5/12.5	Halsey
Hydrocodone/phenylpropanolamine 5/25 syr	Halsey
Hydrocodone/pseudoephedrine liquid	Cenci
Hydrocodone/pseudoephedrine/guiafenesin	Cenci
Hydromorphone HCl tabs 2, 4 mg	Roxane
Iodinated glycerol/DM 30mg/10mg	Halsey
Iodinated glycerol/codeine liquid	Cenci
Iodinated glycerol elixir	Cenci, Silarx
Iodinated glycerol tabs 30 mg	Copley
Iodinated glycerol/DM liquid	Cenci
Iodinated glycerol/cod 30mg/10mg	Halsey
Lactulose syrup 10 g/15 ml	Inalco
Methyclothiazide tab 2.5 mg	Zenith
Midrin caps substitute	Interpharm
Minocycline caps 50, 100 mg	W-C
Morphine sulf supp 5, 10, 20, 30, mg	G & W
Naldecon Ped. drops substitute	LuChem
Oxazepam caps 10, 15, 30 mg	Danbury
Phenylephrine, PPM, guiafenesin liq	Halsey
Pilocarpine HCl opht sol 1%, 2%, 4%	Akorn
Poly Vitamin drops with fluoride 0.25 mg	Cenci
Poly-vitamins/Fluoride 0.25 mg, 0.5 mg	Esquire
Prednisolone sod phos opht sol 0.125%, 1%	Akorn
Rondec DM drops, syrup substitute	LuChem
Rynatan tabs substitute	LuChem
Sulfacetamide opht sol	Akorn
Triamterene/HCTZ caps 50/25	Penn Labs
Triple vitamin drops/fluoride 0.25 mg	Cenci

The following products were **not adopted**:

Calcium inj	Steris
Carbachol ophth. sol 3%	Steris
Cyclopentolate HCl opht sol 1%	Akorn
Dexamethasone sod. phosphate inj 4 mg/ml	Steris
Dexpanthenol inj. 250 mg/ml	Steris
Homatropine HBr opht sol 5%	Akorn
Hydrocortisone suppos 25mg	G & W
Hydocortisone/Neomycin opht sol	Akorn
Levorphanol tartrate tab 2 mg	Roxane
Naphazoline/Pheniramine 0.025/0.3%	Optopics
Naphazoline opht sol 0.1%	Akorn
Phenylephrine HCl opht sol 2.5%, 10%	Akorn
Tropicamide ophth. sol 1%	Akorn

The following products were **not adopted but are still pending**:

Albuterol tabs 2, 4 mg	Watson
Benzonatate caps 100 mg	Chase
CDP/Amitriptyline tabs 5/12.5, 10/25	PBI
Carisoprodol 350 mg	Mutual
Chlorzoxazone tabs 250, 500 mg	Ohm
Clemastine fumarate syrup 0.67 mg/5 ml	Lemmon
Clemastine fumarate tabs 1.34, 2.68 mg	Cord
Clofibrate caps 500 mg	Novopharm
Clonidine 0.1, 0.2, 0.3/chlorthal. 15 tabs	Cord
Dipyridamole tabs 25, 50, 75 mg	Purepac
Doxycycline caps 100 mg	Sidmak
Erythromycin EC/ER tabs 250 mg, 500 mg	Abbott
Ethosuximide caps 100 mg	Chase
Loperamide caps 2 mg	Cord
Loxapine succ. caps 5, 10, 25, 50 mg	Cord
Metaproterenol tabs 10, 20 mg	Biocraft
Methocarbamol tabs 500, 750 mg	Mutual
Minoxidil tabs 2.5, 10 mg	Mutual
Natalins RX sustitute	Copley
Nifedipine caps 10 mg	Novopharm
Nifedipine caps 20 mg	Chase
Pediotic/Cortisporin Otic substitute	Bausch/Lomb
Propoxyphene naps/APAP 50/325, 100/650	Mutual
Propoxyphene naps/APAP tabs 100/650	LuChem
Stuartnatal 1+1 formula	Copley
Sulfacetamide/Prednisolone sol 100/5 mg	Akorn
Sulindac tabs 150, 200 mg	Lemmon, Mutual
Theophylline CR tabs 450 mg	Sidmak
Timolol maleate tabs 5, 10, 20 mg	Novopharm
Tolmetin tabs 200 mg, caps 400 mg	Mutual
Tolmetin sodium caps 400 mg	Purepac
Trazodone tabs 50, 100, 150 mg	Mutual

HIGHER EDUCATION

(b)

NEW JERSEY HIGHER EDUCATION ASSISTANCE AUTHORITY (NJHEAA)

Policy Governing New Jersey College Loans to Assist State Students (NJCLASS) Program

Adopted New Rules: N.J.A.C. 9:9-7

Proposed: May 6, 1991 at 23 N.J.R. 1257(a).
Adopted: July 3, 1991, by the New Jersey Higher Assistance Authority, Philip W. Koebig, Chairman.
Filed: July 8, 1991, as R.1991 d.396 **with substantive changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 18A:72-10.

Effective Date: August 5, 1991.
Expiration Date: October 3, 1993.

Summary of Public Comments and Agency Responses:

The NJHEAA also received two comments regarding the proposal. One comment was from Ms. Jeanne S. Lewis, Stockton State College, on behalf of the New Jersey State College Directors of Financial Aid, and the second was from Mr. William Murphy of Glassboro State College.

COMMENT: Since parents and/or students may have previously applied to the State (NJHEAA) for Stafford, SLS, or PLUS loans, the commenter recommends that the same school certification submitted for these loans be used for the NJCLASS loan program.

RESPONSE: Because NJCLASS is a new State program, using the same school certification that is used for the Federal loan programs is not possible at this time. NJHEAA will research the design and feasibility of a certification to cover both the State and Federal programs.

COMMENT: The commenter suggests that the Authority build the necessary technology into the NJCLASS processing to allow this processing to be completed on the Automated Loan Processing System (ALPS) in the same manner as the current Federal programs.

RESPONSE: Since NJCLASS is a new program, the extensive programming modification which would be required to offer ALPS processing for this program are not possible at this point in time. The automated loan system presently being developed by the Office of Student Assistance and Information Systems will offer this processing for NJCLASS in the future.

COMMENT: It was suggested that applicants should apply for NJCLASS loans directly to the lender in line with the current procedure utilized for Stafford, PLUS/SLS loan certification within the Automated Loan Processing System (ALPS).

RESPONSE: Because ALPS processing cannot be offered for NJCLASS loans at this time, applications must go to the educational institution for certification before they can be forwarded to the lender.

COMMENT: The commenter suggests that it would be helpful if the NJHEAA could estimate the loan interest rate for NJCLASS Program as soon as possible.

RESPONSE: The NJCLASS Program funding will be achieved through the issuance of revenue bonds. The interest rate for the program will be a function of the bond sale price plus associated costs of the sale and cannot be determined until the actual sale takes place. The NJHEAA will publish the NJCLASS interest rate as soon as it is determined.

COMMENT: It was recommended that the NJCLASS application clearly state that the student and/or family must file a need analysis document for their college of attendance and file a Stafford loan application with a lender.

RESPONSE: The NJCLASS application will contain these instructions.

COMMENT: Both commenters suggest that since costs will be incurred by the colleges to process NJCLASS loans, perhaps a portion of the administrative fee charged to applicants by the NJHEAA could be shared with them.

RESPONSE: The NJCLASS program was created to ease the educational financing burden experienced by many New Jersey students and their families. Every effort is being made to keep costs to the borrower as affordable as possible. Fees which will be charged have been designed to cover the NJHEAA's actual costs of administering the program. Building in additional charges to compensate other parties would increase the cost of the loan. It is anticipated that schools will benefit from participating in the NJCLASS Program, by being able to offer an additional financing option for students which, in turn, may help to increase their enrollment levels.

Summary of Changes between Proposal and Adoption:

Subsequent to the proposal of these rules, the New Jersey Higher Education Assistance Authority (NJHEAA) has continued to refine the NJCLASS program. During this process it was determined that several technical changes to the rules were necessary to clarify items in certain areas and to expand the rights of borrowers under the program in other areas. These agency changes are reflected in the rules in the following areas:

N.J.A.C. 9:9-7.1 Definitions

Language added to the definition of "adjusted gross income" was made to reflect the use of only Federal data in income determination eligibility for the program. This is consistent with the income data utilized for Department's other student assistance programs.

The addition of the "in-school period" definition clarifies this term which is utilized throughout the rules, especially under loan repayment requirements. The definition follows the language originally proposed as N.J.A.C. 9:9-7.7(c).

The deletion of the word "independent" in the "student borrower" definition expands the definition of student borrower to dependent as well as independent borrowers, thereby providing loan program eligibility to an increased number of students.

N.J.A.C. 9:9-7.5 Fees

The revised text in N.J.A.C. 9:9-7.5(a)1 and 2 does not increase the amount of the fee the Authority is permitted to charge borrowers but, rather, serves to allow the Authority to designate one portion of this total amount as an application fee and the other portion as an administrative fee. This split in fees more accurately reflects the administrative costs of the program.

N.J.A.C. 9:9-7.6 Interest

The additional text at N.J.A.C. 9:9-7.6(a) was necessary because the program interest rate has not yet been established. The interest rate for the program will be a function of the sale price of bonds to support the program plus associated costs of the bond sale and cannot be determined until the actual bond sale takes place. This bond sale is expected to occur in August 1991.

N.J.A.C. 9:9-7.7 Repayment of loan

N.J.A.C. 9:9-7.7(e) has been revised in order to provide a finite period of time for loan repayment as opposed to the proposal where the term was indeterminate. This change serves to expand the loan repayment period for the overwhelming majority of borrowers.

N.J.A.C. 9:9-7.8 Deferments and forbearance

As with other loan programs administered by the Authority, lenders and borrowers may mutually agree to the modification of scheduled repayment requirements of loans when the borrower is experiencing extraordinary financial difficulties. This change was added to notify the public that such a forbearance policy shall also be utilized in the NJCLASS Program.

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

SUBCHAPTER 7. POLICY GOVERNING NEW JERSEY COLLEGE LOANS TO ASSIST STATE STUDENTS (NJCLASS) PROGRAM

9:9-7.1 Definitions

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

"Adjusted gross income" means total family income *[less allowable State and Federal exemptions]* ***reported for Federal income tax purposes***.

"Authority" means New Jersey Higher Education Assistance Authority.

"Eligible collegiate institution" or "school" or "college" means a college or university approved or licensed by the State Board of Higher Education *[and]* ***or*** accredited by a regional accrediting association recognized by the Council on Postsecondary Accreditation and having a New Jersey cohort default rate of 20 percent or less.

"In-school period" means the period in which a student is enrolled at an eligible school on at least a half-time basis as certified by the school.

"Lender" means New Jersey Higher Education Assistance Authority or its agent for the purposes of this program.

"Parent borrower" means a parent(s), spouse or legal guardian of a dependent undergraduate or graduate student.

"Student borrower" means an *[independent]* undergraduate or *[independent]* graduate student.

"NJCLASS" means the New Jersey College Loans to Assist State Students Loan Programs.

(b) Terms not defined in this section shall be defined in accordance with 34 CFR §682.200, including all subsequent amendments and supplements thereto.

9:9-7.2 Eligibility

(a) To be eligible for a NJCLASS loan, each applicant must:

1. Have an annual adjusted gross family income no greater than $85,000;

2. Be a permanent resident of New Jersey for at least six months prior to filing a NJCLASS application;

3. Not be in default on any student loan or had any prior student loan discharged due to disability or bankruptcy; and

4. Provide an acceptable co-signer if it is determined by the Authority that one is required.

(b) In addition to all of the requirements in (a) above, a student applicant or a student on whose behalf the parent is applying for a NJCLASS loan shall:

1. Have a high school diploma or a high school equivalency certificate;
2. Be enrolled or accepted for enrollment on at least a half-time basis in an eligible school;
3. If currently enrolled in an eligible school, be determined by the school to be making satisfactory academic progress in a degree or certificate program; and
4. Have exhausted or be ineligible for a Federal Stafford Loan.

9:9-7.3 Loan amounts

(a) The maximum amount a parent borrower may borrow for each student for each academic year is $5,000; the maximum amount a student borrower may borrow for each academic year is $5,000.

(b) The total aggregate amount borrowed by any one student or parent borrower on behalf of a student shall not exceed $25,000.

(c) The amount borrowed shall not exceed a student's estimated cost of attendance at the eligible school minus all other financial assistance received by the student for the academic period for which the loan is intended.

(d) The minimum amount which may be borrowed is $500.00.

9:9-7.4 Application procedure

(a) An applicant for a NJCLASS loan shall:

1. Complete the NJCLASS application and credit application. All parts of the application and credit application must be completed regardless of the applicant's age or marital status;
2. Submit the completed application to the eligible school the student attends or plans to attend for certification of enrollment and completion of the school section; and
3. Forward the application materials or request the school to forward these materials to the lender.

(b) Lender will process the application and the borrower and school will be notified of lender approval or disapproval.

(c) Lender will disburse loan funds to parent borrowers in one disbursement. Funds to a student borrower will be made jointly payable to the student and the eligible school, mailed directly to the school and may be multiply disbursed.

9:9-7.5 *[Administrative]* Fee**s***

(a) A recipient of a NJCLASS loan shall be required to pay an ***application and an*** administrative fee to the New Jersey Higher Education Assistance Authority ***which combined will*** not *[to]* exceed five percent of the total approved loan amount.

1. *[This]* ***These fees*** fee shall be deducted from the loan proceeds.
2. For multiple disbursed loans, *[this fee]* ***these fees*** will be deducted in equal installments, from each loan disbursement.

9:9-7.6 Interest

(a) The NJCLASS loan shall have a daily fixed simple annual interest rate. This rate shall be set by the Authority ***by August of the first year of the program and*** in June of each year ***thereafter*** and notice provided in the New Jersey Register.

(b) Interest on a NJCLASS loan shall begin to accrue at the time of the first loan disbursement.

(c) Borrower payment of interest is required to be paid no more frequently than quarterly during the student's in-school period.

9:9-7.7 Repayment of loan

(a) Lender shall provide borrower with a completed repayment Disclosure Statement detailing due dates of required payments at the time of the first loan disbursement.

(b) Payment of the interest to lender during the in-school period on a NJCLASS loan must begin within 60 days after the loan is disbursed.

(c) Payment of principal and interest shall begin within 60 days of a student's less than half-time enrollment, withdrawal or graduation at eligible institution.

(d) The minimum acceptable monthly payment for all NJCLASS loans shall be $50.00.

(e) *[A NJCLASS loan must be repaid within 10 years from the due date of the first payment of principal and interest after less than half-time enrollment, withdrawal or graduation, excluding periods of authorized deferment.]* ***Notwithstanding any periods of deferment and/or forbearance, a NJCLASS loan shall be paid in full no later than 15 years from the first date of loan disbursement.***

(f) The borrower has the right to repay the entire loan or any portion of the loan at any time without penalty.

9:9-7.8 Deferments ***and forbearance***

(a) Deferments under the NJCLASS Program shall be governed by the Federal Stafford Loan provisions concerning this area, 34 CFR §682.210, including all subsequent amendments and supplements thereto.

(b) The lender may, in its discretion, grant borrowers periods of forbearance in the repayment of their NJCLASS loan(s).

9:9-7.9 Default

(a) Default occurs when a borrower fails to make an installment payment when due, or to meet other terms of the Promissory Note under circumstances where the lender finds it reasonable to conclude that the borrower no longer intends to honor the obligation to repay, provided failure to repay persists for:

1. At least 180 days; or
2. At least 240 days during the student's in-school period when interest-only payments are required.

(b) Upon default, borrower is liable for the entire balance of the loan, and the Authority will notify credit bureaus of the default.

(c) Borrower shall pay all charges and other costs, including reasonable attorney fees, necessary for the collection of monies due on the loan as a consequence of the default.

INSURANCE

(a)

DIVISION OF PROPERTY/LIABILITY

Commercial Lines Insurance: Policy Form Standards

Adopted New Rules: N.J.A.C. 11:13-7

Proposed: January 22, 1991 at 23 N.J.R. 159(a).
Adopted: July 15, 1991 by Samuel F. Fortunato, Commissioner, Department of Insurance.
Filed: July 15, 1991 as R.1991 d.411 **with technical changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 17:1-8.1, 17:1C-6(e) and 17:29AA-29.

Effective Date: August 5, 1991.
Expiration Date: November 12, 1992.

Summary of Public Comments and Agency Responses:

Five timely comments were received from National Casualty Company, the American Insurance Association, American International Group, Inc., Crum & Forster Corporation and Insurance Services Office, Inc.

COMMENT: Three commenters suggested that the standards permit defense cost within the policy limits for other kinds of professional liability insurance. One commenter stated that "defense within policy limits" provisions are useful when legal defense costs represent a significant portion of the total loss payments; it mentioned Directors and Officers Liability as one example. It suggested that the rule be amended to permit such policy provisions when claim data demonstrates that defense costs are a major portion of the loss payments.

RESPONSE: These rules affect only those policy forms that must be filed prior to use in accordance with the Commercial Insurance Deregulation Act, N.J.S.A. 17:29AA-1 et seq. Presently, the only professional liability policy forms that must be filed are those for lawyers professional liability and medical malpractice. Lawyers professional liability policies may contain a "defense within limits" provision that meets the standards set forth in N.J.A.C. 11:13-7.3. Medical malpractice policies may not contain such a provision. Other lines mentioned by the

commenters, such as Officers and Directors Liability, are not filed with the Department and therefore are not regulated by these rules.

COMMENT: Two commenters suggested that an alternate method would be to provide a separate limit of liability for defense costs, for example, a lawyers professional liability policy with a $1 million of liability and a separate provision limiting defense costs to $1 million. Neither limit would reduce the other.

RESPONSE: After careful consideration, the Department has decided not to adopt this suggestion as it would defeat the purpose of the rule to require that defense costs generally be covered by policies of professional liability insurance.

COMMENT: Two commenters noted that present "defense within limits" policy provisions often apply the defense costs against any deductible amount, and suggested that N.J.A.C. 11:13-7.3(c)4 be eliminated.

RESPONSE: N.J.A.C. 11:13-7.3(c)4 was specifically intended to prohibit such policy provisions because they reduce the amount of coverage. The Department has therefore not adopted these commenters' suggestions.

COMMENT: Two commenters objected generally to the restrictions in N.J.A.C. 11:13-7.3(c) upon the terms of "defense within limits" provisions in lawyers professional liability policies. These commenters stated that lawyers are sophisticated purchasers of insurance and that these standards were not necessary. One commenter further noted that these restrictions will increase insurer costs, which will be passed along to the purchasers of the policies.

RESPONSE: The Department recognized that lawyers are generally more sophisticated purchasers of insurance and therefore proposed these rules so as to permit "defense within limits" provisions in lawyers professional liability policies with the restrictions set forth in N.J.A.C. 11:13-7.3(c). The Department also recognizes that the payment of defense costs are, and will continue to be, reflected in the premium paid by purchasers of the policies as part of the product being purchased.

COMMENT: One commenter objected generally to the proposed rules and stated several reasons for its opposition. First, the rules would restrict the market and adversely affect competition. Secondly, insurers writing lines subject to the rule would have difficulty obtaining reinsurance. Thirdly, the restrictions on admitted insurers would likely force some lines or purchasers into the surplus lines market where the restrictions of these rules would not apply.

RESPONSE: The Department disagrees with the objections raised by this commenter. First, the Department notes that these rules apply uniformly to all insurers writing these specific lines. Many insurers in the market currently are using forms that comply with the standards set forth in these rules. The Department believes that the restrictions on "defense within limits" provisions are reasonable and in fact will promote competition based on price and service. Secondly, the Department is not aware of any evidence of difficulty in obtaining reinsurance by insurers which currently issue policy forms that meet these minimum standards. The commenter provided no such evidence. Thirdly, the fact that many insurers which issue policy forms that comply with these standards currently compete in the market is evidence that purchasers would not be forced into the surplus lines market for these coverages.

COMMENT: One commenter stated that the $1 million minimum policy limit for a policy that may include a "defense within limits" provision is too restrictive. The commenter noted that many of its insureds are small law firms which have coverage limits of $100,000/$300,000. It suggested that the threshold be reduced so as to apply to these insureds.

RESPONSE: The Department has determined not to reduce the standards for policies with coverage limits of less than $1 million. The Department intends that the approval of "defense costs within limits" policy provisions apply only to policies with larger limits of liability.

COMMENT: A commenter stated that it will be extremely difficult administratively for insurers separately to check defense cost expenditures up to one half of the policy limit, defense costs in excess of that limit and amounts in excess of the 50 percent cap on reduction of policy limits. The commenter stated that it did not believe this would reduce defense cost expenditures by insurers, but would increase administrative costs.

RESPONSE: The Department disagrees with this commenter. Insurers have appropriate means of tracking defense costs. The Department notes that New York has a similar rule that limits the use of "defense within limits" policy provisions; insurers doing business in that state have been capable of complying with similar requirements. The Department does not believe that compliance would result in any significant increase in administrative costs.

COMMENT: One commenter stated that the policy form standards in this rule are more restrictive than standards in other states.

RESPONSE: The commenter provided no information about what states it speaks of, and what standards are applicable in those states. The Department recognizes that many states do not regulate policy form provisions. It is not clear, however, that there is a consensus among the states that do regulate these policy form provisions regarding any specific restrictions.

COMMENT: Two commenters objected generally to any restrictions on the use of policy provisions that provide for defense costs within the policy limits. These commenters asserted that the use of these policy provisions did not meet the statutory standard for disapproval of a policy form as inequitable or misleading. One commenter stated that the insurer and insured should be permitted freedom of contract when the object of the contract is a commercial lines insurance policy.

RESPONSE: For the reasons set forth when these rules were proposed, the Department believes that it has authority to impose these restrictions and therefore disagrees with the commenter. The Department notes that including defense costs as part of the product purchased when obtaining liability insurance clearly benefits insureds, who purchase insurance to protect against losses. The Department believes that the business of insurance is to spread the risk of loss and that these restrictions promote that result.

COMMENT: One commenter objected to the requirement of N.J.A.C. 11:13-7.4(a) which requires insurers to refile nonconforming policy forms to comply with the standards set forth in these rules. The commenter stated that N.J.S.A. 17:29AA-13 permits the continued use of current policy forms unless the Commissioner, after a hearing, orders their discontinuance. The commenter stated that requiring the refiling of conforming policy forms would violate the filers' right to a hearing and due process of law.

RESPONSE: The Department disagrees with the commenter. N.J.S.A. 17:29AA-13 entitles insurers to a hearing if the Commissioner finds that their policy forms do not comply with the standards of the Commercial Insurance Deregulation Act of 1982. These rules impose new commercial policy form standards with which all insurers must comply. The implementation of new minimum policy form standards concerning defense costs within policy limits can render current policy forms nonconforming without a specific finding by the Commissioner.

Summary of Agency-Initiated Changes:

The Department has corrected two minor editorial errors that appeared in proposed N.J.A.C. 11:3-7.1, and inserted a definite compliance date at N.J.A.C. 11:3-7.4(a).

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

SUBCHAPTER 7. COMMERCIAL LINES INSURANCE: POLICY FORM STANDARDS

11:13-7.1 Purpose and scope

(a) These rules interpret provisions of the Commercial Insurance Deregulation Act, N.J.S.A. 17:29AA-1 et seq. and set standards for the *[acceptable]* ***acceptance*** or disapproval of policy forms submitted pursuant to N.J.S.A. 17:29AA-6. These standards are established pursuant to N.J.S.A. 17:29AA-11, which prohibits forms which are unfair, inequitable, misleading or contrary to law, or which produce rates that are *[excess]* ***excessive***, inadequate or unfairly discriminatory.

(b) These rules do not apply to policy forms not required to be submitted by N.J.S.A. 17:29AA-6, which with some exceptions does not require the filing of policy forms insuring "special risks" as defined in N.J.S.A. 17:29AA-3k. These rules do not apply to policy forms issued by eligible surplus lines insurers in accordance with the Surplus Lines Law, N.J.S.A. 17:22-6.40 et seq. Nothing in these rules shall, however, authorize the acceptance or use, or prohibit the disapproval, of a policy form that is otherwise prohibited by another law or rule.

(c) These rules apply to all insurers which file policy forms pursuant to N.J.S.A. 17:29AA-6.

11:13-7.2 Definitions

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

"Commercial lines insurance" includes all property-casualty insurance policies except those excluded by N.J.S.A. 17:29AA-3a and N.J.A.C. 11:18-1.1.

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

"Cost of legal defense" or "defense costs" means allocated attorney and all other litigation expenses that can be separately identified as arising from the defense of a specific claim.

"Day" means calendar day.

"Insurer" means any person, corporation, association, joint underwriting association subject to N.J.S.A. 17:29AA-22, partnership or company licensed under the laws of this State to transact the business of insurance and rating organizations that file policy forms on behalf of their members and subscribers.

"Liability insurance policy" means any insurance policy that provides coverage for legal liability, even if it contains other types of coverage.

"Policy" or "insurance policy" includes all endorsements.

11:13-7.3 Defense costs within policy limits

(a) No commercial insurance policy shall be issued or renewed on a form required to be filed pursuant to N.J.S.A. 17:29AA-6 which contains a provision that includes defense costs within policy limits, except as provided in this section.

(b) Lawyers professional liability insurance policies may contain a provision that includes defense costs within policy limits provided it conforms to the standards set forth in (c) below.

(c) Lawyers professional liability insurance policy forms including the defense costs within policy limits shall contain policy provisions, which may be in the form of a mandatory endorsement, so as to incorporate the standards set forth below into the terms of each policy:

1. The policy form shall provide a minimum limit of liability of $1,000,000.

2. Defense costs shall not reduce the portion of the limit of liability that remains available to pay claims until defense costs have been incurred in an amount that equals or exceeds 50 percent of the policy limit of liability. The portion of the limit of liability that remains available to pay claims may be reduced only by the portion of incurred defense costs greater than 50 percent of the policy limit of liability.

3. The portion of the limit of liability available to pay claims shall not be reduced to an amount less than 50 percent of the policy limit of liability, regardless of the amount of defense costs incurred.

4. No defense costs shall be charged against any deductible amount.

11:13-7.4 Refiling policy forms

(a) Insurers with policy forms containing provisions inconsistent with the standards set forth in this subchapter shall amend those forms and refile them in accordance with N.J.S.A. 17:29AA-6 *[within 180 days of the effective date of this subchapter]* ***by February 1, 1992***.

(b) Policy forms refiled as set forth in (a) above shall comply with the standards set forth in this subchapter.

(c) Policy forms refiled in accordance with this rule shall be accompanied by a certification of an officer of the insurer that the policy form is being refiled in accordance with the standards set forth in this subchapter and that the refiling has been done within the time provided by (a) above.

PUBLIC UTILITIES

(a)

OFFICE OF CABLE TELEVISION

Regulations of Cable Television Telephone System Information

Adopted New Rule: N.J.A.C. 14:18-7.6

Proposed: September 17, 1990 at 22 N.J.R. 2895(a).

Adopted: June 25, 1991 by Celeste M. Fasone, Director, Office of Cable Television (with approval of the Board of Public Utilities; George H. Barbour and Jeremiah F. O'Connor, Commissioners).

Filed: June 27, 1991 as R.1991 d.375, **with substantive and technical changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3) and **with N.J.A.C. 14:18-7.7 not adopted but reproposed (see reproposal in this Register).**

Authority: N.J.S.A. 48:5A-10.

Effective Date: August 5, 1991.

Expiration Date: July 26, 1995.

Summary of Public Comments and Agency Responses:

The following submitted comments on the proposal:

Cheryl Jones, Brookdale Community College

Henry Magers, UA-Columbia Cablevision

John Stevens, TKR Cable Company

Robert A. Giegerich, Esq., on behalf of Sammons Communications of N.J., Inc.

Jan Vermilyea, Monmouth Cablevision Associates

Patrick J. McCall, Garden State Cable TV

Edmund O'Brien, President, Metuchen Cable TV Advisory Committee, Borough of Metuchen

A public hearing was held on October 5, 1990, by and before the Board of Public Utilities. Written comments were submitted to the Office of Cable Television (OCTV), Board of Public Utilities by December 17, 1990. Seven commenters presented written and/or oral comments to the proposal. A copy of the transcript of the public hearing is available through the Board of Public Utilities, Two Gateway Center, Newark, New Jersey, 07102. A summary of comments and responses follows:

COMMENT: UA-Columbia Cablevision (UACC), Sammons Communications of N.J., Inc. (Sammons), Monmouth Cablevision Associates (Monmouth) and Garden State Cable TV (Garden State) commented that the Board should handle problems with a cable company's telephone system or answering procedure on an individual system basis should the need arise. The Board would be better served to visit each company to examine their telephone systems and performances rather than requiring each company to file information.

RESPONSE: In the past, the Board has directed certain cable operators to perform telephone studies on an individual basis to remedy telephone problems. However, the Board's complaint records indicate that many systems have experienced problems with their phone systems and that it is difficult for the Board to determine a proper performance level without more empirical data. Therefore, the record established pursuant to this rule will aid in the determination of the extent to which a standard is necessary. Additionally, this rule will enable the Board to develop information necessary to ensure individual systems can take prompt corrective action should telephone problems arise.

COMMENT: TKR Cable Company (TKR) commented that while there are some aspects of the rule that should be kept on file in the OCTV, the company would need to file the information pursuant to N.J.A.C. 14:18-7.6 yearly even if the information did not change.

RESPONSE: The Board believes that an annual filing is not burdensome since the information requested should be readily available to the cable operator and the annual filing of such avoids administrative problems that occur with the cross-referencing of files.

COMMENT: The Borough of Metuchen has adopted a resolution supporting the telephone rules, N.J.A.C. 14:18-7.6.

RESPONSE: The Board accepts the resolution of the Borough of Metuchen.

COMMENT: Monmouth commented that the proposed N.J.A.C. 14:18-7.6(c) might require the cable operator to file information on

changes in their phone system such as the way the cable operator uses ACD re-grouping, on a daily basis.

RESPONSE: N.J.A.C. 14:18-7.6(c) is intended for substantive changes in phone systems such as added telephone trunk lines, changes in business office hours, or the addition of an ARU (automated response unit). The Board does not believe that re-grouping of ACD's constitutes a substantive change in the phone system. An ACD is an Automated Call Distributor which, among other functions, can allow a cable operator to arbitrarily determine where and when any group of calls or trunk line(s) will be distributed. This allows the cable operator to re-distribute calls when certain lines are busy, as happens during billing cycles, outages, etc. Such a change in handling calls is an internal procedure rather than a change in the cable operator's telephone system; therefore, the Board does not believe that the cable operator needs to report this type of information.

Summary of Agency-Initiated Changes:

The Board received few comments from the industry and the public regarding the annual reporting statistics proposed, and herein adopted, as N.J.A.C. 14:18-7.6. The Board, however, has made some changes upon adoption of the filing requirements for the rule. Several of the changes were made to correlate the information requested in N.J.A.C. 14:18-7.6 and the performance data requested in the reproposed N.J.A.C. 14:18-7.7 (see proposal in this Register). In reproposing N.J.A.C. 14:18-7.7, the Board amended or deleted many of the filing requirements of the formerly proposed N.J.A.C. 14:18-7.7 and in doing so, needed to ensure that all information and performance data filed pursuant to N.J.A.C. 14:18-7.6 would be consistent. Nonetheless, N.J.A.C. 14:18-7.6 stands alone and will provide needed analytic information, even if N.J.A.C. 14:18-7.7 is not adopted. The changes being made upon adoption are minor changes in the type, not the amount, of information required and are therefore viewed as not so substantive as to require additional public notice and comment.

N.J.A.C. 14:18-7.6(a), requiring reporting of the re-routing process for incoming calls, has been deleted. The Board believes that it is no longer relevant due to the fact that proposed N.J.A.C. 14:18-7.7(a) no longer requires reporting of each telephone trunk line.

N.J.A.C. 14:18-7.6(a)19 has been deleted. This paragraph requested the number of telephone trunk lines dedicated to outgoing calls. The Board has deleted this paragraph since upon further review, this does not appear to be a measurement of telephone performance.

As stated above, the Board has initiated several changes so that the information requested in N.J.A.C. 14:18-7.6 correlate to the new proposal for N.J.A.C. 14:18-7.7. Although N.J.A.C. 14:18-7.6, as adopted, can stand alone, the two rules, adopted N.J.A.C. 14:18-7.6 and reproposed N.J.A.C. 14:18-7.7, have been developed to function together to assist the Board in evaluating cable operators' telephone systems. Therefore, the Board believes it necessary to delete and add several paragraphs to N.J.A.C. 14:18-7.6.

The Board has added a paragraph, N.J.A.C. 14:18-7.6(a)14, which requires the cable operator to describe its billing cycles and mailing dates of those bills. N.J.A.C. 14:18-7.7 does not account for factors such as unusally high telephone traffic during certain times of the month being attributable to occurrences such as outages or billing cycles. The addition of N.J.A.C. 14:18-7.6(a)14, should permit the Board to analyze telephone performance data without misinterpreting telephone statistics such as higher than normal telephone traffic patterns during billing cycles.

N.J.A.C. 14:18-7.6(a)18 has been added to determine how a system distributes a call before the subscriber reaches a live operator or customer service representative. At N.J.A.C. 14:18-7.6(a)19 language has been changed to clarify whether a cable operator is providing a message which may answer a subscriber's questions without talking to a company representative. The addition of N.J.A.C. 14:18-7.6(a)18 and the changes to (a)19 will assist in the interpretation of data submitted pursuant to the reproposed N.J.A.C. 14:18-7.7 for companies using an automated response unit (ARU) or message switch. The Board has made changes to N.J.A.C. 14:18-7.6 in order to eliminate misinterpretations or ambiguities that may arise in data submitted pursuant to proposed N.J.A.C. 14:18-7.7. The changes in this section will allow the Board to analyze information submitted pursuant to proposed N.J.A.C. 14:18-7.7, while accounting for all aspects of the cable operator's telephone system configuration. The changes are viewed as not so substantive as to need further public comment.

The Board believes, although not necessary to rulemake, it is appropriate to provide an explanation of the term, "inward telephone trunk line". The term "inward telephone trunk line" is meant to describe a single transmission path provided between the cable company's private branch exchange or other telephone system and the public telephone network.

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

14:18-7.6 Telephone system information

(a) Each cable television operator shall provide the Office of Cable Television the following information concerning the operation of the company's telephone system:

1. The location of each office from which telephone calls from subscribers and the general public are normally received and the number of subscribers served by the office;

2. The days of the week and the hours in which an office is open to conduct business with the public and receive telephone calls;

3. The telephone numbers by which subscribers may call the cable television operator;

4. The method by which subscribers are informed of the telephone number(s) used to contact the cable operator;

5. Whether subscribers are requested to dial a single telephone or separate numbers depending on the nature of their inquiry;

6. Whether inward telephone traffic is grouped to individual departments (that is, service, billing, etc.), along with the total number of such departments and the identification of each department;

7. The total number of inward telephone trunk lines assigned to each telephone number used by the cable television operator;

[8. Whether the operator's telephone system is designed to reroute incoming telephone calls to an alternate path in the event the primary incoming trunks are blocked or otherwise inaccessible and whether this alternate route is dedicated for this purpose;]

*[9.]***8.*** A brief description of the type of telephone system used in the office and the manufacturer and model number of any equipment used.

*[10.]***9.*** Whether the office has an on-premises private branch exchange (PBX) or other private switching device and whether the device handles all telephone traffic for the office;

*[11.]***10.*** The total number of functional lines on the line side (telephone extension/CSR side) of the PBX or other private switching device and, if segregated by department, the number of functional lines assigned to each department;

*[12.]***11.*** The total number of customer service representatives (CSRs) normally available to answer calls. If CSRs are segregated by department, the total number of CSRs available for each department;

*[13.]***12.*** If the assignment of CSRs varies by hour, day or other time period, the cable operator shall describe the variation in the assignment;

*[14.]***13.*** A brief description of the initial and ongoing training provided to the CSRs;

14. A brief description of the billing cycle including dates on which bills are mailed;

15. Whether the CSRs have access to computer terminals for billing or service information and, if so, a brief description of the information available to the CSR;

16. Whether the telephone system serving the office has *[automatic]* ***automated*** call distribution *[(ACD)]* capability for the entire office or for specific departments. If so, the cable television operator shall supply a brief description on the method of call distribution;

17. Whether the telephone system places incoming calls in queue *[so that an incoming caller is held for an available CSR]*, and the maximum number of callers that can be placed in queue;

18. Whether the telephone system has an Automated Response Unit (ARU) and a description of the routing options available to callers through the ARU;

*[18.]***19.*** Whether the telephone system provides recorded messages to callers *[on the status of the call and whether a message is periodically repeated while callers are in queue (on hold)]* ***and a description of the messages provided;***

[19. The total number of telephone trunk lines dedicated to outgoing calls;]

20. Whether telephone answering machines or devices are used, the hours which they are used and the departments in which they are used; and

21. The name and address of the answering service, if used, and the hours in which the service is used. Also, indicate whether the answering service receives all incoming calls or specific departments.

(b) The information required pursuant to (a) above shall be provided to the Office of Cable Television *[within 60 days of the effective date of this rule]* ***on or before October 4, 1991*** and annually thereafter.

(c) Each cable television company shall inform the Office of any substantive change in the information filed pursuant to this section.

TREASURY-GENERAL

(a)

STATE INVESTMENT COUNCIL

International Government and Agency Obligations

Adopted Amendments: N.J.A.C. 17:16-20.1 and 20.2

Adopted Repeal: N.J.A.C. 17:16-20.4

Proposed: June 3, 1991 at 23 N.J.R. 1775(b).
Adopted: July 5, 1991 by the State Investment Council, Roland M. Machold, Director, Division of Investment.
Filed: July 5, 1991 as R.1991 d.386, **without change.**

Authority: N.J.S.A. 52:18A-91.

Effective Date: August 5, 1991.
Expiration Date: May 2, 1996.

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

Full text of the adoption follows.

17:16-20.1 Permissible investments

(a) Subject to the limitations contained in this subchapter, the Director may invest and reinvest the moneys of any pension and annuity group fund, except the Consolidated Police and Firemen's Pension Fund, in obligations which are the direct obligations of sovereign governments or the sovereign's agencies whose obligations are unconditionally guaranteed as to principal and interest by the sovereign's full faith and credit or international agencies whose obligations are directly backed by the collective credit of regional countries.

1. (No change.)

2. The Director shall only select issues of international government and agency obligations from the "Approved List" to be recommended for purchase by the pension and annuity group, including Common Pension Fund D.

17:16-20.2 Limitations

(a) Not more than one percent of the assets of any pension and annuity group fund shall be invested in any one issuer of international government and agency obligations, whether direct or guaranteed.

(b) All international government and agency obligations must be rated at least Aa/AA by Moody's Investor's Service Inc. and Standard & Poor's Corporation or have equivalent ratings.

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

17:16-20.4 (Reserved)

(b)

STATE INVESTMENT COUNCIL

Guaranteed Income Contracts

Adopted New Rules: N.J.A.C. 17:16-36

Proposed: June 3, 1991 at 23 N.J.R. 1776(a).
Adopted: July 5, 1991 by the State Investment Council, Roland M. Machold, Director, Division of Investment.
Filed: July 5, 1991 as R.1991 d.387, **without change.**

Authority: N.J.S.A. 52:18A-91.

Effective Date: August 5, 1991.
Expiration Date: May 2, 1996.

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

Full text of the adoption follows.

SUBCHAPTER 36. GUARANTEED INCOME CONTRACTS

17:16-36.1 Permissible investments

(a) Subject to the limitations contained in this subchapter, the Director may invest the assets of any fund in guaranteed income contracts, provided that:

1. The issuer of the guaranteed income contract is incorporated in the United States;

2. The issuer is not in default as to the payment of any of its outstanding obligations;

3. The issuer, in the case of an insurance company, had a total combined capital stock and surplus reserve for contingencies equal to at least $200,000,000 at the date of its last published financial statement and a credit rating of at least A+ from A.M. Best Company; or

4. The issuer, in the case of a commercial bank, meets all capital requirements as defined by the Federal Reserve Board at the date of its last published financial statement and has a short term debt rating of at least P1 from Moody's Investor Service.

17:16-36.2 Other limitations

The investment in a guaranteed income contract is limited to a term of 10 years or less.

17:16-36.3 Legal papers

Prior to any commitment to purchase a guaranteed income contract, the Division of Investment shall ascertain that the issuer is included on a list of companies which has been certified by the Director as having met the requirements of this subchapter.

(c)

STATE INVESTMENT COUNCIL

U.S. Common and Preferred Stocks and Issues Convertible into Common Stock

Adopted Amendment: N.J.A.C. 17:16-41.3

Proposed: June 3, 1991 at 23 N.J.R. 1776(b).
Adopted: July 5, 1991 by the State Investment Council, Roland M. Machold, Director, Division of Investment.
Filed: July 5, 1991 as R.1991 d.388 **without change.**

Authority: N.J.S.A. 52:18A-91.

Effective Date: August 5, 1991.
Expiration Date: May 2, 1996.

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

Full text of the adoption follows.

SUBCHAPTER 41. U.S. COMMON AND PREFERRED STOCKS AND ISSUES CONVERTIBLE INTO COMMON STOCKS

17:16-41.3 Limitations

(a) The market value of total investments in common and preferred stock and issues convertible into common stock, both domestic, as permitted herein, and international, as permitted in N.J.A.C. 17:16-44, for any one of the pension funds listed in N.J.A.C. 17:16-41.2 shall not exceed 60 percent of the market value of such fund, with the exception of Common Pension Funds A and D. When the combined market value of the common and preferred stock and issues convertible into common stock, held by a pension fund, either directly or in Common Pension Funds A and D, reaches or exceeds 58 percent of the total market value of the pension fund as of the end of a period used for evaluating unit values of participation, then the Council shall be notified at a regularly scheduled meeting of the Council or its Executive Committee. When the combined market value of the common and preferred stock and issues convertible into common stock, held by a pension fund, either directly or in Common Pension Funds A and D, exceeds 60 percent of the total market value of the respective fund, then the Division may have a six-month period of grace to reduce the level of participation of the fund below the 60 percent level, except that the period of grace may be extended for additional four month periods with the approval of the Council.

(b) (No change.)

(c) The total amount of stock purchased or acquired of any one corporation shall not exceed five percent of the common stock, or of any other class of stock which entitles the holder thereof to vote at all elections of directors, of such corporation.

(a)

STATE INVESTMENT COUNCIL

Common and Preferred Stocks and Issues Convertible in Common Stock of International Corporations

Adopted Amendment: N.J.A.C. 17:16-44.3

Proposed: June 3, 1991 at 23 N.J.R. 1777(a).
Adopted: July 5, 1991 by the State Investment Council, Roland M. Machold, Director, Division of Investment.
Filed: July 5, 1991 as R.1991 d.389, **without change.**

Authority: N.J.S.A. 52:18A-91.

Effective Date: August 5, 1991.
Expiration Date: May 2, 1996.

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

Full text of the adoption follows.

17:16-44.3 Limitations

(a) Not more than one percent of the book value of any pension fund shall be invested in the common and preferred stock of any one corporation.

Recodify as (b) (No change in text.)

(c) The market value of international common and preferred stock and issues convertible into common stock that can be held by a pension fund directly or through Common Pension Fund D, when combined with the market value of common and preferred domestic stock, and issues convertible into such common stocks, permitted under N.J.A.C. 17:16-41, cannot exceed 60 percent of the market value of a pension fund, subject to such further provisos as are contained in N.J.A.C. 17:16-41.

(d) The market value of international preferred and common stocks and issues convertible into common stocks, when combined with the market value of international government and agency obligations permitted under N.J.A.C. 17:16-20, cannot exceed 15 percent of the market value of a pension fund, subject to such further provisos as are contained in N.J.A.C. 17:16-67.

(b)

STATE INVESTMENT COUNCIL

Common Pension Fund D

Adopted Amendments: N.J.A.C. 17:16-67.7, 67.8 and 67.12

Proposed: June 3, 1991 at 23 N.J.R. 1777(b).
Adopted: July 5, 1991 by the State Investment Council, Roland M. Machold, Director, Division of Investment.
Filed: July 5, 1991 as R.1991 d.390, **without change.**

Authority: N.J.S.A. 52:18A-91.

Effective Date: August 5, 1991.
Expiration Date: May 2, 1996.

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

Full text of the adoption follows.

17:16-67.7 Method of valuation

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

(g) For the purposes of valuing securities, all values determined under this section shall be converted into United States dollars at rates shown in the Wall Street Journal on the valuation date, or those established by a recognized pricing service.

17:16-67.8 Valuation of units

(a) (No change.)

(b) All valuations established for items (a)1i through iv above shall be converted into United States dollars at rates shown in the Wall Street Journal on the valuation date, or those established by a recognized pricing service.

17:16-67.12 Limitations

(a) (No change.)

(b) In the event that any rule contains a limitation of the assets of any pension and annuity group fund which may be invested either in one issue or a class of issues, that limitation shall be construed to apply to the combined assets of all of the pension funds and shall not restrict the total common pension fund investment in such asset or assets to those limitations for any individual pension fund. Not more than 15 percent of the market value of the assets of any pension and annuity group fund shall be represented by the market value of international common and preferred stocks and securities convertible into common stock as permitted by N.J.A.C. 17:16-41, together with the market value of international government and agency obligations, as permitted by N.J.A.C. 17:16-20, whether held directly by such pension fund or through Common Pension Fund D.

(c)

STATE INVESTMENT COUNCIL

Purchase and Sale of International Currency

Adopted Amendment: N.J.A.C. 17:16-81.2

Proposed: June 3, 1991 at 23 N.J.R. 1778(a).
Adopted: July 5, 1991 by the State Investment Council, Roland M. Machold, Director, Division of Investment.
Filed: July 5, 1991 as R.1991 d.391, **without change.**

Authority: N.J.S.A. 52:18A-91.

Effective Date: August 5, 1991.
Expiration Date: May 2, 1996.

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

Full text of the adoption follows.

17:16-81.2 Limitations

(a) The following limitation applies to those investments permitted under N.J.A.C. 17:16-81.1:

1. The foreign exchange contract must be for the purpose of hedging the international portfolio.

ENVIRONMENTAL PROTECTION

(a)

DIVISION OF WATER RESOURCES

Notice of Administrative Correction

New Jersey Pollutant Discharge Elimination System Fee Schedule for NJPDES Permittees and Applicants N.J.A.C. 7:14A-1.8

Take notice that the Department of Environmental Protection has discovered errors in the current text of N.J.A.C. 7:14A-1.8 (Code update 4-15-91). In proposing and adopting the most recent amendments to N.J.A.C. 7:14A-1.8(d) (see 22 N.J.R. 3679(a) and 23 N.J.R. 1151(a)), rule text current at the time of proposal (see Code update 4-16-90) and not affected by the rulemaking was incorrectly reproduced in the proposal and adoption, and has since been incorporated into the New Jersey Administrative Code.

In N.J.A.C. 7:14A-1.8(d), the second sentence should begin, "Permittees required by the department to conduct detection monitoring . . ." In N.J.A.C. 7:14A-1.8(d)1iii(4), text is missing in the first sentence and the entire second sentence was omitted. In the table of rating numbers and permeability in N.J.A.C. 7:14A-1.8(d)1iii(4), less than (>) and greater than (<) symbols are missing.

This notice of administrative correction is published pursuant to N.J.A.C. 1:30-2.7.

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

7:14A-1.8 Fee schedule for NJPDES permittees and applicants

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

(d) The annual fee for discharges to ground water, except for residuals and landfills covered in (e) and (f) below, is based upon the level of monitoring and/or remedial activity required by the Department at the permitted site. Permittees not required to conduct ground water monitoring shall use the Environmental Impact in d(1) below in the annual fee formula. Permittees required by the Department to conduct [ground water] **detection** monitoring, which is defined as monitoring performed by the permittee to determine whether current or past discharges have resulted in environmental impact, shall use the Environmental Impact in d(1) below in the annual fee formula. Permittees which are required by the Department, in a NJPDES permit, administrative order, administrative consent order, directive letter, or other form of notice, to conduct compliance monitoring in accordance with N.J.A.C. 7:14A-6.15, source removal, and/or ground water remediation, shall use the Environmental Impact in d(2) below in the annual fee formula.

1. The Environmental Impact of a Discharge to Ground Water for permittees not required to conduct ground water monitoring or permittees required to conduct detection monitoring is derived by applying the formula: Environmental Impact = (Risk × Quantity × Ground Water Rating Factor) where:

i.-ii. (No change.)

iii. Ground Water Rating Factor is the sum of the Ground Water Monitoring Status Factor, the Aquifer Factor, Ground Water Use Factor and Permeability Rating divided by 10 where:

(1)-(3) (No change.)

(4) Permeability Factor is the rating number, based on hydraulic conductivity in centimeters per second, of the geological formation immediately beneath **the regulated unit** or **if present, the** facility liner material **for the facilities in detection monitoring. For all other facilities, the permeability factor is based on the hydraulic conductivity of the geological material contaminated.** Facilities assigned a Ground Water Monitoring Status factor of 10, that have demonstrated control of the plume of ground water contamination shall be assigned a permeability factor of 10. Where permeability is not provided to the Department by the permittee, the Department shall assume a permeability factor of 10^{-2}. The rating numbers are assigned as follows:

Rating	Permeability
10	$<10^{-7}$
11	10^{-6}
12	10^{-5}
14	10^{-4}
18	10^{-3}
20	10^{-2}
22	$>10^{-2}$

2. (No change.)

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

(b)

DIVISION OF WATER RESOURCES

Notice of Rule Invalidation

New Jersey Pollutant Discharge Elimination System Statewide Water Quality Management Planning Co-Permittee Requirements

N.J.A.C. 7:14A-2.1(l), (m), (n) and (o) and 7:15-4.1

Take notice that the decision of the Superior Court of New Jersey, Appellate Division, in *New Jersey Builders Association v. Helen Fenske, Acting Commissioner, New Jersey Department of Environmental Protection,* Dkt. No. A-2367-89T1 (App. Div. June 18, 1991), affected the validity of N.J.A.C. 7:14A-2.1(l), (m), (n) and (o) and 7:15-4.1 concerning co-permittee requirements. However, in light of possible pertinent legislative action, the effective date of the decision was stayed until September 15, 1991.

Please contact the Department of Environmental Protection regarding further action on this case.

This notice is provided by the Office of Administrative Law pursuant to N.J.A.C. 1:30-1.13.

(c)

DIVISION OF ENVIRONMENTAL QUALITY

Laboratory Certification and Standards of Performance

Readoption: N.J.A.C. 7:18

Proposed: April 15, 1991 at 23 N.J.R. 1109(a).
Adopted: July 1, 1991 by Scott A. Weiner, Commissioner, Department of Environmental Protection.
Filed: July 3, 1991 as R.1991 d.385, **without change.**

Authority: N.J.S.A. 13:1D-1 et seq., 58:10A-1 et seq., and 58:12A-1 et seq., specifically 58:10A-4, 58:10A-9, 58:12A-4c(4) and 58:12A-9h.

DEP Docket No. 015-91-03.
Effective Date: July 3, 1991.
Expiration Date: July 3, 1996.

Summary of Public Comments and Agency Responses:

The New Jersey Department of Environmental Protection (the Department) is readopting N.J.A.C. 7:18 without change. The chapter contains rules governing the Department's laboratory certification program for drinking water and wastewater. The chapter was adopted in 1981 as part of the Department's efforts to meet the mandates of the New Jersey Safe Drinking Water Act ("SDWA"), N.J.S.A. 58:12A-1 et seq. and the New Jersey Water Pollution Control Act ("WPCA"), N.J.S.A. 58:10A-1 et seq. It provides administrative procedures, certification categories, standards, criteria, and the technical procedures necessary for the certification of laboratories testing drinking water and/or wastewater pursuant to the Department's SDWA program and the New Jersey

Pollutant Discharge Elimination System ("NJPDES") program. The readoption of the chapter will enable the Department to continue its laboratory certification program and, as such, will allow the Department to continue to meet the mandates of the SDWA and the WPCA. As referenced in the Summary section of the readoption notice published at 23 N.J.R. 1109(a) (April 15, 1991), the Department plans to propose additional amendments to N.J.A.C. 7:18 later this year and early next year.

As indicated above, the proposed readoption was published in the April 15, 1991 New Jersey Register. The secondary notice requirement was achieved by publishing a notice in The Star Ledger, The Press of Atlantic City, The Trenton Times, and the Burlington County Times, four newspapers of general circulation. The public comment period extended until May 15, 1991, during which time **no written comments** were received.

Full text of the readoption can be found in the New Jersey Administrative Code at N.J.A.C. 7:18.

(a)

DIVISION OF FISH, GAME AND WILDLIFE FISH AND GAME COUNCIL

1991-92 Game Code

Adopted Amendment: N.J.A.C. 7:25-5

Proposed: May 20, 1991 at 23 N.J.R. 1494(a).

Adopted: July 12, 1991 by the Fish and Game Council, Cole Gibbs, Chairman.

Filed: July 15, 1991 as R.1991 d.416, **with substantive and technical changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 13:1B-29 et seq.

DEP Docket Number: 020-91-04.

Effective Date: August 5, 1991.

Expiration Date: February 15, 1996.

Summary of Public Comments and Agency Responses:

Secondary notice was achieved by mailing press releases to 200 newspapers, posting copies of the rule proposal including summaries of the amendments and notice of the public hearing in Division field offices and mailing copies of the rule proposal to 15 interested organizations, and delivering notices of the public hearing to the Atlantic City Press and the Newark Star Ledger. Six written comments were received by the end of the comment period. A public hearing was held by and before the Fish and Game Council (Council) on June 11, 1991. Four commenters presented oral comments. The public hearing record may be inspected, or a copy obtained upon payment of the Department's nominal copying charges, by contacting Sue Kleinberg, Esq., Department of Environmental Protection, Office of Legal Affairs, 401 East State Street, CN 402, Trenton, New Jersey 08625. A summary of the comments and responses follows:

General Comments

COMMENT: George McCloskey, President, New Jersey State Federation of Sportsmen's Clubs, Mark Lanzim, Legislative Chairman, Ocean County Federation of Sportsmen's Clubs and Pete Furey, Secretary/Administrator, New Jersey Farm Bureau, all expressed general support for the amendments as proposed. Mr. McCloskey and Mr. Furey also expressed appreciation for the Council's and Division's efforts and acknowledged the benefits from the amendments to the sportsmen and/or landowners.

RESPONSE: The Council and the Division acknowledges the support of these commenters.

COMMENT: Rita Cileo, Coordinator, New Jersey Animal Right Alliance, Roseanne Laforte, Mercer County Coordinator, New Jersey Animal Rights Alliance and Nina Austenberg, Director, The Humane Society of the United States, all expressed opposition to the entire proposal and recreational hunting per se. Evie Kramer, President, Deer, Ecology, Environment and Resources, Inc. also objected to recreational hunting and specifically expressed her opposition to deer hunting at the Great Swamp National Widlife Refuge and the proposed 10 deer bag limit for the area.

RESPONSE: The Council is legally mandated by N.J.S.A. 13:1B-29 et seq. to manage wildlife throughout the State of New Jersey, including the wildlife in the Great Swamp National Wildlife Refuge, as a renewable natural resource and to maximize the benefits to be derived from this resource, including the taking of game species, while minimizing its negative impacts. Annual promulgation of amendments to the Game Code by the Council is essential to meet its responsibilities by adjusting seasons, bag limits and methods of taking according to the best scientific information available. Based on the best scientific information available, a ten deer bag limit is necessary for the Great Swamp National Wildlife Refuge in order to help achieve harvest objectives, particularly since the deer hunting season for the area has been reduced from six to five days in 1991.

N.J.A.C. 7:25-5.16(a)5

COMMENT: Richard Browne, a licensed New Jersey falconer, commented regarding the proposed amendment which would require apprentice falconers to be accompanied by a general or master falconer every time they capture or attempt to capture a raptor. He indicated that the time that would be involved on the part of the general or master falconer would make it difficult if not impossible to assist and therefore comply. He suggested that the requirement be deleted or that it pertain only to the taking of the first raptor by apprentice falconers.

RESPONSE: The Council agrees that the proposed amendment may make it difficult for an apprentice falconer to obtain the assistance of a general or master falconer on every occasion he or she wants to take or attempt to take a raptor for falconry purposes during a two year apprenticeship. It also places an undue burden on the general and master falconers who are serving as sponsors.

The Council's primary concern in this matter is to ensure that the apprentice falconers receive adequate and proper training in the live capturing of raptors. After reviewing the matter, the Council believes that this can be achieved by requiring the accompaniment of a general or master falconer only during the taking or attempted taking of an apprentice falconer's first raptor, and thereby eliminating any undue burden on the general and master falconers. The Council so elected to make this change upon adoption.

N.J.A.C. 7:25-5.27(a)

COMMENT: Joseph F. Musil suggested that the firearm buck season be lengthened to two weeks including three Saturdays with a larger bag limit.

RESPONSE: There would be no real benefits to be gained in terms of a significant harvest increase or the hunter success rate since relatively few antlered males remain in the population following the six day firearm buck season as currently provided. An additional seven days of firearm buck hunting as recommended by the commenter would not only be unproductive, it would also conflict with the either sex permit seasons which are needed to achieve antlerless harvest objectives and which provide permit holders the opportunity to hunt all sex and age components of the population thereby increasing hunting opportunities and the overall deer harvest.

N.J.A.C. 7:25-5.28(d)

COMMENT: Douglas Filey commented that the muzzleloader permit deer season is fine; however, he suggested that the three days included for January 1992 be scheduled prior to the regular firearm buck season for antlerless deer only.

RESPONSE: The Council does not see any advantage to the suggestion and, in fact, such an action would conflict with the permit bow season which would be open at the same time throughout most of the State. The continuation of separate and distinct firearm permit seasons following the permit bow and firearm buck season is also needed to facilitate program management and enforcement. The suggestion as provided would also remove the opportunity for muzzleloader permittees to take antlered males which they would be permitted during the three days scheduled for January.

Summary of Agency-Initiated Changes:

Two typographical errors are corrected herein:

Proposed shotgun permit dates for the six day season under N.J.A.C. 7:25-5.29(d)2 listed only the first three dates. The six dates are now correctly listed as December 18, 19 and 20 and January 17, 18 and 25, 1991 in conformity with proposed N.J.A.C. 7:25-5.25(m)2 which indicates that these zones have a six-day season.

Proposed shotgun permit seasons dates for Zone 38 under N.J.A.C. 7:25-5.29(d)7 and (m)7 were erroneously listed as December 5, 6, 18, 19 and 20, 1991. The dates are now correctly listed as December 5, 6, 12, 13 and 14, 1991 in conformity with proposed N.J.A.C. 7:25-5.31(c) specifying the duration of the Great Swamp shotgun season.

As noted in paragraph four of the Summary to the proposal, the Council intended to propose at both N.J.A.C. 7:25-5.9(h) and 7:25-5.10(j) to make beaver and otter trapping permits valid only in the zone or site designated and not transferable from person to person. However, the appropriate amendment was inadvertently omitted from N.J.A.C. 7:25-5.10(j) addressing river otter. The correction was made at N.J.A.C. 7:25-5.10(j).

The Council also adjusted the application dates for the submission and receipt of deer permit applications. Applicants will have additional time to submit permit applications and the Department of Environmental Protection will be able to begin processing these applications earlier in order to meet permit processing and issuance deadlines. Applications will now be accepted for an additional 10 days by advancing the earliest date for submitting applications from August 25 to August 15. The closing date remains as September 10, 1991. The changes were made at N.J.A.C. 7:25-5.28(h)4, 7:25-5.29(h)3 and 7:25-5.30(h)4 in order to provide a 27-day application period.

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 5. 1991-92 GAME CODE

7:25-5.1 General provisions

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

(c) This Code, when adopted and when effective, shall supercede the provisions of 1990-91 Game Code.

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

7:25-5.2 Pheasant—Chinese ringneck (Phasianus colchicus torguatus), English or blackneck (P. c. colchicus), Mongolian (P. mongolicus), Japanese green (Phasianus versicolor); including mutants and crosses of above

(a) The duration for the male pheasant season is November 9, to December 7, 1991, inclusive, and December 16, 1991 through January 4, 1992, excluding December 18, 19 and 20, 1991 in those deer management zones in which a shotgun permit deer season is authorized and also excluding any extra permit deer season day(s) if declared open.

(b) The duration for the male pheasant season for properly licensed persons engaged in falconry is September 1 to December 7, 1991, inclusive and December 16, 1991 through March 31, 1992, excluding November 8 and December 18, 19 and 20, 1991 and January 17, 18 and 25, 1992 in those management zones in which a shotgun deer permit season is authorized and also excluding any extra permit deer season day(s) if declared open.

(c) (No change.)

(d) The duration of the season for pheasants of either sex in the area described as Warren County north of Route 80, Morris County north of Route 80, Ocean County south of Route 70 and the counties of Sussex, Passaic, Bergen, Hudson, Essex, Camden, Atlantic and Cape May and on all wildlife management areas is November 9 to December 7, 1991, inclusive, and December 16, 1991 through February 17, 1992, excluding December 18, 19 and 20, 1991 and January 17, 18 and 25, 1992 in those deer management zones in which a shotgun permit deer season is authorized and also excluding any extra permit deer season day(s) if declared open.

(e) The hours for hunting pheasants on November 9, 1991 are 8:00 A.M. to ½ hour after sunset. All other days on which the hunting for pheasants is legal, the hours are sunrise to ½ hour after sunset.

(f) (No change.)

(g) The opening of the season on semi-wild preserves coincides with the listed statewide opening of November 9, 1991.

(h) (No change.)

7:25-5.3 Cottontail rabbit (Sylvilagus floridanus), black-tailed jack rabbit (Lepus californicus), white-tailed jack rabbit (Lepus townsendii), European hare (Lepus europeus), chukar partridge (Alectoris graeca), and quail (Colinus virginianus)

(a) The duration of the season for the hunting of cottontail rabbit, black-tailed jack rabbit, white-tailed jack rabbit, European hare, chukar partridge and quail is November 9 through December 7, 1991, inclusive, and December 16, 1991 to February 17, 1992, excluding December 18, 19 and 20, 1991 and January 17, 18 and 25, 1992 in those deer management zones in which a shotgun permit deer season is authorized and also excluding any extra permit deer season day(s) if declared open.

(b) The duration of the season for the hunting of the animals enumerated by (a) above for properly licensed persons engaged in falconry is September 1 to December 7, 1991, inclusive, and December 16, 1991 through March 31, 1992, excluding November 8 and December 18, 19 and 20, 1991 and January 17, 18 and 25, 1992 in those deer management zones in which a shotgun permit deer season is authorized and also excluding any extra permit deer season day(s) if declared open.

(c) (No change.)

(d) The hunting hours for the animals enumerated in this section are as follows: November 9, 1991, 8:00 A.M. to ½ hour after sunset. On all other days for which hunting for these animals is legal, the hours are sunrise to ½ hour after sunset.

(e) (No change.)

7:25-5.4 Ruffed grouse (Bonasa umbellus)

(a) The duration of the season for the hunting of grouse is October 12 through December 7, 1991, inclusive, and December 16, 1991 to February 17, 1992, excluding December 18, 19 and 20, 1991 and January 17, 18 and 25, 1992 in those deer management zones in which a shotgun permit deer season is authorized and excluding any extra deer permit season day(s) that is declared open.

(b) (No change.)

(c) The hunting hours for ruffed grouse are sunrise to ½ hour after sunset, with the exception of November 9, 1991 when legal hunting hours are 8:00 A.M. to ½ hour after sunset.

(d) (No change.)

7:25-5.5 Eastern gray squirrel (Sciurus carolinensis)

(a) The duration of the season for the hunting of squirrels is October 12 through December 7, 1991, inclusive, and December 16, 1991 to February 17, 1992, excluding December 18, 29 and 20, 1991 and January 17, 18 and 25, 1992 in those deer management zones in which a shotgun permit deer season is authorized and also excluding any extra permit season day(s) if declared open.

(b) The duration of the season for the hunting of squirrels for properly licensed persons engaged in falconry is September 1 to December 7, 1991, inclusive, and December 16, 1991 through March 31, 1992, excluding December 18, 19 and 20, 1991 and January 17, 18 and 25, 1992 in those deer management zones in which a shotgun permit deer season is authorized and also excluding any extra permit deer season day(s) if declared open.

(c) (No change.)

(d) Hunting hours for squirrels are sunrise to ½ hour after sunset, with the exception of November 9, 1991 when legal hunting hours are 8:00 A.M. to ½ hour after sunset.

(e) (No change.)

7:25-5.7 Wild turkey (Meleagris gallapavo)

(a) The duration of the Spring Wild Turkey Gobbler hunting season includes five separate hunting periods of four, five or 10 days each. The hunting periods for all hunting areas shall be:

1. Monday, April 20, 1992—Friday, April 24, 1992;
2. Monday, April 27, 1992—Friday, May 1, 1992;
3. Monday, May 4, 1992—Friday, May 8, 1992;
4. Monday, May 11, 1992—Friday, May 15, 1992 and Monday, May 18, 1992—Friday, May 22, 1992;
5. Saturday, April 25, 1992; Saturday, May 2, 1992; Saturday, May 9, 1992 and Saturday, May 16, 1992.

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

(e) Hunting methods shall be restricted to calling or stand-hunting. No person shall stalk or attempt to approach a wild turkey for the purpose of taking or attempting to take the bird. All persons must have a turkey calling device in their possession while turkey hunting. No person shall use an electronic calling device at any time during the open season. Persons may not drive or chase wild turkeys for the purpose of putting them in range of hunters. The use of dogs is prohibited. No, decoys, live or artificial, may be used. Fluorescent hunter's orange is not required on outer clothing for turkey hunting. No shot size larger than number four fine shot or smaller than number seven and one-half fine shot may be used for turkey hunting. No shotgun larger than 10 gauge or smaller than 20 gauge may be used for turkey hunting. A person shall not have in possession or control, a firearm or other weapon within 300 feet of a baited area. A baited area is defined as the collection, deposit, concentration or unnatural gathering of feed including, but not limited to, corn, wheat, oats or other substance that may constitute a lure or enticement to turkeys.

(f)-(g) (No change.)

(h) Wild Turkey Hunting Permits shall be applied for as follows:

1.-2. (No change.)

3. The application form shall be filled in to include: Name, address, 1992 firearm or archery hunting license number, turkey hunting areas applied for, hunting periods applied for, and any other information requested. Only those applications will be accepted for participation in random selection which are received in the Trenton office during the period of February 1-15, 1992, inclusive. Applications received after February 15 will not be considered for the initial drawing. Selection of permits will be by random drawing.

i. If a fall turkey hunting season is authorized for 1992, application shall be made in conjunction with the spring season application procedures in a form as prescribed by the Division.

4.-6. (No change.)

(i) Special Farmer Spring Turkey Permits shall be applied for as follows:

1.-2. (No change.)

3. The application form shall be filled in to include: Name, age, address and any other information requested thereon. THIS APPLICATION MUST BE NOTARIZED. Properly completed application forms will be accepted in the Trenton office only during the period of February 1-15, 1992. There is no fee required and all qualified applicants will receive a Special Farmer Spring Turkey Permit delivered by mail.

4. (No change.)

(j) (No change.)

(k) Turkey Hunting Area Map is on file at the Office of Administrative Law and is available from that agency or the Division. The 1992 Spring Turkey Hunting Season Permit Quotas are as follows:

1992 SPRING TURKEY HUNTING SEASON PERMIT QUOTAS

Turkey Hunting Area Number	Weekly Permit Quota*	Season Total	Portions of Counties Involved
1	100	500	Sussex
2	120	600	Sussex, Warren
3	80	400	Sussex, Warren
4	100	500	Sussex, Warren, Morris
5	100	500	Sussex
6	150	750	Sussex, Passaic, Bergen
7	150	750	Sussex, Morris, Passaic
8	60	300	Warren, Hunterdon
9	60	300	Warren, Hunterdon, Morris
10	25	125	Essex, Middlesex, Morris, Somerset, Union
11	40	200	Middlesex, Mercer, Hunterdon, Somerset
13	10	50	Burlington, Ocean
14	50	250	Burlington, Ocean, Mercer, Monmouth
15	55	275	Burlington, Camden, Atlantic
16	60	300	Burlington, Atlantic, Ocean, Cape May, Cumberland
20	65	325	Cumberland, Salem
21	50	250	Atlantic, Cumberland, Salem
22	0	0	Atlantic, Cape May, Cumberland
Total	1,275	6,375	

*Applied to each of the five hunting periods (A,B,C,D,E) in all areas:

A. Monday, April 22, 1992—Friday, April 24, 1992

B. Monday, April 27, 1992—Friday, May 1, 1992

C. Monday, May 4, 1992—Friday, May 8, 1992

D. Monday, May 11, 1992—Friday, May 15, 1992 and Monday, May 18, 1992—Friday, May 22, 1992

E. Saturday, April 25, 1992; Saturday, May 2, 1992; Saturday, May 9, 1992 and Saturday, May 16, 1992

(l) (No change.)

(m) Turkey Hunting Areas are as follows:

1. (No change.)

2. Turkey Hunting Area No. 2: That portion of Sussex and Warren Counties lying within a continuous line beginning at the intersection of Rt. 94 and the Blairstown-Millbrook Road at Blairstown; then northwest along the Blairstown-Millbrook Road to Millbrook Village; then northwest along the Millbrook-Flatbrookville Road to its intersection with the Flatbrook at Flatbrookville; then south along the west bank of the Flatbrook to its confluence with the Delaware River; then north along the east bank of, the Delaware River to the intersection with Rt. 560 at Dingman's Ferry; then east along Rt. 560 to its intersection with Rt. 206; then southeast along Rt. 206 to its intersection with Rt. 519 at Branchville; then south along Rt. 519 to its intersection with Rt. 94 at Newton; then southwest along Rt. 94 to the point of beginning at Blairstown.

3.-13. (No change.)

14. Turkey Hunting Area No. 15: That portion of Atlantic, Burlington, Camden and Gloucester Counties lying within a continuous line beginning at the intersection of Routes 70 and 206 at Red Lion; then south along Route 206 to Hammonton; then south along Route 54 from Hammonton to its intersection with Route 40 at Buena; then west along Route 40 to its intersection with Route 77 at Upper Pittsgrove; then north on Route 77 to its intersection with Route

45 at Mullica Hill; then north along Route 45 to its intersection with Route 322, then west along Route 322 to its intersection with the Delaware River; then north along the east bank of the Delaware River to its intersection with Route 30 at Camden; then east along Route 30 to its intersection with Route 38; then east along Route 38 to its intersection with Route 70; then east along Route 70 to the point of beginning.

15. (No change.)

16. Turkey Hunting Area No. 20: That portion of Cumberland and Salem Counties beginning at the intersection of east bank of the Delaware River and Route 322 near Bridgeport; then southeast on Route 322 to its intersection with Route 45 near Mullica Hill; then south on Route 45 to its intersection with Route 77; then south on Route 77 to its intersection with Route 40; then east along Route 40 to its intersection with Route 553; then south along Route 553 to its intersection with Route 49; then west along Route 49 to Bridgeton and its intersection with the Cohansey River; then south along the west bank of the Cohansey River to its confluence with the Delaware River; then north along the east bank of the Delaware River to the point of beginning.

17.-18. (No change.)

7:25-5.8 Mink (Mustela vison) and muskrat (Ondatra zibethicus) and nutria (Myocaster coypus) trapping only

(a) (No change.)

(b) The duration of the mink, muskrat and nutria trapping season is as follows:

1. Northern Zone: 6:00 A.M. on November 15, 1991 through March 15, 1992, inclusive, except on State Fish and Wildlife Management Areas.

2. Southern Zone: 6:00 A.M. on December 1, 1991 through March 15, 1992, inclusive, except on State Fish and Wildlife Management Areas.

3. (No change.)

4. On State Fish and Wildlife Management Areas: 6:00 A.M. on January 1 through March 15, 1992, inclusive.

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

7:25-5.9 Beaver (Castor canadensis) trapping

(a) (No change.)

(b) The duration of the trapping season for beaver shall be February 1 through February 28, 1992, inclusive.

(c) Special Permit: A special permit obtained from the Division of Fish, Game and Wildlife shall be required to trap beaver. (If the number of applications received in the Trenton office exceeds the quotas listed, a random drawing will be held to determine permit holders). Applications shall be received in the Trenton office during the period December 1, 1991—December 26, 1991. Applicants may apply for only one beaver trapping permit and shall provide their 1991 trapping license number. Permits will be allotted on a zone basis as follows: Zone 1—9, Zone 2—8, Zone 3—2, Zone 4—4, Zone 5—3, Zone 6—16, Zone 7—3, Zone 8—1, Zone 9—3, Zone 10—5, Zone 11—3, Zone 12—3, Zone 13—0, Zone 14—1, Zone 15—0, Zone 16—3, Zone 17—3, Zone 18—2. Total 69. Successful applicants must trap with a valid, current trapping license.

(d) Special Site Specific Permit: During the initial application period, applicants may also apply for one special site specific beaver permit. The total number of permits available shall not exceed 31. Site specific permits will be issued for specific locations or properties where the Division has determined that beaver damage or nuisance problems exist. A random drawing will be held to determine permit holders; however, applicants unsuccessful in obtaining the special permit as set forth at (c) above will be given first opportunity. Permits will be valid only during the beaver trapping season.

(e) The season limit for beaver trapping is three beaver per permit.

(f) A "beaver transportation tag" provided by the Division shall be affixed to each beaver taken immediately upon removal from trap, and all beaver shall be taken to a designated beaver checking station at the times and dates specified on the beaver permit and, in any case, no later than March 2, 1992.

(g) Each beaver trapper shall be restricted to a maximum of five traps. However holders of both a Special Permit and a Special Site Specific Permit may use five additional traps per Special Site Specific Permit provided they are used only on the property or site specified in the Special Site Specific Permit. Each trap shall be tagged pursuant to N.J.A.C. 7:25-5.12 with the tag clearly visible above the level of the water or ice. The Division, in its discretion, may designate and suitably post certain beaver colonies and prohibit all trapping within their dams, or within 500 feet thereof, during the beaver trapping season as indicated in this section.

(h) Special Beaver Permit and Special Site Specific Permits are valid only in the zone or site designated and are not transferable from person to person.

(i) (No change.)

7:25-5.10 River otter (Lutra canandensis) trapping

(a) (No change.)

(b) The duration of the trapping season for otter shall be February 1 through February 28, 1992, inclusive.

(c) Special Permit: A special permit obtained from the Division of Fish, Game and Wildlife shall be required to trap otter. (If the number of applications received in the Trenton office exceeds the quotas listed, a random drawing will be held to determine permit holders). Beaver permit holders will be given first opportunity for otter permits in their respective zones. Applications shall be received in the Trenton office during the period December 1, 1991—December 26, 1991. Only one application per person may be submitted for trapping otter and applicants shall provide their 1991 trapping license number. Permits will be allotted on a zone basis as follows: Zone 1—8, Zone 2—8, Zone 3—2, Zone 4—4, Zone 5—3, Zone 6—9, Zone 7—3, Zone 8—6, Zone 9—3, Zone 10—4, Zone 11—5, Zone 12—2, Zone 13—14, Zone 14—7, Zone 15—12, Zone 16—4, Zone 17—2, Zone 18—5. Total 101. Successful applicants must trap with a valid, current trapping license.

(d) (No change.)

(e) The "otter transportation tag" provided by the Division must be affixed to each otter taken immediately upon removal from the trap. All otter pelts and carcasses shall be taken to a beaver-otter check station at dates specified on the otter permit and, in any case, no later than March 2, 1992, where a pelt tag will be affixed and the carcass surrendered.

(f)-(i) (No change.)

(j) Special otter permits are valid only in the zone designated and are not transferable from person to person.

7:25-5.11 Raccoon (Procyon lotor), red fox (Vulpes vulpes), gray fox (Urocyon cinereoargenteus), Virginia opossum (Didelphis virginiana), striped skunk (Mephitis mephitis), long-tailed weasel (Mustela frenata), short-tailed weasel (Mustela erminea), and coyote (Canis latrans) trapping only

(a) (No change.)

(b) The duration of the regular raccoon, red fox, gray fox, Virginia opossum, striped skunk, long-tailed weasel, short-tailed weasel and coyote trapping season is 6:00 A.M. on November 15, 1991 to March 15, 1992, inclusive, except on State Fish and Wildlife Management Areas.

(c) The duration for trapping on State Fish and Wildlife Management Areas is 6:00 A.M. on January 1, 1992 to March 15, 1992, inclusive.

(d)-(h) (No change.)

7:25-5.13 Migratory birds

(a) Should any open season on migratory game birds, including waterfowl, be set by Federal regulation which would include the date of November 9, 1991, the starting time on such date will be 8:00 A.M. to coincide with the opening of the small game season on that date. However, this shall not preclude the hunting of migratory game birds, including waterfowl, on the tidal marshes of the State as regularly prescribed throughout the season by Federal regulations.

(b) (No change.)

(c) A person shall not take, attempt to take, hunt for or have in possession, any migratory game birds including waterfowl, except

at the time and in the manner prescribed in the Code of Federal Regulations by the U.S. Department of the Interior, U.S. Fish and Wildlife Service, for the 1991-92 hunting season. The species of migratory game birds, including waterfowl, that may be taken or possessed and unless otherwise provided the daily bag limits shall be the same as those prescribed by the U.S. Department of the Interior, U.S. Fish and Wildlife Service for the 1991-92 hunting season.

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

(h) Hunting hours for waterfowl shall be those hours that are prescribed by the Department of the Interior, United States Fish and Wildlife Service, for the 1991-92 hunting season.

(i)-(l) (No change.)

(m) A person shall not take or attempt to take migratory game birds:

1.-10. (No change.)

11. Before 8:00 A.M. on November 9, 1991. However this shall not preclude the hunting of migratory game birds on tidal waters or tidal marshes of the State.

12.-13. (No change.)

14. Except at the time and manner prescribed by the State or Federal regulation, or by the 1991-92 Game Code.

15. With shotgun shells loaded with pellets larger than No. 4 fine shot except those persons engaged in hunting waterfowl may use nothing larger than T (.200 inch) steel shot.

16.-19. (No change.)

(n) Seasons and bag limits are as follows:

1. Morning dove (Zenaida macroura) are protected. There will be no open season on these birds during 1991-92.

2. Rail and gallinule season and bag limits are as follows:

i. The duration of the season for hunting clapper rail (Rallus longirostris), Virginia rail (Rallus limicola), sora rail (Porzana carolina) and common gallinule or moorhen (Gallinula chloropus) is September 1 through November 9, 1991, inclusive.

ii. (No change.)

(o) Woodcock zones and hunting hours are as follows:

1.-2. (No change.)

3. Hunting hours for Woodcock are sunrise to sunset except on November 9, when the hunting hours are 8:00 A.M. to sunset.

(p)-(r) (No change.)

7:25-5.14 Special regulation limiting use of shotguns and shotgun shells containing lead pellets

(a) No person shall have in possession or use in hunting waterfowl and coot or any snipe, rail or gallinules after the regular season for hunting waterfowl commences any shotgun shell containing lead shot or lead pellets or have in possession or use any shotgun containing lead shot in New Jersey, including all territorial waters.

1. (No change.)

(b) A person found in possession of any of the following items at (b)1 to 3 below while hunting for, pursuing, taking or attempting to take waterfowl, coot or any snipe, rail or gallinule after the regular waterfowl season commences is in violation of this section. Each violation shall constitute an additional, separate and distinct offense subjecting the person to a penalty of $20.00 for each offense.

1.-3. (No change.)

(c) (No change.)

7:25-5.15 Crow (Corvus brachyrhynchos)

(a) Duration for the season for hunting the crow shall be Monday, Thursday, Friday and Saturday from August 12, 1991 through March 21, 1992, inclusive, excluding December 9-14 and December 18, 19 and 20, 1991 and January 17, 18 and 25, 1992 in those deer management zones in which a shotgun permit deer season is authorized.

(b) (No change.)

(c) The hours for hunting crows shall be sunrise to ½ hour after sunset, except on November 9, 1991 when the hours are 8:00 A.M. to ½ hour after sunset.

(d) (No change.)

7:25-5.16 General falconry rules

(a) The following rules govern the taking, possession, training, transfer, marking and housing facilities of raptors, the classification of permittees and the use of raptors for falconry to take, kill, or pursue wild birds or wild animals.

1. (No change.)

2. Classes of permits are as follows:

i. (No change.)

ii. General: Permittee shall be at least 18 years of age.

(1) Permittee shall have been licensed at least two years as an apprentice falconer and have had a raptor in possession for at least 12 months. Permittee shall have had two seasons of active field flying experience with a raptor. Sponsor for apprentice must certify in writing that the apprentice is now qualified to become a general falconer.

(2)-(4) (No change.)

iii. (No change.)

3.-4. (No change.)

5. Restrictions on taking raptors are as follows:

i. No person shall take, possess, transport or obtain a raptor unless they are in possession of a current falconry permit, *[ongame]* ***nongame*** permit as described in N.J.A.C. 7:25-4.2(a) or endangered species permit as described in N.J.A.C. 7:25-4.10(b). Apprentice falconers *[may only]* ***shall*** take or attempt to take *[a]* ***their first*** raptor while in the accompaniment of a general or master falconer.

ii.-vi. (No change.)

vii. Bal-Chatri type live traps, other live traps and nets may be used for taking raptors providing they are used in such a manner which would minimize any danger of injuring the raptor. All traps or nets used must have attached thereto a tag or label clearly showing the name and address, permit number and class of the permittee.

viii. Owners of escaped raptors marked in accordance with these regulations may recapture these marked raptors at any time. However, all other banded raptors trapped while attempting to capture a raptor for falconry shall immediately be released unharmed and a report containing the date, time, band number, location and species shall be submitted to the Division within 10 days of capture.

6. Marking of raptors shall be as follows:

i. (No change.)

ii. Wild-caught birds must be tagged with the falconer's name and phone number on the jesses or bells. Captive bred birds must have a seamless Federal marker affixed to one leg.

iii. (No change.)

iv. It shall be unlawful for any person to alter or deface a marker. However, the falconer may smooth any imperfect surface provided the integrity of the marker and numbering is not affected. It shall be unlawful to use or possess a counterfeit marker.

v. (No change.)

7.-9. (No change.)

10. Reporting shall be as follows:

i. Whenever a raptor is acquired, transferred, released or lost, due to escape or death, a copy of Federal Form 3-186A must be submitted to the division within 10 days of the transaction or occurrence.

ii. A report is also required upon termination of the permit for any reason.

Recodify existing ii. as iii. (No change in text.)

11.-12. (No change.)

7:25-5.17 Raccoon (Procyon lotor) and Virginia opossum (Didelphis virginiana) hunting

(a) The duration for the season of hunting raccoons and Virginia opossum is one hour after sunset on October 1, 1991 to one hour before sunrise on March 1, 1992. The hours for hunting are one hour after sunset to one hour before sunrise.

(b) (No change.)

(c) A person shall not hunt for raccoon or opossum with dogs and firearms or weapons of any kind on December 9-14 and on December 18, 19 and 20, 1991 and January 17, 18 and 25, 1992 in those deer management zones or which a shotgun permit deer season is authorized and including any extra permit deer seasons day(s).

(d) A person shall not train a raccoon or opossum dog other than during the period of September 1 to October 1, 1991 and from March 1 to May 1, 1992. The training hours are one hour after sunset to one hour before sunrise.

(e) (No change.)

7:25-5.18 Woodchuck (Marmota monax) hunting

(a) Duration for the hunting of woodchucks with a rifle in this State is March 14 through September 19, 1991. Licensed hunters may also take woodchuck with shotgun or long bow and arrow or by means of falconry during the regular woodchuck rifle season and during the upland game season established in N.J.A.C. 7:25-5.3.

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

7:25-5.19 Red fox (Vulpes vulpes) and gray fox (Urocyon cinereoargenteus) hunting

(a) The duration of the red fox and gray fox hunting season is as follows:

1. Bow and Arrow Only—September 28 through November 8, 1991.

2. Firearm or Bow and Arrow—November 9, 1991 through February 22, 1992, excluding December 9-14, 18, 19 and 20, 1991 and January 17, 18 and 25, 1992 in those deer management zones in which a shotgun permit deer season is authorized and also excluding any extra permit deer season day(s) if declared open.

(b) The use of dogs shall not be allowed for fox hunting during the Statewide bow and arrow only season of September 28—November 8, 1991. There shall be no fox hunting during the firearm deer season, except that a person hunting deer during the firearm deer season may kill fox if the fox is encountered before said person kills a deer. However, after a person has killed a deer he or she must cease all hunting immediately.

(c) The hours for hunting fox are 8:00 A.M. to ½ hour after sunset on November 9, 1991 and on other days from sunrise to ½ hour after sunset.

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

7:25-5.20 Dogs

(a) A person shall not exercise or train dogs on State Fish and Wildlife Management Areas May 1 to August 31, inclusive, except on portions of various wildlife management areas designated as dog training areas, and there shall be no exercising or training of dogs on any Wildlife Management Area on November 8, 1991.

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

7:25-5.23 Firearms and missiles, etc.

(a) Except when legally engaged in deer hunting during the prescribed firearm deer seasons no person shall have in his or her possession in the woods, fields, marshlands or on the water any shell or cartridge with missiles of any kind larger than No. 4 fine shot. This shall not preclude a properly licensed person from hunting woodchuck with a rifle during the woodchuck season. Also excepted is the use of a muzzleloading rifle, .36 caliber or smaller, loaded with a single projectile during the late squirrel season in designated areas. Waterfowl hunters may possess and use shotgun shells loaded with T (.200 inch) steel fine shot or smaller and properly licensed persons hunting for raccoon or opossum with hounds or engaged in trapping for furbearing animals may possess and use a .22 caliber rifle and raccoon, or opossum or legally trapped furbearing animals other than muskrat.

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

(e) Within the areas described as portions of Passaic, Mercer, Hunterdon, Warren and Sussex Counties lying within a continuous line beginning at the intersection of Rt. 513 and the New York State line; then south along Rt. 513 to its intersection with the Morris-Passaic County line; then west along the Morris-Passaic County line to the Sussex County line; then south along the Morris-Sussex County line to the Warren County line; then southwest along the Morris-Warren County line to the Hunterdon County line; then southeast along the Morris-Hunterdon County line to the Somerset County line; then south along the Somerset-Hunterdon County line to its intersection with the Mercer County line; then west and south along the Hunterdon-Mercer County line to its intersection with Rt. 31; then south along Rt. 31 to its intersection with Rt. 546; then west along Rt. 546 to the Delaware River; then north along the east bank of the Delaware River to the New York State Line; then east along the New York State Line to the point of beginning at Lakeside; and in that portion of Salem, Gloucester, Camden, Burlington, Mercer, Monmouth, Ocean, Atlantic, Cape May and Cumberland counties lying within a continuous line beginning at the intersection of Rt. 295 and the Delaware River; then east along Rt. 295 to its intersection with the New Jersey Turnpike; then east along the New Jersey Turnpike to its intersection with Rt. 40; then east along Rt. 40 to its intersection with Rt. 47; then North along Rt. 47 to its intersection with Rt. 536; then east along Rt. 536 to its intersection with Rt. 206; then north along Rt. 206 to its intersection with the New Jersey Turnpike; then northeast along the New Jersey Turnpike to its intersection with Rt. 571; then southeast along Rt. 571 to its intersection with the Garden State Parkway; then south along the Garden State Parkway to its intersection with Rt. 9 at Somers Point; then south along Rt 9 to its intersection with Rt. 83; then west along Rt. 83 to its intersection with Rt. 47; then north along Rt. 47 to its intersection with Dennis Creek; then south along the west bank of Dennis Creek to its intersection with Delaware Bay; then northwest along the east shore of Delaware Bay and the Delaware River to the point of beginning; persons holding a valid and proper rifle permit in addition to their 1992 firearm hunting license may hunt for squirrels between January 27 and February 17, 1992 using a .36 caliber or smaller muzzleloading rifle loaded with a single projectile.

(f) Except as specifically provided below for waterfowl hunters, semi-wild and commercial preserves, muzzleloader deer hunters and trappers, from December 9-14, 1991 inclusive, it shall be illegal to use any firearm of any kind other than a shotgun. Nothing herein contained shall prohibit the use of a shotgun not smaller than 20 gauge nor larger than 10 gauge with a rifled bore for deer hunting only. Persons hunting deer shall use a shotgun not smaller than 20 gauge or larger than 10 gauge with the lead or lead alloy rifled slug or slug shotgun shell only or a shotgun not smaller than 12 gauge nor larger than 10 gauge with the buckshot shell. It shall be illegal to have in possession any firearm missile except the 20, 16, 12 or 10 gauge lead or lead alloy rifled slug or hollow based slug shotgun shell or the 12 or 10 gauge buckshot shell. (This does not preclude a person legally engaged in hunting on semi-wild or commercial preserves for the species under license from being possessed solely of shotgun(s) and nothing larger than No. 4 fine shot, nor a person engaged in hunting waterfowl only from being possessed solely of shotgun and nothing larger than T (.200 inch) steel shot). A legally licensed trapper possessing a valid rifle permit may possess and use a .22 rifle and short rimfire cartridge only while tending his or her trap line.

1. Persons who are properly licensed may hunt for deer with a muzzleloader rifle during the 1991 six day firearm deer season and the permit muzzleloader rifle deer season.

2.-3. (No change.)

4. A muzzleloader is considered unloaded when, in the case of a percussion cap rifle or shotgun, the percussion cap has been removed from the nipple; in the case of a flintlock, when the powder is removed from the pan and a boot or cover made of a nonmetallic material is placed over the frizzen.

5. Whenever a firearm is in a motor vehicle, in addition to the requirements found in N.J.A.C. 7:25-5.23(f)4 (unloaded), it shall be enclosed in a securely fastened case.

(g)-(p) (No change.)

7:25-5.24 Bow and arrow, general provisions

(a) A bow means longbow, recurved bow or compound bow that is hand held and hand drawn and that has no mechanical devices built into or attached to, that will enable the archer to lock the bow at full or partial draw. Except as provided in N.J.A.C. 7:25-5.24(e), all draw locking and draw holding devices are prohibited and all crossbows or variations thereof are prohibited. Hand-held releasing devices are permitted.

(b) No person shall use a bow and arrow for hunting, on December 18, 19 and 20, 1991 and January 17, 18 and 25, 1992 in those deer management zones in which a permit shotgun deer season is authorized, on any additional Permit Deer Season Day(s) if declared open, during the 6-Day Firearm Deer Season, or between ½ hour after sunset and sunrise during other seasons. Deer shall

not be hunted for or taken on Sunday except on wholly enclosed preserves that are properly licensed for the propagation thereof.

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

7:25-5.25 White-tailed deer (Odocoileus virginianus) fall bow season (either sex)

(a) Deer of either sex and any age may be taken by bow and arrow exclusively from September 28-November 8, 1991, inclusive; except in Zone 4 where the season shall run concurrent; however, only deer with antlers at least three inches long may be taken from September 28 to October 18. Legal hunting hours shall be ½ hour before sunrise to ½ hour after sunset.

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

7:25-5.26 White-tailed deer winter bow seasons (either-sex)

(a) Deer of either sex and any age may be taken by bow and arrow exclusively from ½ hour before sunrise on January 6 to ½ hour after sunset on January 29, 1992 inclusive, excluding January 17, 18 and 25, 1992 in those management zones in which a shotgun permit season is authorized. Legal hunting hours shall be ½ hour before sunrise to ½ hour after sunset.

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

7:25-5.27 White-tailed deer six day firearm season

(a) Duration for this season will be December 9-14, 1991 inclusive with shotgun or muzzleloader rifle, exclusively.

(b) Bag Limit: Two deer, with antler at least three inches long, except in those areas designated as "hunters choice" indicated in (d) below, where the bag limit is two deer of either-sex. Only one deer may be taken in a given day per person on a regular firearm hunting license. Persons awarded Zone 9 or Zone 13 shotgun permits may also take one deer of either sex and any age, per permit, on December 9 and 14, 1991, and persons possessing Zone 5, 7, 8, 10, 11, 12, 41 or 63 shotgun permits may also take one deer of either sex and any age per permit on December 9, 1991 subject to the provisions of N.J.A.C. 7:25-5.29. Deer shall be tagged immediately with the "transportation tag" appropriate for the season, completely filled in and shall be transported to a checking station before 7:00 P.M. E.S.T. on the day killed. Upon completion of the registration of the first deer, one valid and proper "New Jersey Second Deer Permit And Transportation Tag" (second tag) will be issued which will allow that person to continue hunting and take one additional deer with antler at least three inches long or one additional deer of either sex in the "hunters choice" area, exclusively, during the current, six-day firearm season. The second tag shall not be valid on the day of issuance and all registration requirements apply. Any legally killed deer which is recovered too late to be brought to a check station by closing time shall be immediately reported by telephone to the nearest Division of Fish, Game and Wildlife law enforcement regional headquarters. This deer must be brought to a checking station on the next open day to receive a legal "possession tag." If the season has concluded, this deer must be taken to a regular deer checking station on the following weekday to receive a legal "possession tag."

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

(e) Hunting Hours: December 9-14, 1991, inclusive, 7:00 A.M. E.S.T. to 5:00 P.M. E.S.T., with shotgun or muzzleloader rifle.

(f)-(g) (No change.)

7:25-5.28 White-tailed deer muzzleloader rifle permit season (either sex)

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

(d) Duration of the muzzleloader rifle permit season is December 16, 17, 21, 23, 24, 26, 27, 28, 30 and 31, 1991 and January 2, 3 and 4, 1992 in zones 2, 3, 5-36, 40-51, 55, 57, 58, 61, 63 and 65; November 9-16, 1991 (first segment) and December 16-27, 30 and 31, 1991 and January 2, 3 and 4, 1992 (second segment) in zones 37 and 52; December 16-31, 1991 and January 1, 2, 3 and 4, 1992 in zones 39 and 62; November 30-December 7, 1991 (first segment) and December 16-31, 1991 (second segment) in zone 53; December 16, 17, 21, 23, 24, 26, 27 and 28, 1991 in zones 1 and 4; December 16-31, 1991 in Zone 54 or any other time as determined by the Director. Legal hunting hours shall be sunrise to ½ hour after sunset E.S.T.

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

(h) Muzzleloader Rifle Permit Season Permits shall be applied for as follows:

1.-3. (No change.)

4. The application form shall be filled in to include: Name, address, current firearm hunting license number, deer management zone applied for, and any other information requested. Only those applications will be accepted for participation in random selection which are received in the Trenton office during the period of August *[25]**15*-September 10, 1991 inclusive. Applications postmarked after September 10 will not be considered for the initial drawing. Selection of permittees will be made by random selection.

5.-7. (No change.)

(i) Farmer Muzzleloader Rifle Permit Season Permits shall be applied for as follows:

1.-2. (No change.)

3. The application form shall be filled in to include: Name, age, size of farm, address, and any other information requested thereon. THIS APPLICATION MUST BE NOTARIZED. Properly completed application forms will be accepted in the Trenton office only during the period of August 1 to 15, 1991. There is no fee required, and all qualified applicants will receive a farmer muzzleloader rifle permit season permit, delivered by mail.

4.-5. (No change.)

(j) (No change.)

(k) The Deer Management Zone Map is on file at the Office of Administrative Law and is available from that agency or the Division. The 1991 Muzzleloader Rifle Deer Season Permit Quotas (either sex) are as follows:

1991 MUZZLELOADER RIFLE PERMIT SEASON PERMIT QUOTAS

Deer Mgt. Zone No.	Season Dates Code	Anticipated Deer Harvest 1991	Permit Quota 1991	Portions of Counties Involved
1	1	58	405	Sussex
2	2	100	535	Sussex
3	2	107	750	Sussex, Passaic, Bergen
4	1	76	288	Sussex, Warren
5	2	357	1540	Sussex, Warren
6	2	124	650	Sussex, Morris, Passaic, Essex
7	2	151	650	Warren, Hunterdon
8	2	326	1735	Warren, Hunterdon, Morris, Somerset
9	2	99	400	Morris, Somerset
10	2	239	850	Warren, Hunterdon
11	2	121	500	Hunterdon
12	2	285	1050	Mercer, Hunterdon, Somerset
13	2	37	225	Morris, Somerset
14	2	150	700	Mercer, Somerset, Middlesex, Burlington
15	2	115	400	Mercer, Monmouth, Middlesex
16	2	108	450	Ocean, Monmouth
17	2	73	250	Ocean, Monmouth, Burlington
18	2	48	265	Ocean
19	2	64	350	Camden, Burlington
20	2	98	350	Burlington
21	2	179	550	Burlington, Ocean
22	2	31	150	Burlington, Ocean
23	2	219	800	Burlington, Camden, Atlantic
24	2	299	650	Burlington, Ocean
25	2	133	600	Gloucester, Camden, Atlantic, Salem
26	2	304	800	Atlantic
27	2	196	600	Salem, Cumberland
28	2	152	475	Salem, Cumberland, Gloucester
29	2	114	400	Salem, Cumberland
30	2	42	140	Cumberland
31	2	15	65	Cumberland
32	2	14	50	Cumberland
33	2	63	250	Cape May, Atlantic
34	2	194	550	Cape May, Cumberland
35	2	135	500	Gloucester, Salem
36	2	14	60	Bergen, Hudson, Essex, Morris, Union, Somerset, Middlesex
37	3	82	225	Burlington, (Fort Dix Military Reservation)
38				Morris (Great Swamp National Wildlife Refuge)
39	4	17	25	Monmouth (Earle Naval Weapons Station)
40	2	16	80	Warren (Allmuchy State Park)
41	2	119	400	Mercer, Hunterdon
42	2	17	55	Atlantic
43	2	92	230	Cumberland
44	2	29	75	Cumberland
45	2	81	275	Cumberland, Atlantic, Cape May
46	2	73	188	Atlantic
47	2	26	100	Atlantic, Cumberland, Gloucester
48	2	52	250	Burlington
49	2	4	15	Burlington, Camden, Gloucester
50	2	44	250	Middlesex, Monmouth
51	2	40	125	Monmouth, Ocean
52	3	18	70	Ocean (Fort Dix Military Reservation)
53	5	27	40	Ocean (Lakehurst Naval Engineering Center)
54	6	1	6	Morris (Picatinny Arsenal-ARRAD Com)
55	2	15	70	Gloucester
56			0	Atlantic (Forsythe National Wildlife Refuge)
57	2	13	40	Atlantic (Forsythe National Wildlife Refuge)
58	2	11	50	Burlington, Ocean (Forsythe National Wildlife Refuge)
59			0	Salem (Supawna National Wildlife Refuge)
60				Hunterdon (Round Valley Recreation Area)
61	2	24	105	Atlantic (Atlantic County Parks)
62	4	13	20	Monmouth (Fort Monmouth)

63	2	66	200	Salem
64			0	Monmouth (Monmouth Battleground State Park)
65	2	21	95	Gloucester
Total		5,741	21,972	

(1) The Season Dates Code referred in the table in (k) above is as follows:

1. Indicates the season dates will be December 16, 17, 21, 23, 24, 26, 27 and 28, 1991.

2. Indicates the season dates will be December 16, 17, 21, 23, 24, 26, 27, 28, 30, and 31, 1991 and January 2, 3, and 4, 1992.

3. Indicates the season dates will be November 9-16, 1991 (first segment); and, December 16-27, 30 and 31, 1991 and January 2, 3 and 4, 1992 (second segment).

4. Indicates the season dates will be December 16-31, 1991 and January 1-4, 1992.

5. Indicates the season dates will be November 30-December 7, 1991 (first segment) and December 16-31, 1991 (second segment).

6. Indicates the season dates will be December 16-31, 1991.

(m) Permit quotas in zones 37, 38, 39, 40, 52-54, 57-59, 61 and 62 are contingent upon approval by appropriate land management agencies for those zones.

(n) Muzzleloader, rifle permit season permits not applied for by September 10, 1991 will be reallocated to shotgun and bow permit season applicants.

7:25-5.29 White-tailed deer shotgun permit season, (either sex)

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

(c) The season bag limit per permit shall be one deer of either sex and any age with a shotgun permit season permit in Zones 1, 3, 4, 18, 20, 21, 23, 24, 26, 30, 31, 32, 34, 37, 40, 43, 45, 46, 52, 53, 55, 61, 64 and 65; two deer of either sex and any age with a shotgun permit season permit in Zones 2, 5-17, 19, 22, 25, 27-30, 33, 35, 36, 39, 41, 42, 44, 47-51, 54, 62 and 63; three deer of either-sex and any age with a shotgun permit season permit in zones: 56, 59, 60; six deer of either sex and any age in Zone 57 and 58; and 10 deer of either sex and any age in Zone 38. Only one deer may be taken in a given day per permit except in Zone 38 where the limit is two deer in a given day per permit. Persons awarded Zone 9 and 13 shotgun permits may also take a deer with antler at least three inches long on December 9 or 14, 1991 with regular a firearm license, and persons awarded Zone 5, 7, 8, 10-12, 41 or 63 shotgun permits may also take a deer with antler at least three inches long on December 9, 1991 subject to the provisions of N.J.A.C. 7:25-5.27. It is unlawful to attempt to take or hunt for more than the number of deer permitted.

(d) Duration of the permit shotgun deer season is from sunrise to ½ hour after sunset E.S.T. on the following dates:

1. December 18, 1991 in Zones 1, 3, 4, 18, 20, 21, 23, 24, 26, 31, 32, 34, 40, 43, 45, 46, 55 and 65;

2. December 18, 19 and 20, 1991 ***and January 17, 18 and 25, 1992*** in Zones 2, 14, 15, 17, 25, 27, 35, 36, 47, 48, 49, 50 and 51;

3. December 9, 18, 19 and 20, 1991 and January 17, 18 and 25, 1992 in Zones 5, 7, 8, 10, 11, 12, 41 and 63;

4. December 18, 19 and 20, 1991 in Zones 6, 16, 19, 22, 28, 29, 30, 33, 42, 44, 56, 60 and 61;

5. December 9, 14, 18, 19 and 20, 1991 and January 17, 18 and 25, 1992 in Zones 9 and 13;

6. December 28, 1991 in Zones 37 and 52;

7. December 5, 6, *[18, 19 and 20]* ***12, 13 and 14***, 1991 in Zone 38;

8. December 21, 1991 and January 18 and 25, 1992 in Zones 39 and 62;

9. January 4, 1992 in Zone 53;

10. December 9, 10, 11, 18, 19 and 20, 1991 in Zones 57 and 58;

11. December 9, 10 and 11, 1991 (first segment), December 18, 19 and 20, 1991 (second segment), January 17, 18 and 25, 1992 (third segment) in Zone 59;

12. January 17, 1992 (first segment), January 18, 1992 (second segment), January 25, 1992 (third segment), in Zone 64;

13. December 20 and 21, 1991 in Zone 54; or

14. (No change in text.)

(e)-(f) (No change.)

(g) Permits for shotgun permit season consist of back display which includes a "deer transportation tag" or proper and valid second tag. The back display portion of the permit will be conspicuously displayed on the outer clothing in addition to the valid firearm license in the case of a shotgun permit season permit, and without the license in the case of the farmer shotgun permit season permit. The "deer transportation tag" portion of the permit must be completely filled out, and affixed to the deer immediately upon killing. This completely filled in "deer transportation tag" allows legal transportation of the deer of either sex to an authorized checking station only. Personnel at the checking station will issue a "possession tag." Any permit holder killing a deer of either sex during this season must transport this deer to an authorized checking station by 7:00 P.M. E.S.T. on date killed to secure the legal "possession tag." The possession of a deer of either sex after 7:00 P.M. E.S.T. on the date killed without a legal "possession tag" shall be deemed illegal possession. Any legally killed deer which is recovered too late to be brought to the check station by closing time must be immediately reported by telephone to the nearest Division of Fish, Game and Wildlife law enforcement regional headquarters. Said deer must be brought to a checking station on the next open day to receive a legal "possesson tag." If the season has been concluded said deer must be taken to a regular deer checking station on the following weekday to receive a legal "possession." For deer management zones where the shotgun permit season is more than one day and the bag limit is two deer, a second valid and proper "New Jersey Second Deer Permit and Transportation Tag" (second tag) will be issued upon registration of the first deer. This permit will allow this person to continue hunting and take one additional legal deer during the shotgun permit season, provided the season is open the following day(s) or on any additional days that shotgun permit season hunting is authorized. For deer management zones where the shotgun permit season is three days or more and the bag limit is three deer, a third "New Jersey Permit and Transportation Tag" will be issued upon registration of the second deer. This permit will allow this hunter to continue hunting and take one additional legal deer during the shotgun permit season, provided the season is open or on any additional days that shotgun permit season hunting is authorized. For Deer Management Zone 38 (Great Swamp National Wildlife Refuge) where the shotgun permit season is five days and the bag limit is 10 deer, an additional valid and proper "New Jersey Permit and Transportation Tag" will be issued which will allow the permittee to take two deer per day per permit. The additional valid and proper "New Jersey Permit and Transportation Tag" will only be available from the Great Swamp National Wildlife Refuge Check Station. Permittees will be able to continue hunting on the remaining designated season dates after registration of deer and issuance of appropriate tags.

(h) Shotgun Permit Season Permits shall be applied for as follows:

1. Only holders of valid and current firearm hunting licenses including juvenile firearm license holders may apply by detaching from their hunting license the stub marked "Special Deer Season 1991," signing as provided on the back, and sending the stub, together with the permit applied for and an application form properly completed in accordance with instructions. Application forms may be obtained from:

i.-iv. (No change.)

2. (No change.)

3. The application form shall be filled in to include: Name, address, current firearm hunting license number, deer management zone applied for, and any other information requested. Only those applications will be accepted for participation in random selection

which are received in the Trenton office during the period of August *[25]**15*-September 10, 1991. Applications postmarked after September 10 will not be considered for the initial drawing. Selection of permittees will be made by random selection.

4.-6. (No change.)

(i) Farmer, Shotgun Permit Season Permits shall be applied or as follows:

1.-2. (No change.)

3. The application form shall be filled in to include: Name, age, size of farm, address, and any other information requested thereon. THIS APPLICATION MUST BE NOTARIZED. Properly completed application forms will be accepted in the Trenton office only during the period of August 1 to 15, 1991. There is no fee required, and all qualified applicants will receive a farmer, shotgun permit season permit, delivered by mail.

4. (No change.)

(j) (No change.)

(k) The Deer Management Zone Map on file at the Office of Administrative Law and is available from that agency or the Division. The 1991 Shotgun Permit Season Permit Quotas (Either Sex) are as follows:

1991 SHOTGUN PERMIT SEASON PERMIT QUOTAS (EITHER SEX)

Deer Mgt. Zone No.	Season Dates Code	Anticipated Deer Harvest 1991	Permit Quota 1991	Portions of Counties Involved
1	1	124	651	Sussex
2	2	652	1461	Sussex
3	1	56	476	Sussex, Passaic, Bergen
4	1	35	304	Sussex, Warren
5	3	2131	4083	Sussex, Warren
6	4	325	1225	Sussex, Morris, Passaic, Essex
7	3	935	1704	Warren, Hunterdon
8	3	2399	4579	Warren, Hunterdon, Morris, Somerset
9	5	604	1276	Morris, Somerset
10	3	1348	2587	Warren, Hunterdon
11	3	632	1347	Hunterdon
12	3	1523	2653	Mercer, Hunterdon, Somerset
13	5	316	778	Morris, Somerset
14	2	908	2078	Mercer, Somerset, Middlesex, Burlington
15	2	379	736	Mercer, Monmouth, Middlesex
16	4	121	512	Ocean, Monmouth
17	2	389	618	Ocean, Monmouth, Burlington
18	1	13	108	Ocean
19	4	172	448	Camden, Burlington
20	1	20	221	Burlington
21	1	23	202	Burlington, Ocean
22	4	50	200	Burlington, Ocean
23	1	36	217	Burlington, Camden, Atlantic
24	1	34	197	Burlington, Ocean
25	2	322	596	Gloucester, Camden, Atlantic, Salem
26	1	55	230	Atlantic
27	2	307	759	Salem, Cumberland
28	4	45	153	Salem, Cumberland, Gloucester
29	4	297	645	Salem, Cumberland
30	4	48	103	Cumberland
31	1	0	0	Cumberland
32	1	0	0	Cumberland
33	4	47	136	Cape May, Atlantic
34	1	20	142	Cape May, Cumberland
35	2	282	656	Gloucester, Salem
36	2	25	95	Bergen, Hudson, Essex, Morris, Union, Somerset, Middlesex
37	6	21	65	Burlington (Fort Dix Military Reservation)
38	7	200	600	Morris (Great Swamp National Wildlife Refuge)
39	8	13	53	Monmouth (Earle Naval Weapons Station)
40	1	15	83	Warren (Allamuchy State Park)
41	3	622	1070	Mercer, Hunterdon
42	4	21	56	Atlantic
43	1	0	0	Cumberland
44	4	14	30	Cumberland
45	1	0	0	Cumberland, Atlantic, Cape May
46	1	19	90	Atlantic
47	2	34	80	Atlantic, Cumberland, Gloucester
48	2	281	616	Burlington
49	2	26	42	Burlington, Camden, Gloucester
50	2	141	426	Middlesex, Monmouth
51	2	102	300	Monmouth, Ocean

52	6	18	45	Ocean (Fort Dix Military Reservation)
53	9	14	48	Ocean (Lakehurst Naval Engineering Center)
54	13	7	30	Morris (Picatinny Arsenal-ARRAD Com)
55	1	6	30	Gloucester
56	4	26	20	Atlantic (Forsythe National Wildlife Refuge)
57	10	21	40	Atlantic (Forsythe National Wildlife Refuge)
58	10	26	50	Burlington, Ocean (Forsythe National Wildlife Refuge)
59	11	67	75	Salem (Supawna National Wildlife Refuge)
60	4	50	120	Hunterdon (Round Valley Recreation Area)
61	4	21	105	Atlantic (Atlantic County Parks)
62	8	12	20	Monmouth (Fort Monmouth)
63	3	174	285	Salem
64	12	90	135	Monmouth (Monmouth Battleground State Park)
65	1	10	50	Gloucester, Camden
Total		16,735	36,740	

(l) Shotgun permit season permit not applied for by September 10, 1991 may be reallocated to muzzleloader rifle, permit season applicants.

(m) The Season Dates Code referred in the table in (k) above is as follows:

1. Indicates one-day shotgun permit season—December 18, 1991.
2. Indicates six-day shotgun permit season—December 18, 19 and 20, 1991 and January 17, 18 and 25, 1992.
3. Indicates seven-day shotgun permit season—December 9, 18, 19 and 20, 1991 and January 17, 18 and 25, 1992.
4. Indicates three-day shotgun permit season December 18, 19 and 20, 1991.
5. Indicates an eight-day shotgun permit season December 9, 14, 18, 19 and 20, 1991 and January 17, 18 and 25, 1992.
6. Indicates a one-day shotgun permit season December 28, 1991.
7. Indicates a five-day shotgun permit season December 5, 6, *[18, 19 and 20]* ***12, 13 and 14***, 1991.
8. Indicates a three-day shotgun permit season—December 21, 1991 and January 18 and 25, 1992.
9. Indicates a one-day shotgun permit season January 4, 1992.
10. Indicates a six-day shotgun permit season December 9, 10, 11, 18, 19 and 20, 1991.
11. Indicates three, three-day shotgun permit season segments—December 9, 10 and 11, 1991 (first segment); December 18, 19 and 20, 1991 (second segment); and January 17, 18 and 25, 1992 (third segment).
12. Indicates three one-day shotgun permit season segments—January 17 (first segment), January 18 (second segment), and January 25 (third segment), 1992.
13. Indicates a two-day shotgun permit season December 20 and 21, 1991.

(n) (No change.)

(o) Permit quotas for Zones 37, 38, 39, 40, 52-54, 56-62 and 64 are contingent upon approval by appropriate land management agencies for those zones.

(p) Deer Management zones are located as follows:

1.-3. (No change.)

4. Zone No. 4: That portion of Sussex and Warren Counties lying within a continuous line beginning at the intersection of Route 560 (Tuttles Corner-Dingman's Road) and the Delaware River at Dingman's Ferry; then southeast along Route 560 to its intersection with Route 206; then southeast along Route 206 to its intersection with the base of the Kittatinny Ridge at Culvers Inlet; then southwest along the base of the Kittatinny Ridge to the Delaware River at the Delaware Water Gap north and west of Quarry Road; then north along the east bank of the Delaware to the point of beginning at Dingman's Ferry. Depew, Tocks, Poxono and Labar Islands in the Delaware River are included in this zone.

5. Zone No. 5: That portion of Warren and Sussex Counties lying within a continuous line beginning at the intersection of the base of the Kittatiny Ridge and Rt. 206 at Culvers Inlet; then southeast along Rt. 206 to its intersection with Rt. 519 at Branchville; then south along Rt. 519 to its intersection with Rt. 206 at Newton; then south along Rt. 206 to its intersection with Rt. 517 at Andover; then south along Rt. 517 to its intersection with Rt. 46 at Hackettstown; then west along Rt. 46 to its intersection with the Zone 4 boundary at the Delaware Water Gap north and west of Quarry Road; then northeast along the base of the Kittatinny Ridge to its intersection with Rt. 206, the point of beginning.

6.-22. (No change.)

23. Zone No. 23: That portion of Burlington, Atlantic and Camden Counties lying with a continuous line beginning at the intersection of Rts. 542 and 563 at Green Bank; then west along Rt. 542 to its intersection with Nescochague Creek at Pleasant Mills; then northwest along Nescochague Creek to Great Swamp Branch; then westward along Great Swamp Branch to its intersection with Rt. 206 (just south of the intersection of Rt. 206 and Middle Road); then north along Rt. 206 to its intersection with Albertson Brook (about four miles north of Hammonton); then westward along Albertson Brook until it becomes Blue Anchor Brook; then westward along Blue Anchor Brook to its intersection with Rt. 30, near Cedar Ave., south of Ancora; then northwest along Rt. 30 to its intersection with Rt. 73; then north on Rt. 73 to its intersection with Rt. 534, Jackson Road; then east along Rt. 534 to its intersection with Atsion Road; then southeast on Atsion Road to its intersection with Willow Grove Road; then northeast on Willow Grove Road to its intersection with Rt. 541, Stokes Road; then southeast along Rt. 541 to its intersection with Rt. 206; then north along Rt. 206 to its intersection with Forked Neck Road; then east along Forked Neck Road which becomes Dingletown Road, curving to the northeast; then northeast along Dingletown Road to its intersection with Bozartown Road; then northeast along Bozartown Road to its intersection with Buttersworth Bogs Road; then east and north along Buttersworth Bogs Road to its intersection with Rt. 532, Chatsworth Road; then east along Rt. 532 to its intersection with Rt. 563 at Chatsworth; then south along Rt. 563 to Rt. 542 the point of beginning at Green Bank.

24. (No change.)

25. Zone No. 25: That portion of Gloucester, Atlantic and Camden Counties lying within a continuous line beginning at the intersection of Rt. 54 and Rt. 40 near Buena; then west on Rt. 40 to its intersection with Rt. 553; then north on Rt. 553 to its intersection with Rt. 610 (Aura Road); then southeast on Rt. 610 to its intersection with Rt. 655 (Fries Mill County Rt. 536); then west on Rt. 322 to its intersection with Rt. 47 at Glassboro; then north on Rt. 47 to its intersection with County Road 635 (Hurfville-Grenloch Road); then eastward on County Road 635 to its intersection with County Road Rt. 707 (Woodbury-Turnersville Rd.); then southeast along Gloucester County Road Rt. 707 (which becomes Camden County Road Rt. 705) to its intersection with County Road 688 (Turnerville-Hickstown Road); then eastward along County Road 688 to its intersection with County Road 689 (Berlin-Crosskeys Road); then northeast along County Road 689 to its intersection with Rt. 73 at Berlin; then south on Rt. 73 to its intersection with Rt. 30; then southeast along Rt. 30 to its intersection with Blue Anchor Brook, just past Cedar Avenue, south of Ancora; then eastward along Blue Anchor Brook until it becomes Albertson Brook

at Fleming Pike; then eastward along Albertson Brook to its intersection with Rt. 206 (about four miles north of Hammonton); then south on Rt. 206 to its intersection with Great Swamp Branch (just past the intersection of Rt. 206 and Middle Road); then eastward along Great Swamp Branch to its intersection with Nescochague Creek; then eastward along Nescochague Creek to Nescochague Lake, at Pleasant Plains; then westward along the north and western shore of Nescochague Lake to its intersection with Hammonton Creek; then westward along Hammonton Creek to its intersection with Rt. 30 (White Horse Pike), near Hammonton; then southeast on Rt. 30 to its intersection with Rt. 559 (Weymouth Road); then southward on Rt. 559 to its intersection with the Atlantic City Expressway; then west along the Atlantic City Expressway to its intersection with Eighth Street; then south along Eighth Street to its intersection with Rt. 322; then westward on Rt. 322 to its intersection with Rt. 54; then southward on Rt. 54 to its intersection with Rt. 40 near Buena, the point of beginning. Zone 65 is excluded from Zone 25.

26. Zone No. 26: That portion of Atlantic and Burlington Counties lying within a continuous line beginning at the intersection of Rts. 40 and 54 near Buena; then southeast on Rt. 40 (40-322) to its intersection with the Garden State Parkway; then northeast on the Garden State Parkway to its intersection with the Mullica River; then northwest along the south bank on the Mullica River to its intersection with Rt. 563 at Green Bank; then north on Rt. 563 to its intersection with Rt. 542; then west on Rt. 542 to its intersection with Nescochague Creek at Pleasant Mills; then northwest along Nescochague Creek to Great Swamp Branch; then westward along Great Swamp Branch to its intersection with Rt. 206 (just south of the intersection of Rt. 206 and Middle Road); then north along Rt. 206 to its intersection with Albertson Brook (about four miles north of Hammonton); then westward along Albertson Brook until it becomes Blue Anchor Brook; then westward along Blue Anchor Brook to its intersection with Rt. 30 near Cedar Avenue, south of Ancora; then northwest on Rt. 30 to its intersection with Rt. 54; then southwest along Rt. 54 to its intersection with Rt. 40 at Buena, the point of beginning.

27. Zone No. 27: That portion of Cumberland and Salem Counties lying within a continuous line beginning at the intersection of Rts. 77 and 40 at Pole Tavern; then northwest on Rt. 40 to its intersection with Rt. 48; then west on Rt. 48 through Penns Grove to the Delaware River; then south along the east bank of the Delaware River to its intersection with the Salem Canal at Deepwater; then eastward along the south bank of the Salem Canal to its intersection with the Salem River; then southward along the west bank of the Salem River to its intersection with Rt. 49 at Salem; then southeast on Rt. 49 to its intersection with Salem County Rt. 667 (Pecks Corner-Cohansey Road) at Pecks Corner; then eastward along Rt. 667 to its intersection with Rt. 540; then east along Rt. 540 to its intersection with Rt. 77; then north on Rt. 77 to its intersection with Rt. 40 at Pole Tavern, the point of beginning.

28. Zone No. 28: That portion of Gloucester, Cumberland and Salem Counties lying within a continuous line beginning at the intersection of Rts. 77 and 40 at Pole Tavern; then east on Rt. 40 to its intersection of Rt. 47 at Malaga; then south on Rt. 47 to its intersection of Rt. 49 in Millville; then west on Rt. 49 to its intersection with Salem County Rt. 667 (Pecks Corner-Cohansey Road) at Pecks Corner; then eastward along Rt. 667 to its intersection with Rt. 540; then east on Rt. 540 to its intersection with Rt. 77; then north on Rt. 77 to Pole Tavern, the point of beginning.

29.-34. (No change.)

35. Zone No. 35: That portion of Salem and Gloucester Counties lying within a continuous line beginning at the east bank of the Delaware River at Penns Grove; then southeast on Rt. 48 to its intersection with Rt. 40; then southeast on Rt. 40 to its intersection with Rt. 553; then north on Rt. 553 to the intersection with Rt. 610 (Aura Road); then southeast on Rt. 610 to its intersection with Rt. 47 at Clayton; then north on Rt. 47 to its intersection with County Rt. 635 (Lambs Road) at Glassboro; then west on Rt. 635 to its intersection with Mantua Creek at Glassboro; then northwest along the Mantua Creek to the Delaware River; then southwest along the east bank of the Delaware River, to Penns Grove, the point of beginning. Chester and Mond's Islands lying in the Delaware River are in this zone.

36.-54. (No change.)

55. Zone No. 55: That portion of Gloucester County lying within a continuous line beginning at the intersection of Rts. 47 and 322 at Glassboro; then east along Rt. 322 (County Rt. 536) to its intersection with Rt. 655 (Fries Mill Road); then south on Rt. 655 to its intersection with Rt. 610 (Academy Avenue); then west on Rt. 610 to its intersection with Rt. 47 (Delsea Drive) at Clayton; then north along Rt. 47 to its intersection with Rt. 322 at Glassboro, the point of beginning.

56.-64. (No change.)

65. Zone No. 65: That portion of Camden and Gloucester Counties lying within a continuous line beginning at the intersection of Rt. 322 and County Road Rt. 659 (Malaga-New Brooklyn Road) in Monroe Township, Gloucester County; then northeast along Rt. 659 to its intersection with County Road Rt. 536 at New Brooklyn; then northward along Rt. 536 to its intersection with County Road Rt. 720 (Brooklyn-Blue Anchor Road); then southeast on Rt. 720 to its intersection with Rt. 73 near Blue Anchor; then southward along Rt. 73 to its intersection with Piney Hollow Road; then southwest along Piney Hollow Road to its intersection with Rt. 322; then west along Rt. 322 to its intersection with County Road Rt. 659, the point of beginning.

7:25-5.30 White-tailed deer bow permit season, either sex

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

(d) Duration of the bow permit season is from November 9—December 7, 1991 in Zones 2, 3, 5-37, 39-55, 58, 59, 61-63, 65; or any other time as determined by the Director. Legal hunting hours shall be ½ hour before sunrise to ½ hour after sunset.

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

(h) Bow Permit Season Permits shall be applied for as follows:

1. Only holders of valid bow and arrow licenses including juvenile bow license holders may apply by detaching from their bow hunting license the stub marked special deer season 1991, signing as provided on the back, and sending the stub together with the permit fee and an application form which has been properly completed in accordance with instructions. Application forms may be obtained from:

i.-iv. (No change.)

2.-3. (No change.)

4. The application form shall be filled in to include: Name, address, current bow and arrow hunting license number, deer management zone applied for, and any other information requested. Only those applications will be accepted for participation in random selection which are received in the Trenton office during the period of August *[25]***15***-September 10. Applications postmarked after September 10 will not be considered for the initial drawing. Selection of permittees will be made by random selection.

5.-8. (No change.)

(i)-(j) (No change.)

(k) The Deer Management Zone Map is on file at the Office of Administrative Law and is available from that agency or the Division. The 1991 Bow Permit Season Quotas (Either Sex) are as follows:

1991 BOW PERMIT SEASON PERMIT QUOTAS (EITHER SEX)

Deer Mgt. Zone No.	Season Dates Code	Anticipated Deer Harvest 1991	Permit Quota 1991	Portions of Counties Involved
1	1	0	0	Sussex
2	1	135	1035	Sussex
3	1	75	800	Sussex, Passaic, Bergen
4	1	0	0	Sussex, Warren
5	1	327	2640	Sussex, Warren
6	1	97	1045	Sussex, Morris, Passaic, Essex
7	1	189	1300	Warren, Hunterdon
8	1	369	3025	Warren, Hunterdon, Morris, Somerset
9	1	163	1000	Morris, Somerset
10	1	260	1680	Warren, Hunterdon
11	1	148	1000	Hunterdon
12	1	272	1900	Mercer, Hunterdon, Somerset
13	1	88	675	Morris, Somerset
14	1	130	1300	Mercer, Somerset, Middlesex, Burlington
15	1	85	800	Mercer, Monmouth, Middlesex
16	1	80	750	Ocean, Monmouth
17	1	58	450	Ocean, Monmouth, Burlington
18	1	20	260	Ocean
19	1	41	400	Camden, Burlington
20	1	42	350	Burlington
21	1	72	425	Burlington, Ocean
22	1	24	210	Burlington, Ocean
23	1	61	600	Burlington, Camden, Atlantic
24	1	46	400	Burlington, Ocean
25	1	71	650	Gloucester, Camden, Atlantic, Salem
26	1	76	400	Atlantic
27	1	102	700	Salem, Cumberland
28	1	46	400	Salem, Cumberland, Gloucester
29	1	64	425	Salem, Cumberland
30	1	18	150	Cumberland
31	1	6	60	Cumberland
32	1	4	40	Cumberland
33	1	27	175	Cape May, Atlantic
34	1	40	375	Cape May, Cumberland
35	1	107	700	Gloucester, Salem
36	1	13	200	Bergen, Hudson, Essex, Morris, Union, Somerset, Middlesex
37	1	11	100	Burlington (Fort Dix Military Reservation)
38		0	0	Morris (Great Swamp National Wildlife Refuge)
39	1	9	50	Monmouth (Earle Naval Weapons Station)
40	1	3	80	Warren (Allamuchy State Park)
41	1	103	750	Mercer, Hunterdon
42	1	8	65	Atlantic
43	1	28	200	Cumberland
44	1	5	40	Cumberland
45	1	26	250	Cumberland, Atlantic, Cape May
46	1	18	100	Atlantic
47	1	16	90	Atlantic, Cumberland, Gloucester
48	1	56	500	Burlington
49	1	3	30	Burlington, Camden, Gloucester
50	1	58	450	Middlesex, Monmouth
51	1	44	350	Monmouth, Ocean
52	1	2	30	Ocean (Fort Dix Military Reservation)
53	1	6	45	Ocean (Lakehurst Naval Engineering Center)
54	1	11	30	Morris (Picatinny Arsenal-ARRAD Com)
55	1	9	80	Gloucester
56		0	0	Atlantic (Forsythe National Wildlife Refuge)
57		0	0	Atlantic (Forsythe National Wildlife Refuge)
58	1	6	50	Burlington, Ocean (Forsythe National Wildlife Refuge)
59	1	13	35	Salem (Supawna National Wildlife Refuge)
60	1	0	0	Hunterdon (Round Valley Recreation Area)
61	1	14	135	Atlantic (Atlantic County Parks)
62	1	12	20	Monmouth (Fort Monmouth)

63	1	37	275	Salem
64				Monmouth (Monmouth Battleground State Park)
65	1	11	100	Gloucester, Camden
Total		3,865	30,175	

(1) The Season Dates Code referred in the table in (k) above is as follows:

1. Indicates the season dates will be November 9—December 7, 1991.

(m) Permit quotas for Zones 37, 39, 40, 52-54, 58, 59, 61 and 62 are contingent upon approval by the appropriate land management agencies for these zones.

(n) (No change.)

7:25-5.31 White-tailed deer permit shotgun season permit (either sex), Great Swamp National Wildlife Refuge (Zone 38)

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

(c) Duration of the Great Swamp Permit Shotgun Season Permit shall be from sunrise to ½ hour after sunset on the following dates: December 5, 6, 12, 13 and 14, 1991 or as may otherwise be designated by the U.S. Fish and Wildlife Service.

(d) Bag Limit: Ten deer of either sex and any age, may be taken with a Great Swamp Permit Shotgun Season Permit. Two deer may be taken in a given day per permit.

(f) Method: The taking of 10 deer of either sex and any age with a Great Swamp (Zone 38) permit shotgun season permit will be permitted in designated areas of the Great Swamp National Wildlife Refuge. Total of 600 Great Swamp shotgun permit season permits will be issued. Daily hunter quotas, hunt procedures and hunting methods in this area shall be provided by the U.S. Fish and Wildlife Service.

(g) Procedures for applying for a Great Swamp permit shotgun season permit will be the same as outlined for the permit shotgun season permit. (see N.J.A.C. 7:25-5.25 (h)). Applicants for the Great Swamp Permit Shotgun Season Permit must indicate Zone 38 on the application in the space reserved for deer Management zone number.

(h)-(i) (No change.)

7:25-5.34 Controlled hunting—hunting restrictions on wildlife management areas

(a) No wildlife management areas have been selected for limited hunter density for the 1991-92 season. However, hunting with firearms shall be prohibited on November 8, 1991 on those wildlife management areas designated as pheasant and quail stamp areas in N.J.A.C. 7:25-5.33.

(b) (No change.)

(a)

DIVISION OF HAZARDOUS WASTE MANAGEMENT

Definition of Hazardous Waste Mixture Rule

Adopted Amendment: N.J.A.C. 7:26-8.1

Proposed: April 15, 1991 at 23 N.J.R. 1113(b).
Adopted: July 11, 1991 by Scott A. Weiner, Commissioner, Department of Environmental Protection.
Filed: July 17, 1991 as R.1991 d.420, **without change.**

Authority: N.J.S.A. 13:1E-1 et seq., particularly 13:1E-6.

DEP Docket Number: 011-91-03
Effective Date: August 5, 1991.
Expiration Date: October 25, 1995.

Summary of Public Comments and Agency Responses:

The amendments were proposed April 15, 1991. The comment period closed June 14. **No comments were received.** The amendments are being adopted without change.

Full text of the adoption follows.

7:26-8.1 Definition of hazardous waste

(a) A solid waste, as defined in N.J.A.C. 7:26-1.6, is a hazardous waste if:

1. (No change.)

2. It meets any one or more of the following criteria:

i.-ii. (No change.)

iii. It is a mixture of solid waste and one or more hazardous wastes listed in N.J.A.C. 7:26-8.13, 8.14, 8.15, or 8.20; however, the following mixtures of solid and hazardous wastes listed in N.J.A.C. 7:26-8.13, 8.14, and 8.15 are not hazardous (except by application of paragraphs (a)2i or ii above, or v, vi or vii below) if the generator can demonstrate that the mixture consists of process wastewater, the discharge of which is specified and limited in a permit issued pursuant to N.J.A.C. 7:14A or Section 402 or Section 307(b) of the Clean Water Act, 33 U.S.C. 1251 et al. (and consequently N.J.S.A. 58:10A-1 et seq. or N.J.S.A. 58:11-49 et seq.), and the generator has notified the Division of Water Resources when claiming exemption pursuant to (a)2iii(1), (2), (3) or (5) below.

(1) One or more of the following spent solvents listed in N.J.A.C. 7:26-8.13: carbon tetrachloride, tetrachloroethylene, trichoroethylene, provided that the maximum total weekly usage of these solvents (other than the amounts that can be demonstrated not to be discharged to wastewater) divided by the average weekly flow of wastewater into the headworks of a facility's wastewater treatment or pre-treatment system does not exceed one part per million; or

(2)-(5) (No change.)

iv. It is a mixture of solid waste and a hazardous waste that is listed in N.J.A.C. 7:26-8.13, 8.14, 8:15 or 8.20 solely because it exhibits one or more of the characteristics of hazardous waste identified in N.J.A.C. 7:26-8.9 through 8.12, unless the resultant mixture no longer exhibits any characteristic of hazardous waste identified in N.J.A.C. 7:26-8.9 through 8.12, and the mixture is:

(1) Initially generated as a mixture; or

(2) The result of containment or cleanup of an accidental discharge.

Recodify existing iv.-vi. as v.-vii. (No change in text.)

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

(b)

DIVISION OF HAZARDOUS WASTE MANAGEMENT

Determining if a Solid Waste is Hazardous Toxicity Characteristic

Adopted Amendments: N.J.A.C. 7:26-8.2, 8.8 and 8.12

Proposed: January 22, 1991 at 23 N.J.R. 151(a).
Adopted: July 11, 1991 by Scott A. Weiner, Commissioner, Department of Environmental Protection.
Filed: July 17, 1991 as R.1991 d.421, **without change.**

Authority: N.J.S.A. 13:1E-1 et seq., particularly 13:1E-6.

DEP Docket Number: 050-90-12
Effective Date: August 5, 1991.
Expiration Date: October 25, 1995.

Summary of Public Comments and Agency Responses:

The amendments were proposed January 22, 1991. The comment period closed March 23, 1991. The comment period was reopened until June 5, 1991. **No comments were received.** The amendments are being adopted without change.

Full text of the adoption follows.

7:26-8.2 Exclusions

(a) The following materials are not regulated as hazardous waste for the purposes of this subchapter:

1.-8. (No change.)

9. Solid waste which consists of discarded wood or wood products which fails the test for the characteristic of toxicity solely for arsenic and which is not a hazardous waste for any other reason if the waste is generated by persons who utilize the arsenical-treated wood and wood products for these materials intended end use.

10.-21. (No change.)

22. Petroleum-contaminated media and debris that fail the test for the Toxicity Characteristic in N.J.A.C. 7:26-8.12 (Hazardous Waste Codes D018 through D043 only) and are subject to the corrective action regulations at 40 C.F.R. Part 280.

Recodify existing 22-25 as 23-26. (No change in text.)

(b) (No change.)

7:26-8.8 Criteria for listing hazardous waste by category, class or type

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

(d) The Department will indicate its basis for listing the classes or types of wastes listed in this section by employing one or more of the following Hazard Codes.

Ignitable Waste (I)
Corrosive Wastes (C)
Reactive Wastes (R)
Toxicity Characteristic Waste (E)
Acute Hazardous Waste (H)
Toxic Waste (T)

7:26-8.12 Characteristics of toxicity

(a) A solid waste exhibits the characteristic of toxicity if, using test methods described in Appendix II of 40 CFR 261, Subpart D or equivalent methods approved by the Department, the extract from a representative sample of the waste contains any of the contaminants listed in Table I, or Table I at 40 CFR 261.24 as amended, at a concentration equal to or greater than the respective value given in those tables. Where the waste contains less than 0.5 percent filterable solids, the waste itself, after filtering, is considered to be the extract for the purposes of this section.

(b) A solid waste that exhibits the characteristic of toxicity, but is not listed as a hazardous waste in this subchapter, has the EPA Hazardous Waste Number specified in Table I, or Table I at 40 CFR 261.24 as amended, which corresponds to the toxic contaminant causing it to be hazardous.

Table I

Maximum Concentration of Contaminants for Characteristic of Toxicity

EPA Hazardous Waste Number	Contaminant	Chemical Abstract Service (CAS) Number	Maximum Concentration (milligrams per liter)
D004	Arsenic	7440-38-2	5.0
D005	Barium	7440-39-3	100.0
D018	Benzene	71-43-2	0.5
D006	Cadmium	7440-43-9	1.0
D019	Carbon tetrachloride	56-23-5	0.5
D020	Chlordane	57-74-9	0.03
D021	Chlorobenzene	108-90-7	100.0
D022	Chloroform	67-66-3	6.0
D007	Chromium	7440-47-3	5.0
D023	o-Cresol	95-48-7	200.0*
D024	m-Cresol	108-39-4	200.0*
D025	p-Cresol	108-44-5	200.0*
D026	Cresol		200.0*
D016	2,4-D	94-75-7	10.0
D027	1,4-Dichlorobenzene	106-46-7	7.5
D028	1,2-Dichloroethane	107-06-2	0.5
D029	1,1-Dichloroethylene	75-35-4	0.7
D030	2,4-Dinitrotoluene	121-14-2	0.13**
D012	Endrin	72-20-8	0.02
D031	Heptachlor (and its epoxide)	76-44-8	0.008
D032	Hexachlorobenzene	118-74-1	0.13**
D033	Hexachlorobutadiene	87-68-3	0.5
D034	Hexachloroethane	67-72-1	3.0
D008	Lead	7439-92-1	5.0
D013	Lindane	58-89-8	0.4
D009	Mercury	7439-97-6	0.2
D014	Methoxychlor	72-43-5	10.0
D035	Methyl ethyl ketone	78-93-3	200.0
D036	Nitrobenzene	98-95-3	2.0
D037	Pentachlorophenol	87-86-5	100.0
D038	Pyridine	110-86-1	5.0
D010	Selenium	7782-49-2	1.0
D011	Silver	7440-22-4	5.0
D039	Tetrachloroethylene	127-18-4	0.7
D015	Toxaphene	8001-35-2	0.5
D040	Trichloroethylene	79-01-6	0.5
D041	2,4,5-Trichlorophenol	95-95-4	400.0
D042	2,4,6-Trichlorophenol	86-06-2	2.0
D017	2,4,5-TP (Silver)	93-72-1	1.0
D043	Vinyl chloride	75-01-4	0.2

*If o-, m- and p-Cresol concentrations cannot be differentiated, the total cresol (D026) concentration is used. The regulatory level of total cresol is 200 mg/L.

**Quantitation limit is greater than the calculated regulatory level. The quantitation limit therefore becomes the regulatory level.

(a)

DIVISION OF HAZARDOUS WASTE MANAGEMENT

Hazardous Waste from Specific Sources Listing of Methyl Bromide Production Wastes Adopted Amendment: N.J.A.C. 7:26-8.14

Proposed: January 22, 1991 at 23 N.J.R. 154(a).
Adopted: July 11, 1991 by Scott A. Weiner, Commissioner, Department of Environmental Protection.
Filed: July 17, 1991 as R.1991 d.422, **without change.**

Authority: N.J.S.A. 13:1E-1 et seq., particularly 13:1E-6.

DEP Docket Number: 51-90-12
Effective Date: August 5, 1991.
Expiration Date: October 25, 1995.

Summary of Public Comments and Agency Responses:

The amendments were proposed January 22, 1991. The comment period closed March 23, 1991. The comment period was reopened until June 5, 1991. **No comments were received.** The amendments are being adopted without change.

Full text of the adoption follows.

7:26-8.14 Hazardous Waste from Specific Sources

Industry	EPA Hazardous Waste Number	Hazardous Waste	Hazard Code
...			
Pesticides	K031-K126	(No Change.)	
	K131	Wastewater from the reactor and spent sulfuric acid from the acid dryer from the production of methyl bromide.	(C,T)
	K132	Spent absorbent and wastewater separator solids from the production of methyl bromide.	(T)
...			

(a)

DIVISION OF ENVIRONMENTAL QUALITY

Fees for Licensing of Naturally Occurring and Accelerator Produced Radioactive Materials
Fees for Registration of By-product, Source and Special Nuclear Materials

Adopted New Rule: N.J.A.C. 7:28-3.13
Adopted Amendments: N.J.A.C. 7:28-3.5 and 4.19

Proposed: November 5, 1990 at 22 N.J.R. 3300(a).
Adopted: July 11, 1991 by Scott A. Weiner, Commissioner, Department of Environmental Protection.
Filed: July 15, 1991 as R.1991 d.417, **with substantive changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3.).
Authority: N.J.S.A. 13:1D-1 et seq. and N.J.S.A. 26:2D-1 et seq., particularly N.J.S.A. 26:2D-9.
DEP Docket Number: 033-90-09.
Effective Date: August 5, 1991.
Expiration Date: July 30, 1995.

Summary of Hearing Officer Recommendations and Agency Response:

Robert Stern, Ph.D., Chief, Bureau of Environmental Radiation, Radiation Protection Element, Division of Environmental Quality, Department of Environmental Protection served as hearing officer at the November 21, 1990 public hearing on the proposed new rule, N.J.A.C. 7:28-3.13 and the proposed amendments to N.J.A.C. 7:28-3.5 and 4.19. No persons presented testimony at the public hearing. After reviewing written comments received during the public comment period, Dr. Stern recommended that the Department adopt N.J.A.C. 7:28-3.5 and N.J.A.C. 7:28-3.13 as proposed and recommended that the amendment to N.J.A.C. 7:28-4.19 be modified to provide for a decrease in category 12 fees for government agencies using lead paint analyzers containing radioactive materials in furtherance of childhood lead poisoning prevention programs. Nancy Wittenberg, Director of the Division of Environmental Quality and John S. Keith, P.E., Assistant Commissiner, Environmental Management and Control have reviewed the hearing officer's report and concur with the recommendations.

Dr. Stern's recommendations are set forth in more detail in the hearing officer's report. A copy of the administrative record on the proposal, including the hearing officer's report, is available upon payment of the Department's nominal charge for copying. Persons requesting copies should contact:

Sue Kleinberg, Esq.
Department of Environmental Protection
Office of Legal Affairs
401 East State Street
CN 402
Trenton, New Jersey 08625

Summary of Public Comments and Agency Response:

The Department of Environmental Protection (Department) is adopting amendments to N.J.A.C. 7:28-3.5 and 4.19 and a new rule, N.J.A.C. 7:28-3.13. The adopted amendment to N.J.A.C. 7:28-4.19 expands the categories of State radioactive materials licenses and increases the fees for most user categories. The adopted amendment to N.J.A.C. 7:28-3.5 and adopted new rule N.J.A.C. 7:28-3.13 establish a new fee of $150.00 for each initial registration for possession of by-product, source or special nuclear materials, establish a registration renewal fee of $100.00 and create an annual fee of $100.00 for each registration amendment. The adopted fees will enable the Department to perform essential inspection, registration and licensing services.

The proposed new rule and rule amendments were published in the New Jersey Register at 22 N.J.R. 3300 (a). The secondary notice requirement was achieved by publishing a notice in the Newark Star Ledger, the Trenton Times and the Camden Courier Post, three newspapers of general circulation, and by mailing the notice to the following interested professional groups and governmental parties: New Jersey Department of Health, Lead Paint Program, United States Nuclear Regulatory Commission, Region I, New Jersey Medical Health Physics Society, New Jersey Chapter of the Health Physics Society. The public comment period extended until December 5, 1990, during which time the following persons provided written comments:

Donald E. Shultz, Ph.D., Teledyne Isotopes; Edmond D. Duffy, MPH, New Jersey Department of Health; K. David Steidley, Ph.D., Self; Steve Mahood, M.S., New Jersey Medical Physics Society; and Jack J. Merkin, M.S., New Jersey Medical Physics Society.

A public hearing on the proposed new rule and rule amendments was held at the New Jersey Department of Environmental Protection, Alexander Road, Princeton, New Jersey on November 21, 1990. No persons presented comments.

General Comments

COMMENT: One commenter stated that it appears that the major reason for the proposed increase in fees is to cover the radioactive material program's (program) budget deficit that resulted from State budget reductions, cost of living increases, inflation and increased administrative costs. This commenter felt that increasing fees to compensate for budget reductions runs counter to the intent of the Legislature and that the Department's Bureau of Environmental Radiation should institute the same "belt tightening measures" as the private sector.

RESPONSE: The Department's Radiation Protection Element is under the mandate of the Radiation Protection Act, N.J.S.A. 26:2D-1 et seq., to ensure that the use of radioactive materials is not injurious or dangerous to the health of the people of New Jersey, the industrial or agriculture potential of the State, or to the ecology to the State and its wildlife. The current fee structure coupled with increased administrative costs and increased cost of living expenses have left the Department without adequate means to meet this statutory mandate. The new registration fees of N.J.A.C. 7:28-3.13 and the amended license fees of N.J.A.C. 7:28-4.19 will enable the Department to do so. They provide the minimum funding necessary to successfully and efficiently operate the radioactive materials program in the Department's Bureau of Environmental Radiation. It is not possible for the Department to reduce its staffing and expenses beyond that set forth in the proposal without substantially impairing the Bureau of Environmental Radiation's ability to perform its duties.

The Department disagrees with the assertion that the Department's fee proposal runs counter to the legislative intent behind mandated budget reductions. The fact that the Legislature may fail to appropriate monies from the General State Fund for a program does not evidence an intent that the program is to be denied the funding necessary for the full performance of its duties. The Department believes that the funding structure also reflects the public policy intent that the regulated community, rather than the general public, must bear the cost of governmental services. The proposed fee schedules are consistent with that intent and equitably distribute the Department's program costs over the breadth of the regulated community.

COMMENT: Several commenters questioned the need for the increase in fee revenues from $65,000 to $431,000.

RESPONSE: The cost of administering the Department's NRC license registration program has risen substantially in recent years as a result of advancing personnel costs and inflation. Additionally, the expanded regulatory oversight of the use of Naturally Occurring and Accelerator Produced Radioactive Materials (NARMs) particularly for diagnostic and therapeutic purposes coupled with inflation and rising personnel costs have substantially increased the Department's costs of operating its own NARM licensing program.

The Department currently has no fee income to defray the costs of the NRC license registration program and the income from the existing NARMs fee schedule is inadequate to cover the current costs of licensing NARMs. In addition, the program lacks the capability to keep its radiation protection standards current with the changing requirements of national and international bodies, and to computerize its licensing operation to facilitate response to the regulated community.

The Department has modified its fees to accommodate a request from the State Health Department for a radiation in licensing fees for government programs which use lead point analyzers for the purpose of preventing lead poisoning in children. This reduction in fees will result in revenues of $417,350 rather than $431,000. The Department has calculated that an aggregate fee base of $417,350 will provide the minimum financial resources necessary to allow the Department to continue its essential registration, licensing, and associated services.

COMMENT: One commenter indicated that it is understandable that the Department would have to raise fees to cover the budget shortfalls for existing positions. However, the commenter added that the Depart-

ment should not be increasing staff. The commenter, additionally stated that there is no need for the Department to acquire new computers, as existing equipment would meet the "modest computational needs" of the program. The commenter suggested that the fees could be cut by 25 percent if no new personnel or equipment are acquired.

RESPONSE: The Radioactive Materials Section of the Bureau of Environmental Radiation, presently, does not have sufficient personnel to adequately fulfill all of its responsibilities. Budget related personnel shortages have caused the Department's facility inspections to be backlogged, resulting in NARM inspections occurring only every two to 2.5 years, and have impeded the section's efforts to support the development and amendment of radiation protection rules and regulations. The Department's efforts to meet the requirements of various Federal regulations or implement the recommendations of Federal guidance documents have also suffered. Faced with this situation, the Department examined its staffing requirements and determined that a minimum of six staff persons was necessary to alleviate the personnel shortage. The current fees would support only one person. Accordingly, the new and amended fees were developed to provide for the additional necessary staff to perform annual inspections of licensees and to develop and support radiation protection rules and regulations. The Department believes that the benefits to the public health, safety and environment justify the small additional expense imposed on individual members of the regulated community.

With respect to the additional computer equipment the Department seeks to acquire, contrary to the commenter's assertion, the Department's existing computer equipment does not have sufficient capacity to efficiently process all registration and licensing applications, renewals and amendments, and to track ancillary activities such as inspections. Therefore, the new and amended fees provide funds for the acquisition of additional computer equipment.

COMMENT: One commenter took issue with the statement in the "Economic Impact Statement" and "Environmental Impact Statement" that the activities funded by the fees would help to reduce health care costs that result from exposure to regulated radioactive materials. The commenter also questioned the Department's efforts in the area of radioactive materials safety.

RESPONSE: While it is difficult to calculate the reduction in health care costs that result from fee funded activities, the use or administration of radioactive materials unquestionably poses recognizable hazards to health care employees, patients and the general public. The Department believes that most users of radioactive materials are cognizant of these hazards and dutifully comply with the various state and Federal rules and regulations governing the use and disposal of radioactive materials. However, there have been instances where radioactive materials were improperly used or administered or where accidents have occurred. In the past five years, the radioactive materials section has responded to approximately 200 incidents involving radioactive materials, and in some cases, was required to remove or arrange for the removal of the materials. Had those materials not been removed by the Department, a health risk would have been presented to employees, patients and the general public and it is likely that some persons would have developed radiation related illnesses and would have incurred costs to treat them. The radioactive materials section has also performed over 600 radiation safety compliance inspections over the last five years. Approximately 50 percent of these inspections uncovered violations of State radiation protection regulations which presented exposure risks to employees, patients or the general public. If not for these inspections, such risks would have continued to be present. Undoubtedly, some of those exposed would have suffered radiation related maladies and they, or their insurers, would have incurred health care costs. Thus, although it is difficult to calculate monetary savings, the Department's emergency response and inspection activities surely reduced health problems associated with exposure to radiation from radioactive materials and their attendant costs.

N.J.A.C. 7:28-3.5

COMMENT: One commenter stated that the State does not have the authority to regulate radioactive material licensed by the United States Nuclear Regulatory Commission (NRC). The commenter, additionally, suggested that, if the State wishes to regulate the use of radioactive material, it should apply to the NRC for "Agreement State" status.

RESPONSE: The Department is aware that the authority to regulate the radiological safety aspects of radioactive by-product, source or special nuclear materials and the authority to license same is vested in the NRC pursuant to the Atomic Energy Act, 42 U.S.C. 2011 et seq. The Department, through the registration requirements of N.J.A.C. 7:28-3, is not attempting to impose any radiological safety conditions or requirements on the NRC licensees but is attempting to identify the nature and location of activities involving by-product, source and special nuclear materials. This is a legitimate State function and is in accordance with the provisions of N.J.S.A. 26:2D-9(h). The registration information is used to alert State, county and local emergency response personnel and State inspection personnel to the nature and location of by-product, source or special nuclear material.

With regard to the suggestion that the Department pursue "Agreement State" status which would give the State authority and responsibility to license and inspect facilities that are licensed by the NRC for the possession and use of by-product, source and special nuclear radioactive materials, the Department has determined that such status would require a large scale commitment of manpower and resources that are not currently available. As there are over 700 facilities in New Jersey that are NRC licensed, the Department would have to, at a minimum, triple the size of its staff in order to conduct a licensing program as an "Agreement State." The Department, therefore, has decided not to pursue "Agreement State" status. The Department anticipates that limits on manpower and resources will continue to preclude pursuit of "Agreement State" status for the foreseeable future. However, it is possible that future conditions may cause the Department to reevaluate its decision not to seek "Agreement State" status.

COMMENT: One commenter stated that registering NRC licensees is essentially a "paperwork chore" that will not result in increased protection of the public. The commenter further stated that the Bureau of Environmental Radiation is not required to respond to incidents involving NRC licensed material, and that any telephone calls regarding such material or incident, will be, and are currently being, directed to the NRC regional office.

RESPONSE: The registration of NRC licensees is significantly more than a "paperwork chore." In accordance with the provisions of N.J.S.A. 26:2D-9(j), the Department responds to radiation incidents. These responses are conducted in conjunction with County and local authorities. In the past five years, the Bureau of Environmental Radiation has investigated approximately 200 incidents. Many of the incidents involved NRC licensed materials. NRC licensees are required as per 10 CFR 20.402 to report theft or loss of radioactive material to the NRC. NRC licensees also must notify the State pursuant to N.J.A.C. 7:28-13 regarding theft or loss of radioactive materials. The Department, upon notification of incidents involving NRC licensed radioactive materials, informs the NRC and provides it with assistance. In some cases where a threat or potential threat to the public health and safety or the environment existed, the radioactive material was temporarily stored by the Department pursuant to its NRC license (license no. 29-07009-02). The information collected as part of the registration process greatly assisted Federal, State, county and local and emergency response teams in the performance of their duties and significantly contributed to the safe conclusion of the incidents. The registration requirement, therefore, does serve to protect the public interest.

N.J.A.C. 7:28-4.19

COMMENTS: One commenter stated that the license fees applicable to portable x-ray flourescence lead paint analyzers using 10 millicuries of sealed cobalt, that is the license fees in category 12 of N.J.A.C. 7:28-4.19, would unduly burden the State and local government agencies which use such analyzers for the purpose of preventing lead poisoning in children. The commenter suggested that government agencies be exempt from the licensing fees or that they be assessed to such agencies at a lower rate.

RESPONSE: The Department has determined that the potential harm to government Childhood Lead Poisoning Prevention Programs from the imposition of category 12 fees justifies a reduction in the category 12 fees to $100.00 for government agencies. In making this determination, the Department examined the impact of a fee reduction on the radioactive materials program and measured that against the importance of maintaining the Childhood Lead Poisoning Prevention Programs. The Department calculated that a reduction of category 12 fees for government agencies to $100.00 would result in a loss of approximately $13,650 of the total $431,000 in fees projected by the program. This constitutes approximately three percent of the program's fee income. The Department determined that this loss of funds would not significantly impede the program's licensing activities. Accordingly, the Department has opted

to reduce the fees for category 12 for government agencies to enhance the possibility that the important Childhood Lead Poisoning Prevention Programs will continue without interruption. Because the loss of funding attributed to the reduction is relatively small, the Department has determined that it can compensate for the loss without raising the fees in any of the categories in N.J.A.C. 7:28-4.19. The fee reduction, therefore, will have no additional financial impact on other members of the regulated community.

COMMENT: One commenter stated that the distribution of Human Use Group fees in N.J.A.C. 7:28-4.19 is arbitrary and capricious.

RESPONSE: The fee schedule represents the level of effort the Department must use to administer the licensing activity associated with each particular category in N.J.A.C. 7:28-4.19. This level of effort varies with the types and quantities of materials used or administered. Larger, more complex licenses require more time to review, and tend to require more frequent license amendments. It takes five to 10 man hours to process an application and four to six hours to process license amendments for large licenses. In comparison, it takes three to six man hours to process license applications and two to four hours to process license amendments for small licenses. Additionally, larger licensees require more verbal and written communications to answer questions regarding compliance with N.J.A.C. 7:28. Larger licensees usually have more facilities and staff requiring additional inspection time, and licensees that administer large numbers of doses generate more records that require review during inspections. The Department believes that it has equitably assessed the fees by linking the fee for a particular human use group to the number of doses administered. This will enable small medical treatment facilities to provide services over the full range of human use groups on a small scale without excessive cost.

COMMENT: One commenter stated that the Department may wish to discourage use of radium for medical purposes, as a matter of public policy, through the imposition of an increased fee.

RESPONSE: Due to the fact radium-226 has an extremely long half-life, and its daughter products emit alpha, beta and gamma radiation, its storage, use and disposal requires extra effort on the part of the licensee as well as the Department. Therapeutic quantities of radium-226 have to be stored in areas that are usually isolated from Nuclear Medicine Departments as well as personnel in general. The use of these materials requires additional surveys and records on the part of the licensee as well as the Department. Accordingly, the fees in the N.J.A.C. 7:28-4.19 for a radioactive materials license involving radium-226 are somewhat higher than the fees in the other categories of N.J.A.C. 7:28-4.19. In sum, the fees for radioactive materials licenses involving radium-226 are based on the extent of the Department's oversight activities and their associated costs; they do not represent an attempt to discourage medical use of radium-226. It is not the policy of the Department to discourage the use of radium 226 or any other material which has a legitimate medical use.

COMMENT: One commenter stated that the proposed fee schedule would raise the cost of private office and small hospital licenses from $500.00 to $3,400 and those of larger hospitals from $500.00 to $3,900.

RESPONSE: The current practice of nuclear medicine involves the use of radioactive materials in four of the six Human Use Groups, that is Human Use Groups I, II, III and VI. Accordingly, the Department currently issues licenses for only these four groups. The license fee for these groups ranges from $1,100 to $3,000, depending upon the number of groups involved and the number of doses administered per group. Since most private offices and small hospitals are only licensed for Human Use Groups I and II, the license fee for these facilities would range from $400.00 to $1,700. This is about one-eighth to one-half of the commenter's estimate. Additionally, large hospitals are usually licensed for Human Use Groups I, II, III and VI. The fee for these facilities would range from $1,100 to $3,000, which is lower than the commenter's upper estimate.

COMMENT: One commenter indicated that it was not clear whether the fees found in N.J.A.C. 7:28-3.13 and N.J.A.C. 7:28-4.19 apply to all radioactive materials or only to state regulated radioactive materials. The commenter also stated that the fee schedule is too complex and could result in a licensee using three or more Human Use Groups paying less than a licensee using two Human Use Groups.

RESPONSE: The fee schedule contained in N.J.A.C. 7:28-3.13 applies only to the registration of NRC licenses issued for the possession or use of radioactive by-product, source or special nuclear material. The fee schedule contained in N.J.A.C. 7:28-4.19 applies to licenses issued by the State of New Jersey for the production, transfer, acquisition, ownership, possession or use of NARMs.

The Department designed the fee schedule in N.J.A.C. 7:28-4.19 to equitably deal with the expenses the Department incurs in licensing NARMs. To achieve an equitable result, it was necessary to establish numerous fee categories. Each category reflects the level of effort the Department must undertake to ensure that the materials in that category are properly licensed and that they are properly handled, stored and administered. The size of the fees differs from category to category and from subcategory to subcategory because the extent of the Department's regulatory efforts is dependent upon the type of radioactive material used and, where applicable, the number of doses administered. As previously mentioned for all Human Use Groups, the increased fees for larger dose categories, reflects the increased effort required to process licensing actions for larger facilities, and the increased effort required during routine compliance inspections of larger facilities to review and evaluate more records and equipment.

Human Use Group II and III materials are stored and primarily administered within a Nuclear Medicine Department. The fees for Human Use Group II and III, taken together, essentially reflect the full costs for surveying and inspecting Nuclear Medicine Department facilities, equipment and records as well as the records of doses administered. This total cost was apportioned between Human Use Groups II and III. The fees for Human Use Group II are generally higher than the fees for Human Use Group III because the majority of Nuclear Medicine Department activities fall into Human Use Group II.

The radioactive materials in Human Use Groups I and VI are usually stored and administered outside of the Nuclear Medicine Department. Therefore, these areas and associated records have to be surveyed and inspected separately during routine compliance inspections resulting in additional costs. Also, for Human Use Group VI, the rooms of patients who are undergoing therapy treatments must be inspected during their use. This accounts for the somewhat higher fees for Human Use Group VI as compared to Human Use Group I.

The Department is aware that there may be instances where facilities licensed for two Human Use Groups could pay more than facilities licensed for three or more groups. This can result because the fee structure is based on the proportional Department regulatory effort expended for each use group. Such instances are not widespread however. Overall, the Department believes that the fee schedule balances the needs of the radioactive materials program with the burdens imposed on the regulated community in the most equitable fashion possible. It allows small medical facilities to provide a wide range of services on a small scale without excessive costs.

COMMENT: One commenter stated that the dose increments for the Human Use Groups in the fee schedule in N.J.A.C. 7:28-4.19 are too small, as even small institutions administer more than 1,000 doses a year.

RESPONSE: The Department recognizes that some small institutions may exceed the maximum yearly dosage rates in the fee schedule for one or more Human Use Group. However, the dose rates and fees apply only to State licensed materials and the commenter may not be accounting for the fact that many of the doses administered in the institutions are licensed by the NRC and not the State. Therefore, the Department believes that the dose rates and fees for the various Human Use Group subcategories are fair as they reflect the cost incurred by the Department in overseeing its licensing activities for the particular radioactive material and the number of dosages involved. The institutions administering Human Use Group NARMs at the higher rates are assessed a higher fee because oversight of the higher rates demands a greater level of Departmental effort. In sum, it is the level of effort the Department must expend to regulate the use or administration of the NARM, not the size of the institution, that dictates the size of the fee.

COMMENT: One commenter stated that the NRC's fee for a five year renewal of a radioactive by-product license and the NRC inspection fee for such license are both $830.00. The commenter observed that these fees are less than those contained in N.J.A.C. 7:28-4.19, despite the fact that such material is used more frequently in nuclear medicine than NARMs.

RESPONSE: The State fees for the possession and use of NARM's may appear higher than the NRC's fees. However, they are not directly comparable. The State fees include the costs of inspections, new and renewal license application or amendment processing. The NRC charges individually for each of these items. Also, the NRC is proposing fee increases which will take effect around August 1, 1991 that will recover approximately 100 percent of the cost of operating a licensing program. This will result in NRC fee increases that will significantly exceed the annual State fees adopted herein.

COMMENT: One commenter stated that the State inspects at a greater frequency than the NRC and that the need for the more frequent inspections should be justified. The commenter, additionally, requested information concerning the frequency of the injuries induced by NARMs and asked whether there was evidence of an increase in patient and personnel exposure to NARMs.

RESPONSE: Current resources dictate that the Department inspect its licensees once every two to 2.5 years. The Department has determined that the interests of patients, health care employees, the general public and the environment are better served by an annual inspection program. Annual inspections more adequately ensure compliance with the provisions of N.J.A.C. 7:28, and the conditions of the radioactive materials license and, as such, provide greater assurance that radioactive materials are administered or used by qualified personnel in a proper and safe fashion.

The Department is not in possession of data evidencing an increase in injuries associated with the administration or use of NARMs. However, it is important to note that the proposed inspection program is precautionary in nature, not reactionary. It is designed to prevent or minimize adverse affects on the health of patients, health care employees and the public that result from exposure to unnecessary radiation and to prevent damage to the environment. Thus, the absence of evidence indicating a rise in radiation exposure incidents does not obviate the need for the Department's proposed inspection program.

It must also be noted that the Department's inspection program for NARMs and the NRC's inspection program relating to NRC licensed radioactive materials are not redundant. Although a facility may be licensed by both the NRC and the State and, therefore, be subject to two inspections, each inspection is separate and distinct. For example, the NRC does not inspect stress thallium areas or therapeutic radium storage and treatment areas. NRC licenses relate to the possession of radioactive by-product, source or special nuclear material, while the State licenses pertain to Naturally Occurring or Accelerator Produced Radioactive Materials. The State and NRC licenses, therefore, contain different conditions and the licensees are required to comply with different regulations. As such, the two inspections have different compliance objectives. They are not redundant.

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

7:28-3.5 Registration of radioactive by-product material, source material and special nuclear material

(a) Any person having within his possession, custody or control any radioactive by-product material, source material or special nuclear material pursuant to a specific license issued by the United States Nuclear Regulatory Commission shall apply for and obtain a registration for possession, custody or control of the specified type(s) and amount(s) of such material as authorized by the license issued by the Nuclear Regulatory Commission. Application forms for the registration of radioactive material are available from the Department. When submitting an application, the applicant shall attach to the application a copy of the license issued by the Nuclear Regulatory Commission.

(b) (No change.)

(c) Fees in the amounts indicated in N.J.A.C. 7:28-3.13 shall be paid for each initial registration application, each registration amendment and each annual registration renewal.

(d) (No change.)

7:28-3.13 Fees for registration of radioactive by-product material, source material and special nuclear material

(a) Fees for initial registration, annual registration renewal and each registration amendment for possession of radioactive by-product material, source material and special nuclear material as provided below shall be paid in full by the applicant/registrant.

1. Initial Registration Fee: $150.00;
2. Annual Registration Renewal: $100.00;
3. Each Amendment to Registration: $100.00.

(b) Payment for each initial registration shall be made only by check or money order payable to "Treasurer, State of New Jersey" and shall be submitted with each initial registration application to the Department.

(c) Annual registration renewal fees payable to "Treasurer, State of New Jersey" shall be submitted to the Department annually no later than August 1 of each year.

(d) In the event that registration renewal fees are paid later than 30 days after August 1, a delinquency fee equal to one-half of the annual license fee will be imposed. Failure to pay a registration renewal fee, including any accrued delinquency fees for longer than 90 days after August 1 shall constitute grounds for suspension or revocation of the registration pursuant to N.J.A.C. 7:28-3.10.

(e) Registration amendment fees shall be submitted with the amended registration.

(f) The initial registration fee, the annual renewal fee and registration amendment fee shall be mailed to:

State of New Jersey
Department of Environmental Protection
Bureau of Revenue
428 East State Street
Trenton, New Jersey 08625-0402

(g) The registration year shall be July 1 of each year to June 30 of the following year.

7:28-4.19 Specific State license fee schedule for the production, transfer, receipt, acquisition, ownership, possession or use of naturally occurring or accelerator produced radioactive material

(a) The specific State license fee schedule for the production, transfer, receipt, acquisition, ownership, possession or use of naturally occurring or accelerator produced radioactive materials is as follows:

Category	Annual License Fee
1. Radioactive materials license for Human Use Group I:	
i. Possession of material only;	$200.00
ii. Administration of less than 10 doses per year;	$300.00
iii. Administration of 10 through 49 doses per year;	$400.00
iv. Administration of 50 or more doses per year.	$500.00
2. Radioactive materials license for Human Use Group II:	
i. Possession of material only;	$200.00
ii. Administration of less than 200 doses per year;	$400.00
iii. Administration of between 200 and 1,499 doses per year:	$800.00
iv. Administration of 1,500 or more doses per year.	$1,200.00
3. Radioactive materials license for Human Use Group III:	
i. Possession of material only;	$200.00
ii. Administration of less than 200 doses per year;	$200.00
iii. Administration of 200 through 999 doses per year;	$400.00
iv. Administration of 1,000 or more doses per year.	$500.00
4. Radioactive materials license for Human Use Group IV:	
i. Possession of material only;	$200.00
ii. Administration of less than 10 doses per year;	$300.00
iii. Administration of 10 through 49 doses per year;	$400.00
iv. Administration of 50 or more doses per year.	$500.00
5. Radioactive materials license for Human Use Group V:	
i. Possession of material only;	$200.00

ii. Administration of less than 10 doses per year;	$300.00
iii. Administration of 10 through 49 doses per year;	$400.00
iv. Administration of 50 or more doses per year.	$500.00
6. Radioactive materials license for Human Use Group VI:	
i. Possession of material only;	$500.00
ii. Administration of less than 10 doses per year;	$600.00
iii. Administration of 10 through 49 doses per year;	$700.00
iv. Administration of 50 or more doses per year.	$800.00
7. Radioactive material license for commercial manufacture, processing and/or distribution of radioactive materials for Human Use.	$3,000.00
8. Radioactive materials license for commercial manufacture, processing and/or distribution of radioactive materials.	$3,000.00
9. Radioactive materials license for radioactive materials as sealed sources used for calibration and quality control purposes with a possession limit of 10 mCi or less.	$600.00
10. Radioactive materials license for radioactive materials, as sealed sources used for calibration and quality control purposes with a possession limit greater than 10 mCi.	$1,000.00
11. Radioactive materials license for radioactive materials as sealed sources contained in devices used for analytical purposes with a possession limit of one mCi or less.	$500.00
12. *[Radioactive materials license for radioactive materials, except radium-226, as sealed sources, contained in devices used for analytical purposes with a possession limit greater than one mCi but less than or equal to 300 mCi.]*	*[$750.00]*
Radioactive materials license for radioactive materials, except radium 226, as sealed sources, contained in devices used for analytical purposes with a possession limit greater than one mCi but less than or equal to 300 mCi:	
i. A government body, department, agency, authority, or any other unit of any state, Federal, county or local government using X-ray fluorescence devices for lead paint analysis	**$100.00**
ii. All others	**$750.00***
13. Radioactive materials license for radioactive materials, except radium-226, as sealed sources, contained in devices used for analytical purposes with a possession limit of greater than 300 mCi.	$1,000.00
14. Radioactive materials license for radioactive radium-226, as sealed sources, contained in devices used for analytical purposes with possession limit greater than one mCi but less than or equal to 50 mCi.	$1,000.00
15. Radioactive materials license for radioactive radium-226, as sealed sources, contained in devices used for analytical purposes with a possession limit greater than 50 mCi.	$1,500.00
16. Radioactive materials license for radioactive materials as sealed sources for Non-Medical Industrial Radiography.	$2,000.00
17. Radioactive materials license for radioactive materials not as sealed sources with a possession limit of 500 mCi or less.	$1,500.00
18. Radioactive materials license for radioactive materials not as sealed sources with a possession limit of greater than 500 mCi.	$2,000.00

(b) All licensees shall pay the fees set forth in (a) above by check payable to "Treasurer, State of New Jersey" prior to August 1 of each year.

1. In the event that the fees are paid after August 1, a delinquency fee equal to one-half of the annual license fee will be imposed. Failure to pay an annual license fee including any accrued delinquency fees for longer than 90 days after August 1 shall constitute grounds for suspension or revocation of the license pursuant to N.J.A.C. 7:28-4.16.
2. The annual license fee shall be mailed to:

State of New Jersey
Department of Environmental Protection
Bureau of Revenue
428 East State Street
Trenton, New Jersey 08625-0402

(c) Facilities for which multiple license categories apply shall be charged the sum of the fees for each of the applicable categories.

(d) The term "doses per year" when used in (a) above means the number of doses of radioactive materials within a category that are administered during the period July 1 to June 30.

(e) The term "human use group" when used in (a) above includes the use of radioactive material for calibration and quality control procedures as well as the administration of radioactive materials to humans.

(a)

DIVISION OF WATER RESOURCES

Water Pollution Control Act
Civil Administrative Penalties and Reporting Requirements
Adopted Repeal: N.J.A.C. 7:14A-3.10 and 7:14A-8.13
Adopted New Rule: N.J.A.C. 7:14A-3.10
Adopted Amendments: N.J.A.C. 7:14-8, 7:14A-1.9, 7:14A-2.5 and 7:18-6.6

Proposed: April 15, 1991 at 23 N.J.R. 1089(a).
Adopted: June 28, 1991 by Scott A. Weiner, Commissioner, Department of Environmental Protection.
Filed: June 28, 1991 as R.1991 d.378, **with substantive changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 13:1D-9, N.J.S.A. 58:1A-1 et seq., N.J.S.A. 58:10A-1 et seq., N.J.S.A. 58:10A-21, N.J.S.A. 58:11-49 et seq., P.L.1990, c. 28.

DEP Docket Number: 014-91-03.
Effective Date: August 5, 1991.
Expiration Date: April 27, 1994, N.J.A.C. 7:14
June 2, 1994, N.J.A.C. 7:14A
July 3, 1996, N.J.A.C 7:18.

Summary of Public Comments and Agency Responses:

The Department proposed the new rule, amendments and repeal on April 15, 1991. The public comment period on the April 15, 1991 proposal closed May 15, 1991. A public hearing was held on May 2, 1991 at the Labor Education Center, IMLR, New Brunswick, New Jersey. Scott A. Weiner, Commissioner of the Department of Environmental Protection, presided at the hearing. The Commissioner heard all comments made at the public hearing, and responded to many of them. The Commissioner has considered all comments made at the hearing, and the rule as adopted reflects that consideration. The public hearing record may be inspected, or a copy obtained upon payment of the Department's nominal charge for copying, by contacting:

Sue Kleinberg, Esq.
Department of Environmental Protection
Office of Legal Affairs
401 East State Street
CN 402
Trenton, New Jersey 08625

The following persons submitted written comments or made oral comments at the public hearing:

Michael J. Brinker, Jr., Executive Director, Joint Meeting of Essex and Union Counties

Arthur R. Brown, Jr., Secretary, New Jersey Department of Agriculture

Edward J. Buzak, Esq., Counsel and Legislative Committee Chairman, Association of Environmental Authorities

Daniel Caramagno, Environmental Engineer, Schering-Plough Research

T.W. Cervino, P.E., Environmental Manager, Colonial Pipeline Company

William A. Cline, Borough Engineer, Borough of Mendham

Frank P. D'Ascensio, Manager, Industrial & Pollution Control, Passaic Valley Sewerage Commissioners

Thomas J. Detweiler, Associate Director, Regulatory Affairs, Chemical Industry Council of New Jersey

Sally Dudley, Executive Director, Association of New Jersey Environmental Commissions

William J. Friedman, Esq.

John Gaston, Executive Director, Stony Brook Regional Sewerage Authority and Association of Environmental Authorities

Henry J. Greenemeir, President, New Jersey Water Pollution Control Association Inc.

Ellen Gulbinsky, Executive Director, Association of Environmental Authorities

Martin M. Gurvitch, P.E., Manager, Environmental Control Department, FMC Corporation

Peter Herzberg, Chair, Legal Committee, Association of Environmental Authorities

Susan E. Hoffman, Esq., Cohen, Shapiro, Polisher, Shiekman and Cohen, counsel to Lenox, Inc.

Donald L. Hoven, Assistant to the President, Hackensack Water Company

Jeannie Jenkins, Biologist, New Jeresy Public Interest Research Group/Clean Ocean Action/Delaware Riverkeeper

Robert W. Johnson, Counsel, Mobil Oil Corporation, U.S. Marketing and Refining Division, Office of General Counsel

Deborah Keller, Executive Director, New Jersey Environmental Federation

Edward A. Kondracki, Esq., Davis, Reberkenny & Abramowitz, counsel to Evesham Municipal Utilities Authority

Phillip Krejci, Director, Environmental Engineering, ARA Services

Diane M. Kress, Environmental Engineer, Environmental Control, Merck Chemical Manufacturing Division, Merck & Co., Inc.

Dennis J. Krumholz, Esq.

Edward Lloyd, General Counsel, New Jersey Public Interest Research Group/Clean Ocean Action/Delaware Riverkeeper

Frank LoBello, Sr., L&L Oil Service, Inc.

Bill Mathesius, County Executive, and Carolyn E. Bronson, Chairperson, County of Mercer

Megan A. Milford, Regulatory Affairs Coordinator, Waste Management of North America, Inc.

Arnold Mitnaul, Administrator, West New York Municipal Utilities Authority

James C. Morford, Vice President/Governmental Relations, New Jersey State Chamber of Commerce

Russell E. Nerlick, Executive Director and Chief Engineer, Western Monmouth Utilities Authority

Robert W. Novak, Executive Secretary/Treasurer, New Jersey Food Processors Association, Inc.

Dr. Alfred H. Pagano, Environmental Affairs Manager, E.I. DuPont-Chambers Works, Salem County

Dennis W. Palmer, P.E., P.P., Director of O&M, Camden County Municipal Utilities Authority

G. Oliver Papps, Associate Director, New Jersey Petroleum Council

Cathy Pollizzi, Industrial Pretreatment Coordinator, Joint Meeting of Essex and Union Counties

James A. Shissias, General Manager, Environmental Affairs, Public Service Electric and Gas Company

John Simas, Vice President, Environmental Affairs, Ciba-Geigy Corporation

Jasbinder Singh, President, Policy Planning and Evaluation

Mark F. Strickland, Environment Committee Secretary, New Jersey State Chamber of Commerce

Robert G. Suozzo, Superintendent, Environmental Control, Merck & Co., Inc.

Bruce Terris, Attorney, New Jersey Public Interest Research Group/Clean Ocean Action/Delaware Riverkeeper

Lisa Tracy-Savoie

George J. Tyler, Esq.

Virginia G. White, Dechert Price & Rhoads

I. General Comments

Several commenters stated that modifications to the permitting program are necessary to fully implement the policies in the Clean Water Enforcement Act.

1. COMMENT: The Association of Environmental Authorities commented that while the intent of the Water Pollution Control Act is to have permittees reach 100 percent compliance with their permits, most publicly owned treatment works, at best, run at 95 to 99 percent compliance with their discharge permits. The commenter stated to accomplish the goal of 100 percent compliance, a serious commitment from the Department is necessary to increase the quality and quantity of final permits issued. The commenter noted that at a rate of one major permit being issued every two months, the Department will be enforcing the Act on a universe of permits in which 70 percent of the major municipal permits will have expired by the end of 1991, and 400 permits will be the subject of adjudicatory hearings. Accordingly, the commenter recommended that the Department create a formal policy to settle a majority of the generic issues plaguing the NJPDES program. The commenter stated that if the backlog in the NJPDES program continues, the pressures will continue to grow until the program self-destructs, leaving the Department and the permittees as innocent, yet guilty, casualties.

The Stony Brook Regional Sewerage Authority and Association of Environmental Authorities commented that many permits are out of date, and will result in some permittees being at a disadvantage when the Water Pollution Control Act and the rule take effect.

The Stony Brook Regional Sewerage Authority and Association of Environmental Authorities also commented that some permits contain new conditions which have not been tested.

The Stony Brook Regional Sewerage Authority and Association of Environmental Authorities also commented that the standards of the Water Pollution Control Act are so "out of whack" with what the other elements of the permitting and enforcement system are capable of supporting. The commenter stated that unless the problems in the permitting process are corrected, enforcement will always be a problem.

The Stony Brook Regional Sewerage Authority and Association of Environmental Authorities commended the Department for providing a standard operating procedure concerning discharge monitoring reports processing.

The Stony Brook Regional Sewerage Authority and Association of Environmental Authorities also commented that the regulated community needs a way to transmit information to the Department electronically, to avoid mistakes made by hand.

The Association of Environmental Authorities commended the Department's efforts to prepare a discharge monitoring report standard operating procedures manual, and noted that an intensive program to educate those who fill out the discharge monitoring report as to its proper use is also going to be necessary. The commenter pointed out that the educational process cannot end on July 1, 1991 when the Water Pollution Control Act becomes operational.

Schering-Plough Research commented that under these rules, a permittee could be assessed substantial fines for violations which result from an improperly written permit. As an example, the commenter cited a permit for a facility's stormwater outfalls; the permit required a sampling program which did not yield representative samples of the stormwater runoff. The commenter questioned whether the permittee could raise the improperly written permit as an affirmative defense to a penalty assessment.

The New Jersey Food Processors Association, Inc. commented that the Department's permit programs should provide for the prompt issuance of realistic permits, permits which reflect the need for periodic

maintenance downtime for treatment equipment, and permits which recognize that upsets and bypass situations will occur.

The New Jersey Food Processors Association, Inc. commented that in light of the pressures on the food industry to keep costs down, it will become more and more necessary to install equipment that will conserve water, reduce waste and speed up production lines. The commenter noted that all of these factors will affect the effluent discharged by a food processor. Accordingly, unless the Department provides a speedy response to requests for changes in permits, the commenter felt that penalties could be assessed unjustly.

The Western Monmouth Utilities Authority commented that the rules should clearly state what types of activities do not require a permit. The commenter suggested that repair and replacement of treatment works should not be subject to these rules. The commenter further stated that "substantial modification" was not clearly defined.

The Association of Environmental Authorities commented that providing electronic transmission of discharge monitoring report data would improve the administration of the Water Pollution Control Act. The commenter noted that mistakes abound in the current manual system during preparation and sign-off by permit holders, and in the Department's receipt, processing and interpretation of the reports.

Ciba-Geigy Corporation commented that in view of the harsh penalties for exceeding effluent limitations, unnecessarily stringent permit limits which cannot be met using current technology should not be imposed. The commenter stated that the regulated community needs to be given permit limits which are consistently attainable, as long as the limits are protective of human health and the environment.

The New Jersey Food Processors Association, Inc. commented that communications with the Department must be improved.

The Association of Environmental Authorities commented that there are embedded technical violations of permit terms which will occur and apparently must be the subject of fines under the Water Pollution Control Act. The commenter stated that these embarrassing assessments will justly result in criticism of the Department by local legislators who will understand that a timely and fair permit would eliminate the problem. Accordingly, the commenter sought a commitment from the Department to increase the quality and quantity of final permits issued.

The Western Monmouth Utilities Authority commented that in basing its determination of effluent limitations upon the seven day low flow with a 10-year reoccurrence, which is certainly a drought condition, the Department has failed to recognize that these limitations should not be applicable during normal stream flows. The commenter recommended that the Department reduce the stringency of the permit requirements during non-drought periods.

RESPONSE: The Department has initiated a review and evaluation of the entire New Jersey Pollutant Discharge Elimination System (NJPDES) permitting program. While this evaluation is still ongoing, several areas for improvements have already been identified. The first of these is to revamp many of the regulations which from the foundation of the NJPDES program. The Department is in the process of drafting six major rule amendments which will be proposed over the next six months. The resulting proposals will affect the identification and application of conditions applicable to discharge permits, the identification of practical quantitative levels (PQLs) for the use in establishing permit effluent limitations, surface and ground water quality standards, a streamlining of the procedures for the Department's development of draft permits, and a response to a recent petition for rulemaking.

The Department has already distributed over 1,000 copies of a "Discharge Monitoring Report (DMR) Instruction Manual for Discharges to Surface Water (DSW) & Significant Indirect User (SIU) Permits," May 1991, which provides detailed guidance to permittees on a wide range of monitoring and reporting issues.

Finally, the Department is putting the finishing touches on a NJPDES permit computer tracking system. When operational, this system will enable the Department to decrease the personnel time necessary to accept and evaluate discharge monitoring reports (DMR), thereby decreasing the time lag between the Department's receipt of a DMR and taking an enforcement action where appropriate. The Department is also evaluating the most efficient method for loading DMR values into this computer system, including the electronic transfer of data.

As stated above, the Department believes that a strong and effective NJPDES enforcement program has to be based on a clear and effective NJPDES permit program. The Department will continue this evaluation process and continue to implement all measures necessary to implement a fair and effective NJPDES program.

2. COMMENT: The New Jersey Petroleum Council commented that in service station tank replacement programs, especially in southern New Jersey, the acidic nature of the groundwater coupled with acidic precipitation accumulating in the excavation make a permittee a significant violator by the very nature of the naturally occurring acidity. The commenter recommended that such inequities should be accounted for and resolved during permit negotiations, or that new or revised standards be granted based on site specific background conditions.

RESPONSE: The Department agrees that this issue is best addressed during the permitting process.

3. COMMENT: Ciba-Geigy Corporation requested clarification that only the analyses required by the permit must be reported on discharge monitoring reports. The commenter noted that in its experience, the preprinted discharge monitoring report forms are not consistent with the permit requirements, and a facility's preprinted form may list an effluent test which is not required to be monitored under the facility's permit.

RESPONSE: The commenter is correct, the content of a permit controls over DMRs as to both the parameters which may be discharged and the effluent limitations placed on those parameters. As stated above, the Department is implementing a quality control program to improve the quality of the DMRs and has been conducting major outreach program to identify and correct DMR errors.

4. COMMENT: The New Jersey Petroleum Council commented that many NJPDES permits are expired or have outstanding adjudicatory hearing requests. The commenter recommended that penalties associated with these permits be stayed until the permitting process is completed, because the imposition of a strict penalty program prior to renewal of permits or completion of the adjudicatory hearings will result in the imposition of penalties that may not be warranted.

RESPONSE: The commenter addresses permit conditions at two distinct stages of the NJPDES permitting process—expired permits and new or modified permits which the permittee appeals. An expired permit can be extended in one of two ways, each addressed in the NJPDES rules. A permittee's timely application for a renewed permit, or in the absence of such application, a letter from the Department will extend the effectiveness of a NJPDES permit beyond its expiration date until the Department issues a new or modified permit. If the Department did not allow for the effectiveness of the permit to be extended and therefore enforceable, but instead stayed all enforcement of the otherwise expired permit, as the commenter suggests, there would be no permit regulating the permittee's discharge. Without an effective permit, the permittee would have no choice but to cease its discharge. This is certainly not an option for a POTW. The second circumstance the commenter addresses is when the Department issues a new or modified NJPDES permit, which the permittee appeals. A request for an adjudicatory hearing does not automatically stay the effectiveness of the conditions of any permit. The NJPDES rules contain the criteria which the Department will apply to individual requests to stay the conditions of a permit being appealed. If the Department denies the stay request, the permittee must comply with the contested conditions which are on appeal. This is no different than an appellate court deciding not to stay the trial court's decision while on appeal. If, however, the Department grants the stay, as the commenter suggests, then the Department would not enforce the contested permit conditions during the adjudicatory hearing. A permittee is required to comply with the effluent limitations of a permit unless its effectiveness is stayed. See also response to Comment No. 9 below.

Several commenters focused their permit concerns on specific effluent limitations within NJPDES permits:

5. COMMENT: Public Service Electric and Gas Company expressed concern that the Department intends to apply the manadatory penalty provisions of the Water Pollution Control Act to certain permit limits without a specific statutory requirement to do so.

RESPONSE: The Department disagrees with this comment. The minimum mandatory penalties for serious violations apply to all effluent limitations other than color. The minimum mandatory penalties for significant noncompliance apply to all effluent limitations other than the flow from a facility operated by a local agency.

6. COMMENT: The Association of Environmental Authorities commented that permits are going to have to be modified to explicitly accommodate the high flow conditions during rainfall.

RESPONSE: If an individual permittee sees such a need, the permittee may raise this issue to the Department in either a permit modification request or when the permit is up for renewal.

7. COMMENT: Ciba-Geigy Corporation recommended that these rules should provide that in determining civil administrative penalties, the Department will consider the statistical confidence level of the test result.

RESPONSE: The appropriate place to raise this issue is in a permit modification request or a permit renewal. Once the Department sets the effluent limits in final effective permit, any exceedance of these effluent limitations is a violation subjecting the permittee to penalty liability. Industry representatives raised this same issue during the legislative consideration of the Water Pollution Control Act and the Legislature declined to respond to the permittees on this issue. The Department's position is consistent with the legislative policy reflected in the statute.

8. COMMENT: ARA Services commented that technical parameters, such as pH limits, set forth in various reporting and monitoring requirements are not necessarily an accurate measure of the performance of current pollution control systems. The commenter stated that the inclusion of such parameters may make lawful operation of currently complying pollution control systems impossible for both public and private users.

RESPONSE: The technical parameters the Department includes in permits are required by State and Federal law as either technology or water quality based parameters.

9. COMMENT: Mercer County recommended that dischargers unable to obtain updated permits by July 1, 1991 should be "grandfathered" under the conditions of their current permits, until the facilities can be funded by upgrading.

RESPONSE: Industry representatives also raised this particular issue during the legislative discussion of the Water Pollution Control Act. Similarly, the Legislature did not include any language to allow the Department to "grandfather" in any permits. All permittees must comply with final and effective permits whether issued before or after July 1, 1991.

10. COMMENT: The New Jersey Food Processors Association, Inc. commented that municipal water supplies become acid at times, and can adversely affect the pH of a permittee's effluent. The commenter recommended that outside influences should be recognized in permitting or in the handling of a violation.

The Stony Brook Regional Sewerage Authority and Association of Environmental Authorities commented that some problems in the permit system affect enforcement, noting that many permits have limits for suspended solids considerably below the limits in the State water quality regulations.

The Stony Brook Regional Sewerage Authority and Association of Environmental Authorities also commented that it is more likely that a plant would be in violation of its permit during rainy times; the commenter questioned whether the Water Pollution Control Act was intended to make such violations the subject of fines and penalties.

The Association of Environmental Authorities commented that permits should be modified to accommodate high flow conditions during rainfall.

The Western Monmouth Utilities Authority commented upon a perceived disparity in the regulations of chlorine residuals. The commenter stated that the flushing of water mains results in the discharge to land or surface waters of water containing chlorine residual; accordingly, the commenter stated that a strict interpretation of the Department's rules would require that these sources be dechlorinated before discharge. The commenter suggested that if one person is to be held to a zero standard, everyone else should be as well.

RESPONSE: The scope of the Department's rule amendments proposed on April 15, 1991 and now adopted focuses on enforcement issues related to the Department's implementation of the Water Pollution Control Act. As stated above, the Department will be pursuing additional rulemaking to address several other issues presented by the Water Pollution Control Act, including the establishment of effluent limitations in NJPDES permits. As far as specific effluent limitations in specific permits, the current effluent limits in existing permits control discharges until modified through the appropriate procedures. However, as issues such as those raised in these comments arise in an enforcement context, the Department may evaluate them on a case-by-case basis.

Several commenters stated that the Department should exercise discretion in the area of a single occurrence resulting in multiple violations:

11. COMMENT: Lenox, Inc. noted that the statute provides that the Department may consider multiple parameter exceedances resulting from a single operational occurrence to be a single violation. The commenter recommended that the Department include a provision to this effect in the rules.

Lenox, Inc. recommended that the rules should provide that when one parameter is required to be monitored and reported in several forms (such as a mass limit and concentration limit for the same pollutant), the Department may consider a violation of such several forms to be a single violation.

The Legal Committee of the Association of Environmental Authorities stated that the rules do not address the Department practice of issuing multiple violations for various parameter exceedances which occur at a single source and at a single time. The commenter noted that the failure of a single piece of equipment could result in the violation of several parameters, resulting in separate penalty assessments for each parameter. The commenter asserted that the possibility that the separate penalties could aggregate more than $50,000 per day is contrary to the legislative intent, and arbitrary and capricious. The commenter, citing section 6(e) of the Water Pollution Control Act, stated that the Department has the discretion to issue a single violation even though a single operational occurrence has resulted in the simultaneous violation of more than one parameter. The commenter stated that the rules must provide for this discretion.

The Stony Brook Regional Sewerage Authority and Association of Environmental Authorities commented that as a result of the interlocking nature of some of the provisions of the rule or of some permit conditions, a single occurrence could result in multiple violations.

The Association of Environmental Authorities commented that a single occurrence which results in a violation of multiple parameters would be treated as multiple violations under the rules. The commenter stated that this result is inappropriate. The commenter further stated that this result was contrary to the intent of the Water Pollution Control Act, which provides the Department with the discretion to issue a single violation for a single operational occurrence that may have resulted in simultaneous violations of several different parameters. The commenter cited the example of a violation for metals; since "total suspended solids" includes metals, the same violation could have violated that additional parameter.

The New Jersey Water Pollution Control Association, Inc. stated that the rules fail to include the provision of the Act which enables the Department to consolidate inter-related parameters as a single violation when more than one parameter is exceeded in a similar and single operational occurrence.

The Camden County Municipal Utilities Authority commented that the Department erred in not including the provision in the Water Pollution Control Act which allowed the Department to consolidate for the purposes of penalty assessment inter-related parameters as a single violation when more than one parameter is exceeded in a similar and single operational occurrence. The commenter urged the Department to follow the intent and wording of the Act and include this provision in the regulations.

The Association of Environmental Authorities recommended that the rules provide that when a single parameter exceedance occurs which can result in several violations on the DMR (such as a high BOD level, which can result in a mass loading violation, a percent removal violation, and a concentration violation), the interdependent exceedances should be considered a single violation.

The Association of Environmental Authorities commented that permit requirements which duplicate or interlock should be eliminated in favor of simple and fair parameters to evaluate performance.

RESPONSE: The Department has put the referenced statutory language into the rule.

Several commenters stated that the rules should allow the Department more discretion in responding to certain violators and certain violations:

12. COMMENT: The New Jersey Food Processors Association, Inc. commented that the Department's rules should allow the use of discretion in preparation of permits, and assessment of fines and penalties.

The Association of Environmental Authorities commented that the rules should provide the Department with the discretion to pursue persons with a historical patterns of violations, and to distinguish them from persons with periodic breakdowns.

RESPONSE: The Legislature established the public policy expressly limiting the Department's exercise of discretion in these types of situations. Moreover, the statute does not distinguish between violators with an "historical pattern of violations" and violators with "periodic breakdowns." The Water Pollution Control Act requires the Department to

assess minimum mandatory penalties against any person with a serious violation or who becomes or remains a significant noncomplier. The Department retains the discretion, however, to decide how to pursue violators not subject to minimum mandatory penalties.

13. COMMENT: The Association of Environmental Authorities commented that the rules do not provide the Department with the discretion to issue a notice of violation rather than a civil administrative penalty assessment. The commenter suggested that a notice of violation should be issued when a person has a minor violation causing no environmental harm, and no record of frequent violations.

RESPONSE: The Department agrees that a notice of violation might be appropriate in response to minor violations when a permittee has no history of frequent violations. The rules do allow the Department to respond in this manner.

14. COMMENT: Mercer County commented that to impose the same mandatory penalties against all dischargers without regard for particular circumstances indicates both a failure in the legislation to improve water quality and a lack of discretion for the Department to consider the appropriateness of penalties. The commenter stated that the mandatory penalties will place undue financial burden on ratepayers and taxpayers, who must ultimately bear the brunt of penalties. The commenter found this intolerable.

RESPONSE: The Legislature established the public policy in setting the levels of the minimum mandatory penalties and the Department is without the authority to modify those levels.

Several other persons made general comments concerning the rules:

15. COMMENT: Lenox, Inc. recommended that in adopting the rules, the Department should keep in mind that the rules may well create independent causes of action by interested citizens. Accordingly, the commenter noted that the Department might not be able to rely upon its own enforcement discretion to forgo application of provisions that are inappropriately or ambiguously drafted, or to interpret equivocal terms in the manner it intended.

The Western Monmouth Utilities Authority recommended that the Department should make its rules simple, direct and understandable.

The New Jersey Food Processors Association, Inc. commented that some of the time limitations in the rules are unrealistic.

The New Jersey Food Processors Association, Inc. commented that the Department's rules must be easily understandable, and any necessary calculations should be simplified and illustrated with examples.

RESPONSE: The Department has reviewed its April 15, 1991 rule proposal with these comments in mind, and as outlined more fully below, the Department has made changes to the rules in an attempt to clarify or remove any potential ambiguities and to ensure that the rules are direct and understandable.

16. COMMENT: The Western Monmouth Utilities Authority commented that a publicly owned sewage treatment plant cannot shut down, but must continue to provide service regardless of their ability to produce an acceptable effluent. The commenter stated that the Department apparently had not recognized this fact in the rule, and that the Department should consider this problem, and judge publicly owned treatment plants differently than industrial or commercial sources which have the ability to shut down rather than discharge an unacceptable effluent.

RESPONSE: As stated above, the Water Pollution Control Act requires the Department to assess minimum mandatory penalties if certain events occur. Within this constraint, the Department appreciates the commenter's perspective and is aware of this issue.

17. COMMENT: The Western Monmouth Utilities Authority suggested that if a facility gets a reading as part of its normal operating procedures which shows a violation, and then an adjustment is made so that the violation is corrected, there should be no penalty.

RESPONSE: The Department's enforcement policy recognizes that there are potentially three financial components to any violation of an effluent limitation: the cost of compliance, potential economic benefit, and a penalty. Consistent with this comment, the Department wants to do all that it can to encourage compliance with NJPDES permits. This is the cornerstone of any effective enforcement program. However, when certain violations occur, the Water Pollution Control Act requires the Department to respond in a specifically prescribed manner, and ignoring a serious violation once it is corrected is not an option available to the Department in such circumstances.

18. COMMENT: The Western Monmouth Utilities Authority recommended that the Department should not go further than what the law provides for, and should not write "good ideas" into the rule.

Lenox, Inc. made the general observation that as stringent as the Water Pollution Control Act is, the rules go beyond what even that strict statute mandates; portions of the rules are more demanding than the statute, and some exceed the Department's statutory authority. The commenter stated that there is no need for the already stringent statute to be made even more onerous. The commenter further noted that many provisions of the rules have no bearing on environmental quality, and recommended that the Department give serious consideration to the effect of the rules upon New Jersey businesses and municipalities.

Lenox, Inc., stated that while health and environmental protection are important goals for all citizens of the State, rules which regulate merely for the sake of regulation and impose penalties for actions unrelated to environmental quality do the State and its residents a great disservice.

RESPONSE: The Department agrees that administrative rules must be authorized by and relevant to the statute. The Department believes that all of the proposed rules are within the statutory authority of the Water Pollution Control Act and furthers the purposes of the Act.

Several commenters questioned the discussion of the effective date of the rule as set forth in the Summary of the rule proposal:

19. COMMENT: L&L Oil Service, Inc. noted that while rules provide guidance and information to the regulated community, these rules would not serve that purpose if they become effective before they are finalized; the regulated community will not know the final content of the rules until after the effective date. The commenter stated that it is patently unfair to subject violators to potentially substantial penalty amounts, without guidance on the Department's criteria for the penalty assessment.

The Chemical Industry Council of New Jersey commented that it would be beyond the Department's authority to apply these rules to violations occurring on or after July 1, 1991 unless the Department has adopted the rules by that date. The commenter also stated that such application is precluded by the Administrative Procedures Act, asserting that N.J.S.A. 52:14B-4.3 and 52:14B-5 of the Administrative Procedures Act provides that no administrative rule is effective unless it is adopted and approved by the Legislature. Accordingly, the commenter concluded that the Department cannot enforce these rules until it has formally adopted them.

DuPont questioned whether the Department could apply these rules to all violations occurring on or after July 1, 1991, if the Department does not adopt the rules until after July 1, 1991. The commenter believes that the Department's statutory authority under the Water Pollution Control Act does not authorize this application. The commenter questioned how the Department could impose these rules on the regulated community before they have been finalized, legally promulgated, and become effective, asserting that this result would deny protection afforded the regulated community under the Administrative Procedures Act.

DuPont questioned whether these rules will be limited only to new permits in place after July 1, 1991. The commenter stated that permittees who previously agreed to specific permit limits, before the enactment of the Water Pollution Control Act, should not now be subject to the new rules without the permit conditions being reopened for reconsideration and renegotiation.

Four members of the Board of Directors of the Environmental Law Section of the New Jersey State Bar Association, writing as individuals, commented on the Department's expectation to adopt these rules no later than July 1, 1991, and its indication that if the rules are adopted at a later date, the Department will apply the rules to all violations occurring between July 1, 1991 and the effective date of the rules, as well as after the effective date, pursuant to the Water Pollution Control Act. The commenters stated that there is no reason for the Department to either finalize its penalty rules implementing the Water Pollution Control Act by July 1, 1991, or suggest retroactive application, because the statutory amendments to the Water Pollution Control Act require the Department to adopt a uniform civil penalty assessment policy by January 1, 1992. The commenter suggested that the Department reconsider retroactive application of these rules in light of the prohibitions on the retroactive application of penalties. The commenters added that it is unclear whether the Department would retroactively apply the proposed rules or the rules which eventually are adopted. The commenters stated that it is patently unfair to subject the regulated community to substantial penalty amounts prior to providing guidance on the criteria for assessing such penalties.

Ciba-Geigy Corporation disagreed with the application of these rules to all violations which occur on or after July 1, 1991 even if the Depart-

ment does not adopt these rules until after July 1, 1991. The commenter stated that to be consistent with the New Jersey Administrative Procedure Act, the rules should become enforceable after promulgation.

RESPONSE: The Water Pollution Control Act expressly states that the amendments to N.J.S.A. 58:10A-10 and new sections N.J.S.A. 58:10A-10.1 and 10.2, shall only apply to violations which occur on or after July 1, 1991. There is additional statutory language requiring the Commissioner to adopt a uniform assessment of civil penalties policy by January 1, 1992. The Water Pollution Control Act amendments do not require the Commissioner to modify its penalty rules prior to the application of statutory amendments referenced above. As a result, the legislative policy of limiting the Department's discretion and requiring minimum mandatory penalties is effective July 1, 1991, whether or not the Department has adopted rule amendments by that date. The Department had wished, as indicated in its proposal, to be able to have its amended rules adopted and effective by July 1, 1991, to coincide with the effective date of the statutory amendments. Due to the number, extent and complexity of the comments received, however, the Department was not able to meet this goal. In order to obtain the broadest possible public notice of the rule adoption, the Commissioner signed and filed this adoption document with the Office of Administrative Law on Friday, June 28, 1991; mailed copies of this adoption document to each of the 46 commenters listed above; and issued a press announcement concerning these actions and corresponded with all permittees alerting them of the adoption prior to the August 5, 1991 publication date. The Legislature does not have to approve these amendments prior to their becoming effective as one commenter suggested.

As discussed above, and independent of this discussions concerning the effective date of these regulatory amendments, the legislative policy does not provide for an exemption from the statutory amendments for permits the Department issued prior to July 1, 1991.

Several commenters questioned the role of these rules in the delegation of authority to local agencies:

20. COMMENT: Lenox, Inc. recommended that the rules should expressly provide that they do not apply to industrial discharges to publicly owned treatment works, where a delegated local agency has an approved pretreatment program in place. The commenter noted that the Department's intent is to turn over the administration of industrial sewer discharges to local authorities with adequate programs in place, and allow local permits to replace NJPDES/SIU permits. Accordingly, the commenter recommended that the Department also turn over enforcement to the local authorities, and expressly state that these rules will not apply in cases where only a local permit exists. Otherwise, the commenter feared that a discharger could be unfairly exposed to two separate enforcement schemes.

The Joint Meeting of Essex and Union Counties requested clarification of whether delegated local agencies were required to assess the penalties provided in the rule.

The Joint Meeting of Essex and Union Counties suggested that the rules should clarify that all references to the authority of the Department also apply to delegated local agencies.

The Joint Meeting of Essex and Union Counties suggested that the rule should provide delegated local agencies with the discretion concerning the importance they place on various types of violations.

The Joint Meeting of Essex and Union Counties commented that discretion should be afforded delegated local agencies in assessing penalties, based upon the degree of violation and the individual circumstances present at the industrial facility, including how a violation affects the treatment plant. The commenter suggested that if no discretion is to be afforded delegated local agencies, then there should be a means to avoid the assessment of a mandatory minimum fine for a minimal violation that has no consequence on the plant.

FMC Corporation noted that industrial sites which are permitted by a POTW may be in violation of its permit limits merely because the industrial sanitary discharge does not contain as much dilution water as the discharge from a residence. Since there is no assurance that the POTW could promptly change these limits or provide other relief, the rule should make special provision for violations of such limits.

Four members of the Board of Directors of the Environmental Law Section of the New Jersey State Bar Association, writing as individuals, recommended that the Department clarify the rules as they concern specific enforcement procedures which are to be utilized by delegated local agencies, in order to prevent the implementation of conflicting enforcement procedures and policies by various delegated local agencies.

RESPONSE: With respect to these comments the focus of this rulemaking is on discharge permits the Department issues. The relationship of this rulemaking to the Department's pretreatment program will be the subject of additional rulemaking by the Department in September 1991.

Several commenters stated that the Department underestimated the economic impact of these rules on local agencies:

21. COMMENT: L&L Oil Service, Inc. commented that the proposal of these rules did not discuss the cost of obtaining the financial assurances required in connection with a hearing or an extended payment schedule. The commenter added that the Department also failed to analyze the cost of additional professional services, both technical and legal, which are required to understand the rules, evaluate their impact upon the operation of a business, and provide advice with respect to compliance and if enforcement action is taken.

RESPONSE: The Department discussed the financial impact of the proposed rules on permittees in compliance with individual permits. Beyond this, the public policy in the statutory amendments prohibits the Department from differentiating in the rules between permittees based upon the fiscal impact of the amendments.

22. COMMENT: The West New York Municipal Utilities Authority commented that most facilities would be in violation at some point. The commenter cited EPA statements that an excellently run facility would be in compliance approximately 95 percent of the time. In light of this information, the commenter questioned whether the penalties assessed under the rule would be stocking the Department's coffers, and suggested that the penalties would lead to "ruination" for a number of municipalities.

RESPONSE: The EPA 95 percent confidence level means that if a facility is in compliance with a limit there is a 95 percent probability that the facility is operating properly. In other words, the EPA recognizes that five percent of the time other facts can compensate for improper operation. However, the Water Pollution Control Act mandates that all penalties the Department collects on penalties of the Water Pollution Control Act shall be deposited in the Clean Water Enforcement Fund. The Water Pollution Control Act further defines the specific uses of the monies in this Fund "exclusively by the department for enforcement and implementation of the Water Pollution Control Act," unless otherwise specified by law, N.J.S.A. 58:10A-14.3. The Department is aware of the potential economic impact of noncompliance on permittees, particularly municipalities and other public entities, and has refocused its efforts toward doing all that it can to ensure compliance to minimize any such impacts.

23. COMMENT: The Passaic Valley Sewerage Commission requested an analysis of the increased costs resulting from the requirement that reports be submitted within five days after the end of the reporting period. The Commission pointed out that users will be forced to pay a premium for faster turnaround of monitoring data in order to comply with this requirement. The Commission also suggested that the need for faster turnaround for all users would produce a "bidding war" which would drive costs still higher. Accordingly, the Commission concluded that all users would incur additional costs under these rules.

RESPONSE: In response to this comment, the Department has modified the rule to have the five day reporting period begin when the violator knows or should know about the noncompliance. In this manner the Department hopes to alleviate the situation described in the comment.

24. COMMENT: The Passaic Valley Sewerage Commission disputed the Department's contention that these rules would have an economic impact only upon those persons who violated the Water Pollution Control Act. The Commission asserted that all affected users will incur substantial increases in costs to comply with the Water Pollution Control Act, and that the Department had not determined the extent of those increases. The Commission stated that as a result of the monthly reporting requirements in the Water Pollution Control Act, many categorical users will experience a 600 percent increase in paperwork associated with pretreatment. The Commission noted that other indirect users also will experience substantial increases in user charge paperwork since there is no distinction contained in the law. The Commission questioned the Department's position that the requirement for increased monitoring and reporting would not result in increased costs, and requested documentation supporting the Department's position.

RESPONSE: Comments similar to this one were raised during the legislative debates on the Water Pollution Control Act. However, the

Department is unaware of any specific study or data which verify the contentions of the comment. As stated in the April 15, 1991 rule proposal, certain permittees will incur additional reporting and record keeping requirements as a result of increased statutory requirements in these areas. The Department invites additional comments from the general public as well as the regulated community on these comments. The Department will review and evaluate all such comments and determine if additional rulemaking is appropriate.

Several commenters questioned the Flexibility Analysis in the April 15, 1991 proposal:

25. COMMENT: Four members of the Board of Directors of the Environmental Law Section of the New Jersey State Bar Association, writing as individuals, commented that the Regulatory Flexibility Analysis in the proposal failed to consider the costs to small businesses of obtaining the requisite financial assurances in the event that a hearing or extended payment schedule is requested. The commenters noted that financial institutions routinely charge fees for issuing and maintaining financial assurance documents. In addition, some form of collateral must be posted in order to obtain the financial assurance. The commenters recommended that the Department must revisit the regulatory flexibility analysis, and include consideration of these costs. The commenters asserted that the Department's failure to include these issues in the regulatory flexibility analysis invalidates the proposed regulations.

RESPONSE: The Department believes that the Regulatory Flexibility Analysis in the April 15, 1991 proposal appropriately and sufficiently addressed the requirements of such an analysis. In addition, the Legislative policy in the statutory amendments prohibits the Department from differentiating in the rules between permittees based on fiscal impact of the amendments.

Several commenters questioned the applicability of these rules to violations of the Department's Underground storage tank rules:

26. COMMENT: Lenox, Inc. requested that the Department state whether any reporting obligations under the underground storage tank rules are intended to be subject to these penalty rules.

Lenox, Inc. recommended that to the extent the rules are applicable to the Underground Storage of Hazardous Substances Act, N.J.S.A. 58:11-49 et seq., a separate section for tank violations should be established.

Lenox, Inc. stated that many of the requirements in the rules were impossible to apply to underground storage tanks. The commenter stated that any attempt to apply the rules to underground storage tanks would be awkward or impossible because of the differences in terminology between these rules and the rules governing underground storage tanks. For this reason, the commenter recommended that all references to underground storage tanks and the Underground Storage of Hazardous Substances Act, N.J.S.A. 58:11-49 et seq. should be deleted from the rules.

RESPONSE: Yes, the Underground Storage of Hazardous Substances Act, N.J.S.A. 58:11-49 et seq., requires that the Department take enforcement action for violations of that act, including reporting obligations, and the regulations promulgated pursuant thereto according to the requirements of the Water Pollution Control Act. The Department considered this when it adopted the earlier version of this chapter on August 1, 1988 and concluded that a separate section was not necessary. Any such violations may be adequately addressed under this chapter as modified herein pursuant to the Water Pollution Control Act. Nothing in the Water Pollution Control Act nor in the April 15, 1991 rule proposal specifically requires that the Department handle these violations differently from any other violations under the Water Pollution Control Act.

Several commenters made other general statements:

27. COMMENT: ARA Services commented that deficiencies in technical parameters and in notice requirements for violation descriptions may encourage "attacking" of violations rather than quick environmental protection oriented resolutions, and also raise severe procedural protection issues. ARA Services commented that provisions for notices to violators are deficient throughout these rules, and that the penalties for technical and administrative issues are overly strict throughout the rules.

RESPONSE: As stated above, the Department is committed to improving the quality of the permits. In addition, the Department has modified some of the notice requirements to be consistent with the statutory amendments. Without more specificity, the Department is unable to determine which specific provisions the commenter is referring to.

28. COMMENT: The New Jersey Public Interest Research Group/Clean Ocean Action/Delaware Riverkeeper commented that the Department is not operating as a well run, effective enforcement agency when it is relying on entities such as the commenter to uncover violations.

RESPONSE: The Department disagrees with this comment. The Department has made great strides in recent years in aggressively but fairly enforcing permits under the Water Pollution Control Act. As further discussed throughout this response document, the Department is continuing to evaluate and improve its enforcement efforts. Furthermore, State law allows a citizen to bring an action to enforce certain environmental laws if the Department has not taken an enforcement action, provided the citizen gives the Department prior written notice of its intended action. One of the purposes of this notice is to allow the Department an opportunity to evaluate this situation and determine whether or not it is in the public interest to have the Department initiate an enforcement action instead of the citizen. In certain limited circumstances the Department does in fact elect to initiate enforcement actions in response to such notice. However, the Department actually "uncovers" less than five percent of its cases as a result of this citizen notice requirement. In contrast, over the last several years the Department has itself uncovered a record number of violations, taken more enforcement actions, assessed more penalties and collected more penalties dollars than at any time in the past and more than any other state.

29. COMMENT: FMC Corporation commented that when a violation occurs, the permittee may not always have immediate information to identify the cause, any may need to investigate, conduct analysis, or retain a consultant. The commenter recommended that the rule should allow for valid, ongoing investigations which seek to answer questions raised by the violation.

RESPONSE: Nothing in the proposed rules limits a violator's right to conduct all necessary investigations. The Department encourages all permittees to conduct any investigations they deem necessary.

30. COMMENT: Merck & Co., Inc. commented that the rules are, in general, far to complex.

RESPONSE: Admittedly, the regulation and enforcement of the ground and surface water permitting programs under the Water Pollution Control Act address complex issues. The Department has attempted to draft rules which both the regulated community and the regulators can clearly understand. The Department encourages all interested parties to make specific recommendations on how the Department can improve its regulations.

31. COMMENT: Four members of the Board of Directors of the Environmental Law Section of the New Jersey State Bar Association, writing as individuals, commented that many active and abandoned New Jersey properties are regulated under numerous State and Federal programs. The commenters stated that too often, the jurisdictional line between such programs is murky; for example, 42 U.S.C. § 9621(e) exempts certain sites from state and local permitting requirements. Accordingly, the commenters requested that the Department discuss the overlap between these programs and the anticipated impact of the regulations when adopted.

RESPONSE: The issues the commenters raise relate to the NJPDES permitting program and not to the enforcement issues under the Water Pollution Control Act. The Department will consider these issues in subsequent NJPDES permitting rule amendments.

32. COMMENT: Four members of the Board of Directors of the Environmental Law Section of the New Jersey State Bar Association, writing as individuals, recommended that the Department publish enforcement guidelines concerning its enforcement procedure, and schedule seminars for the regulated community and delegated local agencies.

RESPONSE: The Department agrees that an increased outreach program will go a long way to improve the effectiveness of the NJPDES Permitting program. The Department will be publishing both a seminar schedule and guidance documents that are available to the regulated community.

One commenter questioned the relationship between the penalties collected and the Wastewater Trust Fund:

33. COMMENT: Mercer County asked whether the proceeds of penalties may be diverted from the Wastewater Trust Fund, and into general program administration. The commenter noted that such a diversion would reduce the amount of funds available to correct

problems, and would leave certain municipalities and utilities without sufficient funding to eliminate the causes of their violations.

Mercer County recommended that 100 percent of the proceeds of penalties be used to help fund the Wastewater Trust Fund, and that none be used for general administration.

Mercer County recommended that additional revenues for the Wastewater Trust Fund be established through appropriations.

RESPONSE: Section 12 of the Water Pollution Control Act requires that all monies from fines, penalties, or recoveries of costs or economic benefit which the Department collects be deposited into the Clean Water Enforcement Fund. The Department may use this Fund for the enforcement and implementation of the Water Pollution Control Act. In addition, the Water Pollution Control Act creates the Wastewater Treatment Operator's Training Account which is to be the repository for 10 percent of any penalty assessed and collected by a local agency. The Water Pollution Control Act does not authorize any of these monies to be deposited into the Wastewater Trust Fund. Any such change as the commenter suggests would have to be through legislation.

II. N.J.A.C. 7:14-8.2

Several commenters questioned the definition of bypass:

34. COMMENT: The Association of Environmental Authorities commented that the definition of "bypass" should be made more specific, to eliminate an unnecessary burden of calls to the Department Hotline. The commenter noted that many routine changes in operations at a plant will require notification. The commenter also pointed out that since permits are generally silent on the operating rules for high flow conditions, the Department should expect a rush of notifications every time it rains, as operating practices are modified to maximize treatment.

The Association of Environmental Authorities recommended that the Department narrow the definition of "bypass," because under the current definition, many routine changes in operation at a plant will require Department notification and further contribute to stress on the Department's Hotline. The commenter noted that since permits generally are silent on the operating rules for high flow conditions, it is likely that permittees would flood the Hotline with calls every time it rains, as operating practices are modified to maximize treatment and the documentation groundwork is laid for an "upset" defense. This is particularly true at smaller plants which are subject to hydraulic overload during rainfall.

The New Jersey Petroleum Council suggested the following revision to the definition of "bypass," to allow for portions of the treatment works that do not effectively treat the influent to be bypassed: " 'Bypass' means the anticipated or unanticipated intentional diversion of a waste stream from the portion of the treatment works that is necessary to treat that waste stream to within permit limits."

Merck & Co., Inc. commented that the proposed definition of bypass includes the diversion of waste streams from a treatment facility, and the definition of a treatment facility is so broad that a bypass would include the removal of waste from a portion of a facility by tank truck for cleaning of a sewer or for minor repairs and the replacement of the waste stream back into the sewer downstream. The commenter stated that this type of operation should not fall under the definition of bypass.

RESPONSE: The Department adopted the statutory definition in establishing its regulatory definition of bypass and cannot change the statutory language. As both the Department and the regulated community gain experience with this new statutory provision, the Department will evaluate the option of adding additional clarifying language to address the problems the commenters identified and determine whether or not subsequent rulemaking is appropriate.

One commenter questioned the definition of Department:

35. COMMENT: Four members of the Board of Directors of the Environmental Law Section of the New Jersey State Bar Association, writing as individuals, recommended that the rules must be clarified to provide that in each use of the term "Department," the authority of a "delegated local agency" is included.

RESPONSE: The definition of "Department" is the statutory definition, N.J.S.A. 58:10A-3d. Furthermore, as stated above, the focus of this rule amendment was on the Department's authority and procedures under the Water Pollution Control Act. In subsequent rulemaking the Department will address how these rules will impact local agencies. The Department has solicited public comment on its preproposal concerning amendments to the Department's pretreatment rules (see 23 N.J.R. 149(a)). That preproposal included the enforcement aspects of the pretreatment program, including a delegated local agency's enforcement responsibilities. The Department intends to propose additional amendments to further address these enforcement issues under the Water Pollution Control Act in September 1991.

One commenter questioned the definition of discharge:

36. COMMENT: Lenox, Inc. questioned the definition of "discharge" in N.J.A.C. 7:14-1.6. The commenter noted that the definition includes "leaking" of a pollutant, while the underground storage tank rules distinguish between the concepts of leaks and discharges. Under the underground storage tank rules, a leak includes the release of a hazardous substance into a secondary containment; accordingly, the commenter noted that a leak (as defined in N.J.A.C. 7:14B-1.6) from an underground storage tank is not a release into the waters or lands of the State, and poses no direct threat to the environment. The commenter stated that for the purpose of imposing penalties, leaks which pose no threat to the environment cannot be held to the same criteria to which discharges into the environment are held.

RESPONSE: The Department agrees with the commenter that for the purposes of determining penalties for violations of the rules in N.J.A.C. 7:14B the definition of discharge in N.J.A.C. 7:14-8.2 should not include a "leak." The Department has, simultaneous with this adoption, proposed to clarify this issue. The definition of "discharge" is consistent with the statutory definition, N.J.S.A. 58:10-3.e. Pursuant to this definition a "discharge" must be "into the waters of the State, onto land or into wells from which it might flow or drain into said waters ..." A leak into a secondary containment system is therefore not a "discharge" pursuant to the Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq.

Several commenters questioned the definition of DMR:

37. COMMENT: The Joint Meeting of Essex and Union Counties recommended that the rules should clarify that the term "DMR" includes an industrial user's Self-Monitoring Report to a POTW, since POTWs with approved pretreatment programs (Delegated Local Agencies) may assess penalties against industrial users for violations of their permits.

The Joint Meeting of Essex and Union Counties requested clarification of the definition of "DMR" as it relates to the Department and to the definition of "permit" and "delegated local agency."

RESPONSE: As currently written, this chapter only applies to the Department. As stated above, how and to what extent it will impact local agencies will be described in subsequent rulemaking.

38. COMMENT: Four members of the Board of Directors of the Environmental Law Section of the New Jersey State Bar Association, writing as individuals, asked that the Department specify the difference between the terms "monitoring report form" and "discharge monitoring report."

RESPONSE: The Department directs the attention of the commenter to the respective regulatory definitions of these terms where the distinction is clearly articulated. The definition of "Monitoring Report Form" notes that it is for the reporting of data pursuant to certain Discharge to Ground Water Permits. This distinguishes it from "Discharge Monitoring Report" which is for direct or indirect discharges to surface water or ground water and includes Baseline Monitoring Reports.

39. COMMENT: Four members of the Board of Directors of the Environmental Law Section of the New Jersey State Bar Association, writing as individuals, commented that numerous problems (such as errors in printing effluent limitations by the government) with the Department's and EPA's pre-printed discharge monitoring report forms have occurred in the past. The commenters recommended that the definition should clearly indicate that such problems cannot be the basis for, or contribute to, a finding of violation.

RESPONSE: As discussed above, the Department has several initiatives designed to reduce and finally eliminate the types of problems presented by the commenter and will continue to work with the regulated community to resolve these problems. Moreover, it is the permit, not the DMRs, which control the discharge and which the Department will use to determine whether or not there has been a violation of the permit.

40. COMMENT: Four members of the Board of Directors of the Environmental Law Section of the New Jersey State Bar Association, writing as individuals, commented that while the definition of the term "discharge monitoring report" or "DMR" refers to the Environmental Protection Agency's uniform national form, the current format of that form is not evident from the definition. For purposes of clarity, the commenters suggested that the Department include that form as an appendix to these regulations. The commenters also suggested that it would be appropriate for the definition to refer to the preprinted forms

which the Department provides to permittees, indicating that those forms meet the uniform national form requirements. The commenters made the same comments with respect to the definition of "monitoring report form."

RESPONSE: The Department provides current Discharge Monitoring Report (DMR) forms to all permittees. It is, therefore, not necessary or appropriate to include these forms as an appendix to these rules. The Department has amended this definition to emphasize that permittees must use the current DMR forms.

41. COMMENT: Four members of the Board of Directors of the Environmental Law Section of the New Jersey State Bar Association, writing as individuals, recommended that the definition of "discharge monitoring report" must clarify that the term includes an industry's self-monitoring report to the publicly owned treatment works, because the rules permit delegated local agencies to assess penalties for permit violations.

RESPONSE: An industrial user's SMR form is not included in the definition of "monitoring report form" under N.J.A.C. 7:14A-1.9. However, the Department has solicited public comment on its preproposal concerning amendments to the Department's pretreatment rules (see 23 N.J.R. 149(a)). That preproposal included the enforcement aspects of the pretreatment program, including a delegated local agency's enforcement responsibilities. The Department intends to propose additional amendments to further address these enforcement issues under the Water Pollution Control Act.

42. COMMENT: Four members of the Board of Directors of the Environmental Law Section of the New Jersey State Bar Association, writing as individuals, requested clarification of the definition of "Federal Act," and asked whether the Department intended to include subsequent amendments to the Federal Water Pollution Control Act Amendments of 1972.

RESPONSE: The Department adopted the statutory language in the regulatory definition of "Federal Act," and has modified it to indicate that it includes all subsequent amendments.

Several commenters questioned the definition of hazardous pollutant:

43. COMMENT: L&L Oil Service, Inc. noted that the rules, as proposed, fail to provide sufficient guidance to the regulated community in some cases. The commenter noted that many of the definitions, including the definitions of the terms "hazardous pollutant" and "toxic pollutant," refer to other Federal and State regulations. The commenter recommended that the Department include an appendix setting forth these referenced lists, because many businesses do not maintain a complete library of all Federal and State regulations.

RESPONSE: The references to other Federal and State regulations in the definitions of "hazardous pollutant" and "toxic pollutant" are appropriate. Copies of these regulations are readily available and the regulated community has a responsibility to be familiar with them. Furthermore, inclusion of a specific listing in this regulation would require formal amendments to the regulation every time substances were newly included under the cited Federal and State regulations.

44. COMMENT: The Western Monmouth Utilities Authority commented that the definition of "hazardous pollutant" should provide an exception for chlorine residual discharged by a facility treating domestic sewage which is required to be disinfected prior to discharge. The purpose of this suggested exception would be to avoid fines against treatment plants using chlorine for disinfection; such fines would be required should chlorine remain as a normally regulated hazardous pollutant. The commenter suggested that the exception should apply only to those dischargers who treat a combination of domestic and industrial wastes and are required to disinfect; industrial waste treatment plants which do not receive pathogenic materials and therefore should not require disinfection would not be included in the exception. The commenter noted that until only a few years ago, the Department's rules required the use of chlorine or its compounds as a means of disinfection. The Department now requires non-detectable limits of chlorine in freshwater discharges, forcing most dischargers to employ a scheme of chlorination and dechlorination, to provide adequate disinfection without chlorine residual. Even so, since the required chlorine concentration is zero or non-detectable, the commenter asserted that it would be nearly impossible to avoid violations by more than 20 percent of the limit on a monthly average, resulting in serious violations. The commenter stated that the harm resulting from the discharge of a low chlorine residual into a receiving stream should not warrant a penalty.

The commenter specifically suggested that the Department provide that a discharger, upon obtaining a reading of detectable chlorine residual in its effluent, could make an adjustment to the system by reducing chlorine feed or increasing dechlorination feed. If the effluent requirements were met within one hour thereafter, the original reading would not be included in the monthly averaging.

The commenter noted that chlorine residuals could be eliminated by significantly overdosing with the dechlorination chemical, but this practice would be wasteful of energy and chemicals.

The commenter also suggested that the exception should not protect a violator from penalties for discharges which result in a fish kill downstream of the discharge, or from a requirement that the discharger restock the stream.

RESPONSE: The Water Pollution Control Act defines which pollutants are hazardous pollutants by referencing specific lists of substances. The regulatory definition of "hazardous pollutant" is the same as the statutory definition, N.J.S.A. 58:10A-3(u). The Department does not have the authority to exclude a substance from the definition of hazardous pollutant if that substance is on one of the referenced lists.

45. COMMENT: Four members of the Board of Directors of the Environmental Law Section of the New Jersey State Bar Association, writing as individuals, noted that the amendments to the definition of "hazardous pollutant" delete the citation to the definition of "toxic pollutant." The commenters recommended that the definition include that citation, as it is necessary for clarity.

RESPONSE: The earlier version of this definition included a citation to the definition of toxic pollutant because that term was defined in other regulations. Now that these regulations include a definition of toxic pollutant, there is no need to include a similar citation.

46. COMMENT: The New Jersey Public Interest Research Group commented that the definition of "hazardous pollutant" in N.J.A.C. 7:14-8.2 is incorrect and inconsistent with the statutory definition in N.J.S.A. 58:10A-3(u). The definition in both the statute and the proposed regulations includes six classifications connected in the statute by "or" but connected in the regulations by "and." The regulations must be changed to conform to the statutory definition. A pollutant must only meet any one of the six criteria to be termed a hazardous pollutant, not all six criteria.

The definition of "hazardous pollutant" in this regulation should read as follows:

1. Any toxic pollutants identified pursuant to Section 307 of the Federal Act or Section 4 of the State Act *or* those pollutants, or combinations of pollutants ... [emphasis added].

RESPONSE: The Department has modified this definition to be the same as the statutory definition.

Several commenters questioned the definition of major facility:

47. COMMENT: L&L Oil Service, Inc. commented that the definition of "major facility" does not include specific criteria which render an operation a "major facility."

Four members of the Board of Directors of the Environmental Law Section of the New Jersey State Bar Association, writing as individuals, requested greater specificity in the definition of "major facility." The commenters noted that under the definition as proposed, any site labeled as a "major facility" by the United States Environmental Protection Agency (EPA) could be a "major facility" for purposes of these rules. The commenters pointed out that this aspect of the definition provides little guidance to the regulated community, and recommended that the Department propose its own specific criteria so that the public can comment. The commenters also stated that if DEP is adopting a Federal regulatory definition, the criteria of that definition must be specified.

RESPONSE: The regulatory definition of major facility is the same as the statutory definition in the Water Pollution Control Act. The definition of "major facility" does not include specific criteria, but the current criteria are available from the United States Environmental Protection Agency. The definition of "major facility" does not directly impact on the assessment of civil administrative penalties pursuant to N.J.A.C. 7:14-8, but is important to the NJPDES permitting rules in N.J.A.C. 7:14A. Therefore, the Department will further evaluate this comment and decide whether subsequent amendments to N.J.A.C. 7:14A are appropriate.

Several commenters questioned the definition of permit:

48. COMMENT: The Joint Meeting of Essex and Union Counties requested clarification of the use of the phrase "letter of agreement" in the definition of "permit."

The Joint Meeting of Essex and Union Counties requested that the definition of the term "permit" include industrial user permits.

Four members of the Board of Directors of the Environmental Law Section of the New Jersey State Bar Association, writing as individuals, commented that the use of the phrase "letter of agreement" in the definition of the term "permit" is confusing, and recommended that the Department specify the contents of a "letter of agreement."

Four members of the Board of Directors of the Environmental Law Section of the New Jersey State Bar Association, writing as individuals, recommended that the definition of the term "permit" should be clarified to state that it includes any permit, etc., issued by the Department or by a delegated local agency to an industrial user.

The Joint Meeting of Essex and Union Counties recommended that the definition of "permit" should include industrial user permits and compliance schedules, so that the definition reflects the entire permit process, including applications by industrial users which require the industrial user to submit information to the POTW.

RESPONSE: The Department included the phrase "letter of agreement" in the regulatory definition of permit because the Water Pollution Control Act included it in the statutory definition of permit. The phrase "letter of agreement" in the definition of "permit" is adequately described therein as an "agreement entered into between a delegated local agency and a user of its municipal treatment works, setting effluent limitations and other conditions on the user of the agency's municipal treatment works." How and to what extent this definition should be modified to include local agencies was beyond the scope of this rulemaking, but the Department will address this issue in subsequent rulemaking.

49. COMMENT: The Legal Committee of the Association of Environmental Authorities commented that the definition of "permit" is "nonsensical" in that it can be interpreted as authorizing penalties for violations for permit conditions which have been stayed. The commenter pointed out that this provision eliminates the effect of a stay. The commenter recommended that the provision be clarified to state that even if a permit is stayed as to one parameter, all other parameters remain enforceable.

The Association of Environmental Authorities commented that the definition of "permit" in N.J.A.C. 7:14-8.2 is inconsistent with the definition of that term under the Water Pollution Control Act. The commenter noted that the definition in the rule includes permit conditions which have been stayed. The commenter disagreed with this portion of the definition, because the whole purpose of obtaining a stay of permit conditions is to avoid enforcement of the stayed conditions. The commenter stated that the definition makes no sense, because it enables the Department to assess penalties for violations of permit conditions which have been stayed.

RESPONSE: A permit controls a permittee's discharge. The statutory definition of "permit" includes permits which have any or all of their conditions stayed. Staying a permit or particular conditions of a permit does not change the permit into something else, it is still a permit. A stay of a permit or a portion of a permit does, however, remove the Department's ability to enforce any such stayed provisions. This is appropriate and consistent with the definition of "permit" at N.J.A.C. 7:14A-1.9. The Department has modified the definition to make it clear that a permittee is not subject to enforcement for "violations" of any permit conditions which have been stayed by the Department pursuant to N.J.A.C. 7:14A-8.10.

One commenter questioned the definition of person:

50. COMMENT: Lenox, Inc. commented that it is not clear how, if at all, the rules apply to underground storage tanks. The commenter questioned whether the definition of "person" in N.J.A.C. 7:14-1.9 includes owners and operators of underground storage tanks, since the definition includes no express reference to such persons.

RESPONSE: The definition of "person" includes without limitation any entity or natural person. The owners and operators of underground storage tanks are therefore "persons" for the purpose of enforcement action under Section 10 of the Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq.

One commenter questioned the definition of pollutant:

51. COMMENT: Waste Management of North America, Inc. noted that the definition of "pollutant" includes rock and sand. The commenter requested that the Department further quantify when rock and sand becomes a pollutant. The commenter pointed out that even with properly constructed erosion and sedimentation controls in place, it may be impossible to prevent sediment transport during a storm event; minimal sediment transport can be expected in storm events and during periods of high flow.

RESPONSE: The Water Pollution Control Act defines "pollutant" to include rock and sand when rock or sand are discharged into the waters of the State.

One commenter questioned the definition of schedule of compliance:

52. COMMENT: The Joint Meeting of Essex and Union Counties requested that the definition of the term "schedule of compliance" include industrial user permit compliance schedules.

RESPONSE: The Department has solicited public comment on its preproposal concerning amendments to the Department's pretreatment rules (see 23 N.J.R. 149(a)). That preproposal included the enforcement aspects of the pretreatment program, including a delegated local agency's enforcement responsibilities. The Department intends to propose additional amendments to further address these enforcement issues under the Water Pollution Control Act.

Several commenters questioned the related definitions of serious violation and significant noncomplier:

53. COMMENT: The Joint Meeting of Essex and Union Counties recommended that the Department continue to define "significant noncomplier" pursuant to the Federal regulations. The commenter stated that the definition of that term in the proposal would result in unnecessary administration and scrutiny of industrial users in significant noncompliance, and limit the manpower available for other priorities.

RESPONSE: The Department is aware and sensitive to the burden that could be created through the application of different Federal and State definitions of "significant noncomplier." The Department has reconvened the Pretreatment Task Force to, in part, address this issue and to reconcile any differences between the two definitions. The Department will then consider subsequent rulemaking in September 1991 to implement any necessary amendments.

54. COMMENT: The Joint Meeting of Essex and Union Counties noted that under the definition of "significant noncomplier" in the proposal, a person could become a significant noncomplier without ever having committed a serious violation. The commenter recommended that in determining whether a person is a significant noncomplier, the Department should consider the level or degree of the person's violations.

The Joint Meeting of Essex and Union Counties commented that it was odd that a person could be a "significant noncomplier" without ever having committed a "serious violation," and requested that the Department revisit this issue.

RESPONSE: The Water Pollution Control Act defines "significant noncomplier" as any person who commits four violations of any magnitude during a six month period, so a person could in fact be a "significant noncomplier" without committing a serious violation.

55. COMMENT: The Passaic Valley Sewerage Commission questioned the definition of "significant noncomplier," in which a person would be deemed a significant noncomplier for a serious violation for the same pollutant, at the same discharge point sources, in any two months of any consecutive six month period. The Commissioners noted that more than one six month period could include the same two months of serious violations; for example, serious violations in May and June of one year would be included in the six month period from January through June, and the six month period from February through July. The Commissioners stated that this provision could result in a "double jeopardy" situation for a user, who would be considered a significant noncomplier for both six month periods. While conceding that this interpretation of the provision was "absurd," the Commissioners asserted that if the provision can be enforced as described, someone will do so. The Commissioners noted that the same comment applied to item 2 of the significant noncomplier definition, concerning exceedance of an effluent limitation in any four months of any consecutive six month period.

The Passaic Valley Sewerage Commission commented that the definition of "significant noncomplier" provides that a person can become a significant noncomplier as a result of a serious violation for the same pollutant, at the same discharge point source, in any two months of any consecutive six month period. The commenter noted that the same two months of serious violations could appear in more than one six month period, and therefore extend the time during which a person would be considered a significant noncomplier.

Hackensack Water Company asked whether the six month periods used in the definition of "significant noncomplier" mean the periods beginning with January and July of each year, the period beginning with the effective date of the permit, or the period beginning with the date of the first violation.

RESPONSE: The Water Pollution Control Act defines "significant noncomplier" in part as "any person who commits a serious violation for the same [pollutant] at the same discharge point source, in any two months of **any** six month period, who exceeds the monthly average . . . ." [emphasis added] N.J.S.A. 58:10A-3(w). The Department interprets this to mean that the inclusion of "any six month period" creates a moving six month evaluation period. Therefore, if a permittee had in a particular year only two violations of its permit which were serious violations in the months of May and June, the permittee would be a significant noncomplier for the six month periods January through June, February through July, March through August, April through September, and May through October. This does not result in any "double jeopardy" however since the Department would only penalize the permittee once for the serious violations which caused the permittee to be a significant noncomplier. In addition, there are separate statutory provisions which impose obligations, rather than penalties, which a permittee triggers upon becoming a significant noncomplier. An example is the change to monthly monitoring and reporting of the parameter in question.

56. COMMENT: The Passaic Valley Sewerage Commission (PVSC) requested clarification of item 2 of the definition of "significant noncomplier," which concerns exceedance of an effluent limitation expressed as a monthly average by any amount in any four months of any consecutive six month period. In light of the words "any amount," the Commissioner asked that the Department clearly define how the average values are to be calculated; how non-detectable values are to be incorporated; how several grab samples taken in one day are to be valued, and how an average value is determined when 24 hour recorders are employed.

PVSC questioned how an average value should be handled when 24 hour recorders are used. The commenter stated that the 24 hour recording of pH is infinitely more accurate and conducive to proper volume control of pH than the taking of instantaneous samples.

PVSC commented that the definition of "significant noncomplier" refers to an exceedance of an effluent limitation, without describing the number of decimal places used to determine such an exceedance. For example, if a limitation is 2.1, and there is a detectable limit of 2.11, the commenter questioned whether the latter number should be rounded down (resulting in no violation), or carried to two decimal places (resulting in a violation).

PVSC questioned whether non-detectable values would be incorporated into averages as zero, or as the detectable limit.

PVSC questioned how grab samples taken over a period of one day are to be valued and incorporated.

PVSC recommended that the average of values should be rounded off to the same number of decimal places as used in the limit; if the limit is 2.15 mg/l, the average would be rounded to two decimal places. As a result, a limit of 2.15 mg/l would not be violated by an average of 2.153 mg/l, which would be rounded to 2.15 mg/l.

PVSC also recommended that non-detectable values should be set to zero, and averaged in on that basis. PVSC stated that to use the detection limit instead of zero would be arbitrary and unreasonable.

PVSC also recommended that a daily sample be calculated by averaging all grab samples taken during the 24 hour period. PVSC stated that the representative 24 hour sample period should not run from midnight to midnight, because this would make sampling by the POTW virtually impossible.

PVSC also recommended that the Department incorporate the EPA methodology in 40 CFR 401.11 concerning pH. If the user exceeded the one percent limit, the entire month would be in violation for purposes of determining significant noncomplier status; however, the calculation of fines would include the 28, 30, or 31 days as a continuing course of conduct.

RESPONSE: The Department has prepared and distributed the "Discharge Monitoring Report (DMR) Instruction Manual for Discharges to Surface Water (DSW) & Significant Indirect User (SIU) Permits," May 1991, which provides detailed guidance to permittees on these issues and a wide range of other monitoring and reporting issues.

57. COMMENT: The Western Monmouth Utilities Authority commented that under the definition of "significant noncomplier," a permittee which exceeded an effluent limitation for four months in a six month period would be a significant noncomplier even if the average over the entire six month period is less than the permit limitation. The commenter suggested that the definition also include a requirement that the average over the six month period must exceed the limitation.

The Association of Environmental Authorities opposes the criteria used to define "significant noncomplier." In defining "significant noncomplier" as a permittee exceeding a permit limitation by any amount in four months of a six month period, the Department has failed to recognize either the precision of tests or environmental impact. The commenter pointed out that a facility could be considered a significant noncomplier if the monthly average exceeds the permit limitation in four months of a six month period, even though the total average over the same period was less than the permit limitation. The commenter suggested redefining "significant noncomplier" as a permittee which violates the same permit limitation during four months of a six month period, but only if the average of the results over that six month period also exceed the permit limitation.

RESPONSE: The Department is unable to make the changes suggested in these two comments because they are not consistent with the statutory definition of significant noncomplier in the Water Pollution Control Act.

58. COMMENT: The Joint Meeting of Essex and Union Counties expressed its concern with the definitions of "serious violation" and "significant noncomplier." The commenter stated that it could meet the concentration limit, it could meet the lead limitation, but invariably a few months out of the year it misses; it is strictly a mathematical calculation. The commenter recommended that the periods of time removal should be put down that will not be a violation.

RESPONSE: The definitions of "serious violations" and "significant noncompliance" are the same as the statutory definitions, N.J.S.A. 58:10-3(v) and (w). This six month period will be a rolling period of time.

59. COMMENT: The Western Monmouth Utilities Authority commented that a violation of permit conditions will not necessarily result in more than a negligible degradation of the environment, especially in light of the conservative limits set forth in permits. The commenter stated that 95 percent of the time, a violation of 40 percent would not result in any environmental degradation.

RESPONSE: The Water Pollution Control Act is a strict liability statute and there is not a requirement to establish environmental harm or damage in the establishment of a violation. The Legislature followed this original statutory scheme in defining significant noncomplier in the Water Pollution Control Act.

60. COMMENT: Ciba-Geigy Corporation recommended that permit violations due to analytical, sampling or test method variability should not be considered "serious violations" nor trigger mandatory penalties. The commenter cited a Chemical Manufacturers Association report entitled "Issues and Impact of Effluent Variability," which stated the following: "By defining these effluent limits statistically using actual treatment system performance data, the methodology inherently assumes a certain percentage of effluent quality samples from a well designed and well operated treatment plant will exceed the specified limits." The commenter pointed out that notwithstanding these assumptions, the Department's permits and enforcement rules have been written to consider effluent limits as never-to-be-exceeded values. The commenter recommended that the Department remedy this situation by changing the definition of a permit violation to reflect the fact that effluent limitation guidelines and permit limits are based upon statistical analysis and, therefore, represent numbers which will be exceeded occasionally. The commenter stated that precision and accuracy assessments predict that the analytical variability at permit limits close to the effluent limitations will repeatedly be greater than 20 percent, and will be even more than 100 percent for some constituent limits.

RESPONSE: Industry representatives raised these same issues during the Legislature's deliberation of the Water Pollution Control Act, the Legislature rejected these arguments. As stated above, a permit controls a permittee's discharge. The permittee violates that permit for any parameter when any of the effluent limitations are exceeded by any amount.

61. COMMENT: Waste Management of North America, Inc. suggested that to be consistent with the Water Pollution Control Act, the definition of "serious violation" should be revised to refer to an exceedance of an effluent limitation for "a" discharge point source rather than "any" discharge point source, and include limitations set forth in permits, administrative orders, or administrative consent agreements, including interim enforcement limits.

RESPONSE: The Department agrees that this change would clarify the definition and has made the change in the rule.

62. COMMENT: The Association of Environmental Authorities suggested making the definition of pH violations more stringent, because a discharge of two standard units outside the range of the permit

limitation could cause a serious problem in water quality, and a serious environmental impact depending upon the receiving stream.

Colonial Pipeline Company questioned why the definition of "serious violation" for pH requires "at least two but less than three standard units outside the range of the pH effluent limitation." Specifically, the commenter questioned why a violation of more than three standard units beyond the allowable range would not be a serious violation under this definition, while a violation of two units outside the acceptable range would constitute a serious violation. The commenter suggested that this provision be revised to require a violation of an effluent limitation for pH of at least three standard units outside the range of the pH effluent limitation. The commenter noted that if this change were made, the definition of "serious violation" would better correlate with the magnitude of deviation required for a violation to be considered of major serious in the matrix at N.J.A.C. 7:14-8.5.

The New Jersey Public Interest Research Group/Clean Ocean Action/ Delaware Riverkeeper commented that the proposal relaxed the definition of "serious violation" for pH set forth in the Water Pollution Control Act. The commenter stated that while the Act sets a standard of 40 percent over permit limitations, the proposal defines "serious violation" for pH to be at least two but less than three standard units outside the range of the pH effluent limitation. The commenter explained that two standard units outside the range of the pH effluent limit would be 9,900 percent over the limit. The commenter recommended that the definition of "serious violation" should be revised to include violations of 40 percent over permit limitations.

The Association of New Jersey Environmental Commissions commented that the Department's definition of "serious violation" for toxicity and pH is insufficiently stringent. The commenter pointed out that the Water Pollution Control Act defines "serious violation" as an exceedance of effluent limitations by 20 percent or more for hazardous pollutants, and 40 percent or more for nonhazardous pollutants; however, the Department's definition would allow these exceedance factors to be measured in such a way that the serious violation level would be 50 percent over the permitted levels. The commenter recommended that the Department adopt a more stringent exceedance factor.

An individual commenter noted that portion of the definition of "serious violation" which concerns pH limit violations should not be limited to violations by "less than three standard units." The commenter noted that under the definition as proposed, a violation by four standard units would not be a serious violation.

An individual commenter recommended changing the portion of the definition of "serious violation" which concerns pH limit violations to read "any violation of an effluent limitation for pH equal to at least one standard unit outside the range of the pH effluent limitation." The commenter pointed out that each standard unit "step" on the pH scale is 10 times higher or lower than the preceding "step."

Public Service Electric and Gas Company opposed commenters who stated that the "equivalent exceedance factor" for pH is too liberal, and not in keeping with the statutory exceedance limits of 20 percent or more for hazardous pollutants, and 40 percent or more for nonhazardous pollutants. The commenter pointed out that the 20 percent and 40 percent exceedance limits are specifically for pollutants measured by mass or concentration, while pH is not measured by mass or concentration. The commenter interpreted the Water Pollution Control Act as providing that the "equivalent exceedance factor" is intended to be a qualitative rather than a quantitative equivalent. As such, the 20 percent and 40 percent quantitative thresholds do not apply to pH.

The New Jersey Environmental Federation opposed the relaxation of the exceedance factor for pH, and urged the adoption of a 40 percent factor. The commenter stated that while pH is a critical factor to water quality the rule treated it as trivial.

RESPONSE: Based on the comments received, the Department has concluded that the equivalent exceedance factor proposal for pH was not the most appropriate. The Department, therefore, will not adopt the proposed amendment in this provision concerning pH, and has, simultaneous with this adoption, proposed an alternate equivalent exceedance factor for pH. The Department will determine the seriousness factor of a pH effluent violation according to the existing seriousness definitions in N.J.A.C. 7:14-8.5.

63. COMMENT: The New Jersey Environmental Federation questioned the Department's determination of standards for effluent toxicity tests. The commenter stated that a 50 percent factor would not deter violators, because few would actually be assessed penalties under this rule. The commenter requested that the effluent toxicity standard be reduced to 20 percent.

The New Jersey Public Interest Research Group/Clean Ocean Action/ Delaware Riverkeeper commented that the proposal relaxed the definition of "serious violation" for whole effluent toxicity tests. The commenter stated that the Water Pollution Control Act requires a particular definition of the term, as follows: any exceedance in effluent limitation for a discharge point source by 20 percent or more for a hazardous pollutant, or 40 percent or more for a non-hazardous pollutant. The Department is required to prescribe an equivalent exceedance factor for an effluent limitation for a pollutant which is not measured by either mass or concentration, such as pH and whole effluent toxicity test. The commenter stated that rather than find the correct equivalency factor as required by the statute, the rule instead has divided whole effluent toxicity into five penalty categories.

Four of those categories address violations of the LC50 test; the commenter stated that all of the violation percentages proposed by the Department are less stringent than the 20 percent exceedance allowed under the Water Pollution Control Act, except for the highest percentage in each of those four categories. The commenter recommended that the Department should use its discretion to set a percentage that is more stringent than the 20 percent minimum which is set for serious violations.

The fifth category, violations of a No Measurable Acute Toxicity limit, requires greater than or equal to 50 percent mortality in any test concentration. The commenter stated that this aspect of the definition weakens the Water Pollution Control Act, and is clearly in violation of the 20 percent over requirement set forth in the Act.

Similarly, whole effluent toxicity tests (LC50s) measure the toxicity of an entire effluent and, as such, clearly fall within the hazardous pollutant category under the definition of a serious violation. The Department must find the appropriate equivalency factor by calculating a number that is 20 percent over the permitted limit for each category of violation. It has not done so in its proposed regulations.

Finally, NOEC and NMAT limits are used to protect water quality to the highest degree. These limits are set at no chronic or acute effect levels and should be stringently enforced. The Department is proposing to set a serious violation level for a violation of an NMAT limit at 50 percent over the permitted limit rather than the maximum 20 percent set in the Act. This is in violation of the Wtaer Pollution Control Act.

The New Jersey Public Interest Research Group also commented that the definition of "serious violation" in the Water Pollution Control Act gives the Department the discretion to establish a more stringent factor of exceedance than the 20 percent found in the definition. The Department has chosen not to exercise the discretion which the Legislature has granted in this section. It should exercise its discretion to create a classification of serious violations using a more stringent factor than the minimum 20 percent required by law for LC50s of less than 50 percent, NOEC, and NMAT limits.

In the case of LC50s of less than 50 percent, any permittee required to meet such a limit must already be in violation of the original whole effluent toxicity limit in its permits because a Statewide minimum of 50 percent is set by DEP regulation. An LC50 of less than 50 percent is thus permissible only as an interim enforcement limit in a compliance schedule. It is appropriate for the Department to consider any such violation of an interim limit as a serious violation.

Because NOEC and NMAT limits are used to protect water quality to the highest degree and these limits are set at no chronic or acute effect levels, the limits should be more stringently enforced than merely the minimum standards included in the statute. The Department should use the discretion provided under the Act to set a more stringent serious violation level for both NOEC and NMAT violations.

Public Service Electric and Gas Company opposed commenters who stated that the "equivalent exceedance factor" for whole effluent toxicity is too liberal, and not in keeping with the statutory exceedance limits of 20 percent or more for hazardous pollutants, and 40 percent or more for nonhazardous pollutants. The commenter pointed out that the 20 percent and 40 percent exceedance limits are specifically for pollutants measured by mass or concentration, while whole effluent toxicity is not measured by mass or concentration. The commenter interpreted the Water Pollution Control Act as providing that the "equivalent exceedance factor" is intended to be a qualitative rather than a quantitative equivalent. As such, the 20 percent and 40 percent quantitative thresholds do not apply to this parameter.

RESPONSE: The Department agrees with these comments on the importance of whole effluent toxicity (WET) limits in NJPDES permits.

In order to effectively restrict the discharge of toxics, the Department has selected a combined approach limiting both specific pollutants of concern and the toxicity of the discharge as a whole.

The Water Pollution Control defines serious violation for pollutants which are measured by concentration or mass, and expressed as either monthly averages or daily maximums/minimums. For all other pollutants, such as whole effluent toxicity, the Clean Water Enforcement Act requires the Department to "prescribe an equivalent exceedance factor."

Toxicity limits are different from most other effluent limits in several important aspects, and therefore not included in the statutory definition of a serious violation. First, although nominally referred to in terms of "concentration," toxicity limits are not measured as specific weight per volume (for example, milligrams per liter (mg/l)) like most other pollutants. Toxicity limits are expressed as a percent of effluent which causes a specific effect on a certain percent of the test organisms.

Second, toxicity limits are not established as maximum amounts, as are the majority of other limits. Instead, toxicity limits are actually minimum limits; the minimum percent of effluent in the test water which causes a specific affect on a certain percent of the test organisms. In this regard, as a minimum limit, toxicity limits are similar to percent removal limits established for certain pollutants. As the percent effluent that causes a specific effect on a particular percent of the test organisms decreases, the actual toxicity increases.

Third, the toxicity scale is not linear. That is, a change in a toxicity measurement of one percent effluent represents a different measure of toxicity depending on where it occurs on the toxicity scale. This is in contrast to other pollutants, such as metals, where a change of one microgram per liter (ug/l) represents a constant quantity of metal, whether one goes from two to six ug/l, or 50 to 51 ug/l.

As a result, toxicity limits do not fit into the statutory definition of a serious violation along with most other pollutants. The Department, therefore, had to "prescribe an equivalent exceedance factor" for toxicity limits. This does not mean that the Department must develop an exceedance fator for toxicity which would be the same as the 20 percent factor the statute applies to more common hazardous pollutants which are both expressed as a monthly average or daily maximum/minimum, and measured by concentration or mass. Instead, the statute requires the Department to develop an equivalent exceedance factor which is as reasonable and appropriate for toxicity as the 20 percent factor is for other hazardous pollutants.

As described in more detail below, the Department investigated mathematical transformations to deal with the characteristics of the toxicity limits. A means was found to calculate a percent exceedance with transformed data. However, the results were not technically sound.

The Department then developed an alternate exceedance factor based on the mathematical difference between the toxicity limit and the test result. The difference signifying a serious violation varies with the different ranges across the toxicity scale. This is because the toxicity scale is not linear. The smallest differences used, nine percent and 10 percent effluent, is the range of minimum differences the Department believes is reasonable and appropriate as a significant violation of a toxicity limit.

The application of the equivalent exceedance factor the Department included in the proposal can best be illustrated by working through several examples.

EXAMPLE A

1. **Permit limit**

Hypothetical permit limit for acute toxicity: LC50 ≥ 50%.

This means that if the concentration of effluent which causes death to 50 percent of the test organisms is less than 50 percent effluent, a violation of the effluent limit occurs.

2. **Determining the toxicity value of the discharge**

The permittee conducted a toxicity test which yielded the following results:

Percent Effluent		Percent Mortality
Control	0	0
	6.25	0
	12.5	20
	25.0	40
	50.0	80
	100.0	100

Based on an analysis of this data set, this acute toxicity test yield an LC50 = 28% effluent. That is, 50 percent of the test organisms died in 28 percent effluent.

3. **Determining whether the toxicity value indicates a violation**

As stated above, in order for a violation of the limit to occur, the resultant value must be less than the minimum limit contained in the permit. Since an LC50 = 28% is less than the limit of an LC50 ≥ 50%, the permittee has violated the effluent limit.

4. **Determining whether the violation is a serious violation**

Using the table contained in N.J.A.C. 7:14-8.2 in the definition of serious violation, the Department applies the following procedure to determine whether or not the violation of the toxicity limit is a serious violation.

a. First, using the table, identify the appropriate range in the first column of the table in which the permit effluent limit fits.

In this example, the permit limit is an LC50 ≥ 50%, the correct range is the second range from the top, the one which states "greater than or equal to 50 and less than 80".

b. Then, move across the table to column two to identify the difference in percent effluent which would trigger a serious violation.

For this example the range is "greater than or equal to 15".

c. Subtract the test result directly from the limit:

For this example: 50—28 = 22

This value is the Difference in percent effluent.

d. Finally, compare this value, 22, to the range identified in item b. above.

As the difference between the test result and the limit is 22 and that value is "greater than or equal to 15", a serious violation has occurred.

EXAMPLE B

Using, the same limitation from above, LC50 ≥ 50%, if the test result was an LC50 = 40% effluent. The difference in percent effluent is:

50 − 40 = 10

As the difference is "not greater than or equal to 15", a serious violation did not occur. However, a violation of the limitation has occurred.

EXAMPLE C

1. **Permit limit**

Hypothetical permit limit for chronic toxicity: no observable effects concentration (NOEC).

This means that if the results of the test show a value which is less than the permit limit, a violation of the effluent limit occurs.

For chronic toxicity limits expressed as an NOEC, follow the same procedures outlined above for violation of acute limits by simply substituting the NOEC values for the LC50 values.

In the remainder of this response, the Department discusses some of these issues in more technical detail and responds to any of the comments not otherwise addressed above.

Characteristics of Toxicity Data

The Department in the definitions of "serious violation" at N.J.A.C. 7:14-8.2 proposed separate criteria for whole effluent toxicity (WET), and incorporated those criteria in a civil administrative penalty procedure for violations of WET limitations at N.J.A.C. 7:14-8.12. This was done in order to address the unique characteristics of the WET parameter and in consideration of the Department's recent implementation of chronic WET limitations in NJPDES permits. It also reflected the past experience of the Department in applying the previous penalty matrix to WET limits.

There are two types of WET limits, acute toxicity limits, which are expressed as either an LC50, which is the median lethal concentration of a toxic substance, or as NMAT, which means no measurable acute toxicity and chronic toxicity limits, which are expressed as an NOEC, which means no observable effect concentration. While WET limits expressed as an LC50 and NOEC are nominally discussed as concentration limits, they differ from normal concentration limits which are generally expressed as a weight per volume (for example, mg/l). The units for these two WET limits are expressed as percent effluent. These limits represent a specific dilution of an effluent that will have a specific toxicological endpoint, for example, kill one-half of the test organisms over the course of the toxicity test. The NMAT limit is also not a concentration limit since it is expressed as the allowable percentage of test organisms killed in any test concentration over the course of the test.

In addition to differences in the way toxicity concentrations are expressed, there are also differences in the characteristics of toxicity data. WET limits expressed as an LC50 or NOEC are minimum limits, since there is an inverse relationship between LC50s and NOECs, and toxicity

(that is, toxicity increases as the LC50 or NOEC value decreases). This means that a violation of an LC50 or NOEC limit would occur when the measured LC50 or NOEC of an effluent sample was less than the limit, similar to a violation of a percent removal effluent limitation.

Both the LC50 and NOEC toxicity scales are not linear. That is, a change in an LC50 or NOEC of one percent effluent represents a different quantity of toxicity depending on where it occurs along the toxicity scale, in contrast to a parameter like copper where a change of one ug/l represents a constant quantity of copper. Looking at the upper portion of the scales, an LC50 or NOEC of 50 percent effluent is twice as toxic as an LC50 or NOEC of 100 percent effluent, respectively, since the 50 percent effluent dilution is one-half the concentration of 100 percent effluent yet results in the same toxicological effect. At the lower end of the scales, an LC50 or NOEC of 10 percent effluent is five times as toxic as an LC50 or NOEC of 50 percent effluent, respectively, since the 10 percent effluent dilution is one-fifth of the concentration of the 50 percent effluent dilution, but results in the same toxicological endpoint.

Toxicity Limits

The comments confuse both the intent of WET limits and the level of water quality protection provided by the different types of WET limits. New Jersey has a minimum toxicity standard (N.J.A.C. 7:9-5.7(a)) of an LC50 ≥ 50% effluent. The Department develops water quality based WET Limits in accordance with the procedures in N.J.A.C. 7:9-4.6(c)5, only when more stringent than the effluent standard in N.J.A.C. 7:9-5.7(a). Water quality based WET limits are set to prevent instream toxicity to the aquatic biota in the waterbody receiving the effluent.

In setting permit conditions the Department calculates both acute and chronic WET limits, compares the two to determine which is the more stringent (that is, protective) and puts only that more stringent limit in the permit as the final limit. It is therefore not correct to say that one type of limit provides a higher level of protection than another, since the goal of both is the same, to prevent instream toxicity in the waterbody receiving the effluent after allowable mixing. That means that there is no reason to apply a more stringent enforcement criteria to one type of WET limit versus another as the commenter suggests. Whether acute or chronic WET limits govern for any particular discharge depends on the size of the effluent flow relative to the size and mixing capacity of the receiving water.

The Department has applied the NMAT limit when the acute limit procedure resulted in a calculated limit greater than an LC50 of 100 percent effluent. Such a situation generally means that a chronic limit is needed. The Department uses the NMAT limit because it is a little more stringent than an LC50 of 100 percent effluent and is the most protective limit that could be given in the absence of chronic limits. During the current permit cycle, the Department will replace most NMAT limits with more stringent chronic limits. Although in some cases, where the NMAT limit is determined to be equally stringent to the appropriate chronic limit, the NMAT limit may be retained since acute toxicity testing is less costly than chronic toxicity testing.

The commenter incorrectly suggested that because WET limits expressed as NMAT and NOEC have names including the words "no toxicity" or "no effects" that they are more protective than a WET limit expressed as an LC50, which is a level where 50 percent of the test animals die. All WET limits set requirements to be measured at the end of the discharge pipe before discharge. As discussed above, when properly set for the particular discharger/receiving water combination, the governing WET limit, regardless of how it is expressed, is designed to prevent instream toxicity to aquatic biota. It is a matter of statistical convention that acute data uses a median measure like the LC50 and chronic data does not.

Toxicity and the Penalty Matrix

At the time the Department adopted the existing matrix in N.J.A.C. 7:14-8.5, the Department had not considered whether it was appropriate for violations of WET limits. Soon after its adoption, however, several enforcement cases emerged involving violations of WET limits. At that time permits only included acute WET Limits as an LC50 value or as NMAT. Since an LC50 limit is a minimum limit, applying it to the matrix was difficult since a violation is less than the limit, making it impossible to directly calculate a percent exceedance. It is neither appropriate nor correct to merely subtract the LC50 test result from the limit and consider the difference as the "percent exceedance". A percent exceedance for violations of an LC50 limit can be calculated however, if both the limit and test result are first converted into toxic units, which eliminates the inverse scale problem referred to above. An acute toxic unit (TU_a) is the reciprocal of the LC50 multiplied by 100 (for example, LC50 of 50 percent effluent equals two TU_a; LC50 of 100 percent effluent equals one TU_a).

After overcoming the difficulty of calculating a percent exceedance for LC50 limits, the Department next considered whether or not it was reasonable to utilize the matrix in 8.5 to evaluate percent exceedances based on converted LC50s. Whole effluent toxicity is a "toxic pollutant" under the existing definition in N.J.A.C. 7:14A-1.9 and therefore a "hazardous pollutant" under the existing definition in N.J.A.C. 7:14-8.2. Due to the State's minimum effluent toxicity standard of an LC50 greater than or equal to 50 percent effluent, the range of LC50s evaluated was from 50 percent to 100 percent effluent. The Department than concluded that the penalty matrix in 8.5 could be used and that it was reasonable to do so. The Department has successfully applied the 8.5 matrix to violations of LC50 limits.

Applying the 8.5 matrix to violations of the NMAT limit proved more problematical. The NMAT limit in accordance with N.J.A.C. 7:9-4.6(c)5i(2) requires that no mortality above normal background levels occur in any test concentration, including 100 percent effluent. For normal background mortality the department uses in the permit, the acceptable control mortality level specified in N.J.A.C. 7:18-6.6(v) for toxicity tests which were then less than 10 percent for fish and less than 15 percent for aquatic invertebrates. Unlike the limits expressed as LC50s or NOECs, compliance with a limit expressed as NMAT is not done by a statistical analysis of the data. In evaluating compliance with the NMAT limit, the highest percent mortality from among the test concentrations is utilized. By dropping the less than sign from the acceptable control mortalities, a percent exceedance from the NMAT limit can be calculated by using the highest percent mortality from among the test concentrations and the 10 percent or 15 percent control mortality values, whichever was applicable. The Department found that applying these calculated percent exceedances to the penalty matrix could result in unreasonably high penalties. For example, in a standard toxicity test using 20 fish per test concentration and the 10 percent figure as normal background mortality, two out of 20 fish dead is considered normal background mortality. If in a single test concentration, three out of 20 fish died, that is equal to a 50 percent exceedance and would have been a major violation under the 1989 matrix. Calling the death of one additional fish in one test concentration a major violation is not scientifically justifiable nor reasonable from a regulatory viewpoint. The Department decided at the time that using its enforcement discretion, it would apply the penalty matrix to NMAT violations, but only when it was reasonable to do so.

Development of the 1991 Regulations

In developing the 1991 regulations, the Department's goals were to address the statutory requirements of the Water Pollution Control Act, to deal with the problems arising from the application of the matrix to WET limits, and to accommodate chronic WET limits expressed as NOECs.

The Department first evaluated whether or not the 20 percent exceedance criteria for a hazardous pollutant was applicable for WET limits. As discussed above, a percent exceedance cannot be directly calculated for WET data expressed as an LC50 or NOEC, but rather, both the limit and the data must first be transformed into toxic units. A chronic toxic unit is the reciprocal of the NOEC multiplied 100. Table 1 contains the LC50 or NOEC equivalents for a 20 percent exceedance of WET limits calculated using the toxic unit method. Unlike acute WET limits expressed as LC50s, chronic WET limits as NOECs below the 50 percent effluent level are being imposed on permittees. The Department anticipates that chronic WET limits as low as an NOEC of 10 percent will routinely be imposed on dischargers. When comparing acute and chronic limits for stringency as discussed above, applicable acute limits will generally govern when the chronic limit is an NOEC below 10 percent effluent.

TABLE 1: LC50 or NOEC Equivalents to a 20 percent exceedance of WET limits calculated in toxic units.

LC50 or NOEC Limit (% Effluent)	LC50 or NOEC (% Effluent) Equal to 20% Exceedance	Difference (% Effluent)
100	83	17
90	75	15
80	66.66	13.34
70	58	12
60	50	10
50	41.66	8.34
40	33.33	6.67
30	25	5
20	16.66	3.34
10	8.3	1.7

Reviewing the data in Table 1, the differences equivalent to a 20 percent exceedance at the lower concentrations were exceedingly small. For example, with a limit of an NOEC of 10 percent effluent, a reported value of an NOEC of 8.3 percent effluent, a difference of only 1.3 percent effluent, is a 20 percent exceedance. Taking into consideration the nature of WET data and in particular the statistical derivation of LC50s and NOECs, the Department determined that it was unreasonable to characterize a difference in percent effluent of less than nine percent-10 percent effluent as a significant violation. In an attempt to resolve this problem and considering the nature of the toxicity scales, the Department also investigated whether or not other transformations, including the logarithmic and arcsine, could be used along with the toxic unit method to eliminate the problem of unreasonably small 20 percent exceedances. In the end, the Department concluded that it would have to abandon the percentage exceedance approach in defining a "serious violation" for wet limits.

In view of the characteristics of WET data discussed above and the unreasonable percent exceedances resulting from the toxic unit method, the Department concluded that the WET limit clearly is not the type of "concentration" parameter envisioned by the Legislature in drafting the statute. The Department believes that its charge from the Legislature in developing an equivalent exceedance factor for the WET parameter, was not to develop a strict equivalent of 20 percent exceedance as the commenter contends, but to arrive at alternate exceedance factors that would define a level of a serious violation for the WET parameter that is as reasonable for the WET parameter as the Legislature determined a 20 percent exceedance to be for other hazardous concentration based parameters. The Department believes the alternate exceedance factors it developed does just that.

The same is true for the alternate exceedance factor developed for WET limits expressed as NMAT. As discussed above, the NMAT limit is not really a concentration limit, and experience with the penalty matrix in applying the percent exceedance approach to NMAT limits showed that it could result in unreasonable results. For an acute toxicity test using a fish, the acceptable control mortality level used to calculate the percent exceedance would be 10 percent. A 20 percent exceedance would then be 12 percent mortality, which considering that the standard toxicity test uses twenty organisms per concentration, is less than one additional dead fish in any concentration.

The alternate exceedance factor the Department developed for LC50 and NOEC limits is based on the difference in percent effluent between the permit limit and the reported test result. Since toxicity is not a linear scale, the Department developed four ranges of differences in percent effluent defining a significant violation, with the smaller differences assigned to the lower end of the toxicity scale, where toxicity increases most rapidly for each one percent effluent incremental increase on the toxicity scales. The smallest differences in percent effluent utilized were a nine percent and 10 percent effluent difference, which as discussed above, is the range of the minimum difference the Department believes is reasonable as a significant violation. A percent effluent difference for a violation of a limit of an NOEC of 10 percent effluent of no more than nine percent, was also of practical necessity. A 10 percent effluent or 11 percent effluent difference would define a significant violation as an NOEC of zero percent and one percent effluent, respectively, which do not exist.

The characteristics of the NMAT limit discussed above made it more difficult to arrive at a rationale for an alternate exceedance factor. The alternate exceedance factor the Department developed for the NMAT limit was based on the fact that the limit as originally conceived was an attempt to be somewhat more stringent than an LC50 = 100 percent effluent, at a time when chronic toxicity testing had not developed to the point where chronic limits could be placed in permits. A significant violation was therefore defined as greater than or equal to 50 percent mortality in any test concentration, including 100 percent effluent. The occurrence of 50 percent mortality in 100 percent effluent is by definition an LC50 = 100 percent effluent.

64. COMMENT: Ciba-Geigy Corporation commented that the definition of "serious violation" for a violation of LC50 and NOEC limits is based upon a violation, for all effluent percentages, of approximately 20 percent. The commenter interpreted this definition as indicating that the Department considers LC50 and NOEC to be measuring toxic pollutants regardless of the percent effluent used in the test. The commenter stated that this appears to be contrary to the definition of "toxic pollutant" in the Water Pollution Control Act, which requires the Department to take exposure into account. The commenter recommended that the definition of "serious violation" be modified to reflect that an LC50 or NOEC tested at a dilution factor that approximates low stream flow conditions is a serious violation when a 20 percent violation occurs. For more concentrated effluent concentrations, which do not meet the definition of "hazardous pollutant" for any other reason, a 40 percent or more violation would be a serious violation.

RESPONSE: The Department does consider exposure in setting water quality based whole effluent toxicity limits. A dilution factor is calculated using either the statistical low flow specified in the surface water quality standards, N.J.A.C. 7:9-4, in non-tidal streams or plume models in tidal waters. It also seems that the commenter is confusing the difference in percent effluent factors that were proposed, with percent exceedance factors. The commenter should refer to the detailed response above on how the serious violation definition for whole effluent toxicity was developed. No change was made to the rules.

65. COMMENT: An individual commenter recommended that the list of violations which cause a person to become or remain a "significant noncomplier" be revised to include exceedances of the monthly average of the daily maximums and/or daily minimums for an effluent limitation. The commenter stated that this revision is necessary because some parameters, such as dissolved oxygen, have "daily minimum" or "minimum at any time" limitations.

RESPONSE: There is no need to make this change because this issue is already included in the statutory and regulatory definitions of serious violation.

66. COMMENT: The Joint Meeting of Essex and Union Counties requested clarification of the provision which makes a person a "significant noncomplier" for failure to submit a completed discharge monitoring report in any two months of any consecutive six month period. First, the commenter questioned whether DMR would be considered "complete" if it were completed within an allotted amount of time after the permittee received notice that the DMR was incomplete, or if the DMR had to be completed by the original due date to be considered "complete." Second, the commenter questioned whether a DMR would be considered incomplete if it were signed by an unauthorized representative of the permittee.

The Joint Meeting of Essex and Union Counties questioned whether a person should be deemed to be a "significant noncomplier" for failure to submit a completed DMR in any two months in a consecutive six month period. The commenter questioned whether a DMR would be considered incomplete for purposes of this definition if there were inadvertent omissions. The commenter also questioned whether if the omission were corrected within a certain amount of time, the DMR would still be considered incomplete for purposes of this definition.

Four members of the Board of Directors of the Environmental Law Section of the New Jersey State Bar Association, writing as individuals, requested clarification of the definition of "significant noncomplier." The commenters noted that one of the criteria in the definition is the failure to submit a completed discharge monitoring report in any two months of a six month period, and asked whether "completed" means complete as of the original due date, or complete after the permitee is notified that the discharge monitoring report is incomplete and is given time to submit the information. The commenters also questioned whether a discharge monitoring report would be considered incomplete if an unauthorized representative signs the report, or if certain ministerial items are omitted.

RESPONSE: The Department would consider a DMR to be complete if the permittee completed the DMR within 10 days of the permittee's

receipt from the Department of notice that the DMR was incomplete (see N.J.S.A. 58:10A-10.1). The Department would consider a DMR to be incomplete if the DMR was signed by an unauthorized representative of the permittee.

67. COMMENT: The Joint Meeting of Essex and Union Counties recommended the definition of "serious violation" should not include exceedance of flow limits and percent removals. The commenter noted that flow was specifically excluded in the Department's preproposal on pretreatment amendments at 23 N.J.R. 149(a), and that flow is also excluded as a violation of effluent limitations for NJPDES permits. The commenter also stated that percent removal is merely a mathematical calculation, and that only concentration and loadings have a practical effect; the commenter noted that a POTW could be in compliance for both concentration and loadings while out of compliance for percent removal.

RESPONSE: Color is the only effluent limitation which the Water Pollution Control Act excluded from the definition of serious violation. Furthermore, the Water Pollution Control Act directed the Department to prescribe an equivalent exceedance factor for any effluent limitation not measured by concentration or mass. The Department's preproposal on pretreatment amendments at 23 N.J.R. 149(a), is not the subject of this phase of the rulemaking necessary to implement the Water Pollution Control Act. The commenter is incorrect in the statement that violation of the effluent limit for flow is not a violation of a permit. Nothing in the Water Pollution Control Act allows the Department to ignore percent removals in the determination of whether or not some one is a "significant noncomplier."

68. COMMENT: Colonial Pipeline Company questioned whether the definition of "serious violation" applies to ground water monitoring data. The commenter reasoned that the definition would not pertain to ground water monitoring well data, because the wells are not discharge point sources and do not have effluent limitations established in the commenter's discharge to ground water permits. Colonial Pipeline Company recommended that if the Department intends that the definition of "serious violation" should include certain violations of ground water monitoring well limitations, the Department should revise the definition to account for situations in which the limitations may be more stringent than upgradient or background conditions. The commenter noted that background concentrations of some parameters are significantly higher than the commenter's permit limitations. The commenter recommended that these conditions should not trigger mandatory civil administrative penalties, and that if violations of ground water monitoring well limitations can be "serious violations," the definition of that term should be based on parameter values that significantly exceed upgradient conditions.

RESPONSE: The commenter is correct on the issue of the application of serious violations to certain discharge to ground water permits. The definition of serious violation is applicable to all point source discharge for which effluent limitations have been applied. Thus, it is applicable to a discharge to ground water, but not to a permit, also called a "discharge to ground water" but which only requires monitoring of ground water and does not authorize a discharge of any kind.

69. COMMENT: Lenox, Inc. commented that under these rules, all releases from underground storage tanks conceivably could be characterized as "serious violations". Under the Hazardous Substance Underground Storage Act, all leaks and discharges must be reported to the Department. The commenter stated that this requirement essentially sets an effluent limitation of zero for underground storage tanks. Therefore, the commenter concluded that a leak or discharge of one drop from an underground storage tank is an infinite percent greater than the amount allowed to be leaked or discharged, and will always be greater than the 20 percent exceedance constituting a "serious violation." The commenter expressed concern that high penalties would be imposed for insignificant or miniscule leaks or discharges. For the same reason, the commenter noted that a leak or discharge of a single drop from an underground storage tank would be considered major seriousness for purposes of the matrix set forth in N.J.A.C. 7:14-8.5(f). Therefore, the commenter recommended that if discharges from underground storage tanks are to be subject to the penalties in these rules, a separate penalty scheme should be designed to address the distinctive characteristics associated with operation of underground storage tanks.

RESPONSE: The Department does interpret the definition of serious violation to apply in the absence of clearly articulated effluent limitations in the context the commenter described. The definition of "serious violation" applies to a discharge at a point source. Any discharge from an Underground Storage Tank is an unpermitted discharge to which the definition of serious violation is not intended to apply. Penalties for any such unpermitted discharges would be determined in accordance with N.J.A.C. 7:14-8.5(g)1iii(2), 2iv and 3i.

70. COMMENT: Four members of the Board of Directors of the Environmental Law Section of the New Jersey State Bar Association, writing as individuals, noted that the length of the sentence defining the term "serious violation" renders the definition unclear. The commenters suggested that "serious violation" be defined more clearly, by setting forth in a separate sentence the exception for the Department's ability to set a more stringent factor of exceedance on a case-by-case basis.

RESPONSE: The Department has modified the structure of the definition of "serious violation" to clarify this issue.

71. COMMENT: The Chemical Industry Council of New Jersey expressed concern over the portion of the definition of "serious violation" which allows the Department to use, on a case-by-case basis, a more stringent factor of exceedance to determine whether a serious violation has occurred. The commenter questioned what criteria the Department will use to determine when it will apply a more stringent factor of exceedance to determine a serious violation. The commenter noted that in the absence of such criteria in a rule, the regulated community will not know when the Department will employ a case-by-case analysis; therefore, it will be impossible for a permittee to alter its conduct to ensure compliance. The commenter recommended that the Department promulgate rules setting forth the specific criteria. The commenter raised the same issues with respect to the definition of "significant noncomplier."

Lenox, Inc. commented that the Water Pollution Control Act provides that certain violations of permit conditions will be deemed to be "serious violations," and authorizes the Department to establish more stringent "factors of exceedance" on a case-by-case basis to determine when a "serious violation" has occurred. The commenter pointed out that the Act requires the Department to state specific reasons for establishing the more stringent factors of exceedance, and that the definition of "serious violation" in the rules states no criteria upon which the Department would rely in establishing the more stringent factors. The commenter recommended that the Department should include such criteria in a rule. The commenter added that the same comments apply to the definition of "significant noncomplier," which provides for the use of more stringent frequencies or factors on a case-by-case basis.

DuPont Chambers Works commented that the definitions of "serious violation" and "significant noncomplier" go beyond the Department's statutory authority under the Water Pollution Control Act. The commenter noted that the definitions of these terms provide that on a case-by-case basis, the Department may use a more stringent factor of exceedance to determine that a violation is a serious violation or that a person is a significant noncomplier. The commenter questioned what comprises a "more stringent factor of exceedance," when would the Department use such a more stringent factor, and the Department's criteria for determining when and how it will use a more stringent factor. Under the rules as proposed, the regulated community cannot know when the Department will use the more stringent factor; accordingly, the commenter pointed out that a violator could learn of an exceedance in which the more stringent factor was applied only after a civil penalty has been issued.

RESPONSE: The Legislature gave the Department the authority to use a definition of serious violation on a case-by-case basis and requires the Department to articulate the specific reasons for establishing the more stringent factors for exceedance (see N.J.S.A. 58:10-3(v) and (w). This authority is granted so that the Department may effectively address violations which, due to certain unique factors, cannot be adequately addressed within the numerical ranges of the definitions. Since this authority would only be utilized in relatively unique circumstances on a case-by-case basis, it is not possible at this time to establish criteria for when and how it would be applied. The Department will provide all necessary notice when required.

72. COMMENT: Hackensack Water Company noted that the definition of "significant noncomplier" excludes a local agency exceeding an effluent limitation for flow. The commenter asked whether an SIU permittee would also be excluded from the definition if it exceeded its flow requirement because the local agency (though willing) is prevented by a State agency from revising the POTW flow. The commenter noted that violations may continue in some cases until a permit can be revised, but revision of the permit may be delayed by a third party. Hackensack Water Company asked whether the definition of "significant non-

complier" sets different standards for local agencies than the standards set for other entities.

RESPONSE: The Water Pollution Control Act only allowed an exception for local agencies for flow and this does not extend to an SIU permittee discharging into that local agency's POTW.

73. COMMENT: The New Jersey Public Interest Research Group commented that the definition of a significant noncomplier as proposed in the regulations at N.J.A.C. 7:14-8.2 at paragraph 3 does not include violations of the average of daily maximums. It must be amended to include violations of the average of daily minimums as well as the average of daily minimums to ensure that limits for percent removals, pH, and other effluent limitations which are expressed as minimums are included in the definition.

RESPONSE: The Department already included violations of daily maximums and daily minimums in the proposal definition of serious violations as required by the Water Pollution Control Act.

Several commenters questioned the definition of toxic pollutant:

74. COMMENT: Ciba-Geigy Corporation commented that the definition of "toxic pollutant" at N.J.A.C. 7:14A-1.9 is overly broad, and inconsistent with the definition of the term at N.J.A.C. 7:14-8.2. The commenter pointed out that while the definition at N.J.A.C. 7:14A-1.9 refers to "death, disease, behavioral abnormalities ... in such organisms and their offspring," the definition at N.J.A.C. 7:14-8.2 refers to "... offspring, identified pursuant to Section 307 of the Federal Act, 33 U.S.C. 1317 or Section 4 of the State Act, N.J.S.A. 58:10A-4." The commenter recommended that the definition at N.J.A.C. 7:14A-1.9 should be revised to be consistent with the definition at N.J.A.C. 7:14-8.2.

The Camden County Municipal Utilities Authority inquired as to whether the definition for toxic pollutant contained in the regulations is the same as that definition in the Act.

RESPONSE: The Department has clarified the regulatory definition of toxic pollutant so that it is the same as the Water Pollution Control Act.

75. COMMENT: Ciba-Geigy Corporation recommended that the rules should include a list of substances considered "toxic pollutants." The commenter noted that the regulated community's knowledge of whether a discharge contains "toxic pollutants" is integral to compliance with these rules. The commenter also noted that under the definition of "toxic pollutant," the Department could classify and reclassify specific pollutants as "toxic pollutants" without any requirement that the regulated community be notified; the commenter stated that the regulated community should receive notice and an opportunity to comment upon specific toxic pollutant listings. Including the list in a reproposal of these rules would accomplish this goal.

RESPONSE: The references to other Federal and State regulations in the definitions of "hazardous pollutant" and "toxic pollutant" are appropriate. Copies of these regulations are readily available and the regulated community has a responsibility to be familiar with them. Furthermore, inclusion of a specific listing in this regulation would require formal amendments to the regulation every time substances were newly included under the cited Federal and State regulations.

76. COMMENT: The New Jersey Public Interest Research Group commented that the definition of a toxic pollutant as proposed in the regulations at N.J.A.C. 7:14-8.2 is less inclusive than the definition in the Water Pollution Control Act at N.J.S.A. 58:10A-3(r) and therefore violates the Water Pollution Control Act. The Water Pollution Control Act defines the term as any pollutant identified in the Federal Act or a pollutant as further defined in the Act itself. The proposed regulation, however, limits the definition to those pollutants which are both identified pursuant to the Federal Act and meeting the additional criteria listed in the Act.

RESPONSE: The Department has amended the rule to be the same as the Water Pollution Control Act.

One commenter questioned the definition of upset:

77. COMMENT: An individual commenter questioned the meaning of the phrase "a prior exception" in the definition of the term "upset," and requested that the Department either define "a prior exception" or clarify the definition of "upset."

RESPONSE: "[A] prior exception" is the statutory phrase within the definition of upset to refer to the situation in which the Department has given prior approval for the performance of maintenance operations such that the permittee would not be liable for any effluent violations which result from such operations. A formal regulatory definition of this phrase is not necessary.

Several commenters questioned the definition of violator:

78. COMMENT: Lenox, Inc. commented that the definition of "violator" in the rule as any person or entity against whom the Department asserts a violation would unfairly brand a person or entity as a violator, without that person or entity having any opportunity to challenge the asserted violation. The commenter recommended that the definition of "violator" should be limited to those persons or entities against whom the Department has not merely alleged but proven a violation, or persons or entities who have allowed a violation to become a final order without an appeal.

Four members of the Board of Directors of the Environmental Law Section of the New Jersey State Bar Association, writing as individuals, suggested that the term "violator" be deleted from the rules. The commenters stated that the attachment of a label such as "violator" to any person against whom the Department asserts a violation of the Act, or the applicable rules, does not give any recognition to principles of due process and equal protection; nor does it recognize the Department's own hearing rules which provide an opportunity for a permittee against whom a violation is alleged to challenge any proof offered by the Department and, if necessary, to prove its innocence.

RESPONSE: The Department is sensitive to the concerns raised in these comments. However, the term is used in the statute and, consistent with the statute, the Department uses this term in the penalty rules to refer to a permittee who has submitted a discharge monitoring report which indicates that the permittee's discharge was in violation of the effluent limitations in the applicable permit. That the permittee may have certain defenses to penalty liability for those violations does not change the fact that the permittee has in fact violated the effluent limitations of a NJPDES permit. The definition of "violator" specifically states that it means any person against whom the Department asserts a violation ..." This does not "unfairly brand" a person as a violator but merely states an action has been taken by the Department.

One commenter recommended an additional definition be added to the rule:

79. COMMENT: An individual commenter recommended that the rules define the term "exceedance." The commenter noted that no dictionaries she consulted defined the term.

RESPONSE: No formal definition of the word "exceedance" is necessary. The word is a noun formed from the verb "exceed" which is defined in standard dictionaries. The term is used in the statute without a definition.

III. N.J.A.C. 7:14-8.3

Several commenters questioned the Department's proposal concerning changes N.J.A.C. 7:14-8.3:

80. COMMENT: Public Service Electric and Gas Company and four members of the Board of Directors of the Environmental Law Section of the New Jersey State Bar Association, writing as individuals, requested that the Department clarify N.J.A.C. 7:14-8.3(c)1. The commenter stated that the use of the term "final order" does not provide sufficient clarity for purposes of the computation of interest under N.J.A.C. 7:14-8.3(c)1; it is unclear whether a penalty is due and owing (i) on the date set forth in the order and assessment, (ii) the date on which an Administrative Law Judge renders a decision, or (iii) the date on which an Appellate Division issues an order. The commenter recommended that the penalty should be due and owing on the date on which an order becomes final, defined as the twenty-first day after receipt, if no hearing is requested; or the conclusion of the appeal period following a decision by the Office of Administrative Law or a court if no appeal of that decision is filed.

RESPONSE: The commenters are referred to N.J.A.C. 7:14-8.3(b) which clearly articulates when a penalty is due and owing, which is consistent with the commenters' interpretation.

81. COMMENT: Ciba-Geigy Corporation recommended that interest should not accrue during the appeal of a penalty after the violator has posted financial assurance. The commenter asserted that the continuing accrual of interest after the financial assurance is posted is overly punitive, forces a violator to settle without due process, and eliminates any incentive for the Department to conduct a speedy hearing or penalty settlement.

RESPONSE: The Water Pollution Control Act clearly states that if "the department's assessed penalty is upheld in full or in part, the department shall be entitled to a daily interest charge on the amount of the judgment from the date of the posting of the security with the commissioner and until paid in full." N.J.S.A. 58:10A-10d.(5). The De-

partment drafted the rule consistent with this Water Pollution Control Act provision.

82. COMMENT: Mobil Oil Corporation, U.S. Marketing and Refining Division, strongly objected to N.J.A.C. 7:14-8.4, which requires a violator contesting a civil administrative penalty to post financial assurance. The commenter stated that these requirements violate the due process clauses of the United States and New Jersey constitutions, by placing an undue financial burden on such violators, effectively depriving many of their right to appeal.

RESPONSE: This provision is expressly required by the amendments to the Water Pollution Control Act.

Several commenters noted that the Department did not include the exemption from interest liability of a local agency which the Water Pollution Control Act provides:

83. COMMENT: The Legal Committee of the Association of Environmental Authorities commented that the requirement in N.J.A.C. 7:14-8.3(c)2 for interest on penalties upheld in the administrative process should not apply to penalties assessed against local agencies. The commenter stated that such interest assessments are contrary to the Water Pollution Control Act and precluded by the Tort Claims Act.

The Association of Environmental Authorities commented that N.J.A.C. 7:14-8.3(c)2 appears to provide that interest accrues on penalties against local agencies during the process of appealing the penalties. The commenter stated that the Water Pollution Control Act clearly provides that municipalities and local agencies would not be subject to interest on penalties during the appeal process.

Counsel to the Eveshsam Municipal Utilities Authority (MUA) commented that N.J.A.C. 7:14-8.3(c)2 should make it clear that interest on the amount of a civil administrative penalty should not accrue during the course of an appeal, if the penalty is assessed against a local agency. The commenter noted that the statute does not authorize interest against a local agency.

RESPONSE: The Department disagrees with these comments. The new statutory language of N.J.S.A. 58:10A-10d(5) does not exempt a local agency from the requirement to pay interest if the Department's assessment is upheld in full or in part. This interpretation is supported by the "Senate Review, Finance and Appropriations Committee Statement, Senate, No. 2188—L.1990, c.28" in the section concerning new responsibilities for all NJPDES permit holders, item No. 6.

Several commenters questioned the specific authority the Department had in settling penalties:

84. COMMENT: The Joint Meeting of Essex and Union Counties requested clarification of whether the 50 percent reduction authorized under the rules applied to the Department's original penalty assessment. The commenter also questioned whether the penalty could be reduced below the mandatory minimum.

The Joint Meeting of Essex and Union Counties requested clarification of N.J.A.C. 7:14-8.3(e), which provides for settlement of a civil administrative penalty at an amount no less than the statutory minimum. The commenter questioned whether a settlement could reduce a penalty below the range set forth in the penalty matrix.

Lenox, Inc. commented that the Department should provide a mechanism to reduce a penalty down to the statutory minimum if a discharger is unlikely to be able to pay the penalty without going out of business, or otherwise demonstrates an inability to pay. The commenter recommended that the Department work with dischargers to achieve environmental corrections without sacrificing jobs or economic viability. The commenter noted that if a discharger lacks sufficient funds both to invest in pollution control measures and pay a penalty, its payment of the penalty may lead to further penalty assessments because of the failure to invest in pollution control measures.

RESPONSE: The Department may settle a civil administrative penalty assessed pursuant to N.J.A.C. 7:14-8.5 below the bottom of the range as long as the reduced amount is not below the statutory minimum and otherwise in compliance with N.J.A.C. 7:14-8.3.

85. COMMENT: Policy Planning and Evaluation commented that many violations result from improper management, and that the Department should consider having the violator implement proper management tools as part of a settlement.

RESPONSE: The Department agrees with this comment.

86. COMMENT: The Legal Committee of the Association of Environmental Authorities commented that under N.J.A.C. 7:14-8.3(e)1ii and 8.3(e)2ii, a penalty for economic benefit could be assessed against a local agency. The commenter stated that this result is contrary to N.J.S.A. 58:10A-10(d)(5). The commenter further asserted that a local agency, which is not a profit making industry, should not be treated as one, since the local agency has no shareholders to benefit from its profits.

RESPONSE: The regulatory sections the commenter references do not deal with the assessment of economic benefit against a violator, but rather with the Department's discretion to settle a civil administrative penalty assessed. In drafting those sections, the Department followed the Water Pollution Control Act language in N.J.S.A. 58:10A-10(d)(4). The commenter appears to confuse the difference between economic benefit and profit. Local agencies may gain an economic benefit through violations of the Water Pollution Control Act, by, for example, deferring the cost of borrowing money necessary for a piece of equipment to bring a facility into compliance.

87. COMMENT: DuPont Chambers Works commented that several provisions in N.J.A.C. 7:14-8.3 give discriminatory advantages to local agencies. Specifically, the commenter referred to the provision for docketing a civil administrative penalty with the Clerk of the Superior Court, which provides that no lien for such a penalty will attach to the property of a local agency. The commenter also cited N.J.A.C. 7:14-8.3(e)2, which provides that for settlement of violations of something other than an Administrative Consent Order, followed by entry into an Administrative Consent Order, the Department would have the discretion to settle the penalty of a local agency limited only by the economic benefit and the minimum mandatory penalties.

RESPONSE: The sections the commenter refers to are identical to the Water Pollution Control Act language.

One commenter referred to an earlier draft of the rules:

88. COMMENT: Counsel to the Evesham MUA commented that N.J.A.C. 7:14-8.3(e)2ii and iii provide that the Department may compromise the amount of a civil administrative penalty assessment by up to 75 percent and 50 percent for a second penalty assessment and third penalty assessment against the violator, respectively. The commenter noted that if the violator is a local agency which enters into an administrative consent order, the statute provides the Commissioner with full discretion to compromise the amount of the penalty, provided that the penalty is not reduced below the statutory minimum. For this reason, the commenter stated that the Department was unnecessarily limiting its ability to settle a penalty assessment.

RESPONSE: This comment involves language which the Department considered in early drafts of these rules, but elected a delete prior to the April 15, 1991 proposal.

Several commenters noted that the Department did not include the exemption from posting the financial assurance by a local agency which the Water Pollution Control Act provides:

89. COMMENT: The Association of Environmental Authorities commented that under the Water Pollution Control Act, municipalities and local agencies are not required to post financial security with respect to administrative consent orders. The commenter stated that N.J.A.C. 7:14-8.3(g) requires any violator seeking a civil administrative penalty payment schedule of more than 90 days to post financial assurance with the Department; since the term "violator" can include a local agency, the commenter stated that this provision was contrary to the Act.

The Legal Committee of the association of Environmental Authorities recommended that N.J.A.C. 7:14-8.3(g) should be revised to provide that local agencies need not post financial assurance in connection with a penalty payment schedule extending more than 90 days, because the financial assurance requirement is specifically precluded by the Water Pollution Control Act.

RESPONSE: The Department inadvertently omitted this exemption and has corrected this in today's adoption by exempting local agencies from the requirement to post financial assurance.

Several commenters suggested that the Department allow for alternate forms of financial assurance:

90. COMMENT: Lenox, Inc. suggested that N.J.A.C. 7:14-8.3(h) be revised to provide more flexibility in the means of financial assurance which would be acceptable to the Department. Specifically, the commenter suggested that the rules should allow a permittee to "self-insure," and demonstrate to the Department that it has sufficient funds available to be committed to the task in question, rather than committing the funds up front for a letter of credit, surety bond or trust.

RESPONSE: The Department agrees that some flexibility may be appropriate for dealing with the statutory requirements concerning financial assurance. Therefore, the Department has added the following

language at the end of N.J.A.C. 7:14-8.3(h): "or in another form the Department approves in writing for this purpose."

Several commenters suggested modifications to the procedures for requiring financial assurance:

91. COMMENT: Lenox, Inc. commented that the Department should not require financial assurance if the remedial activity required under an administrative consent order will be comparatively less costly, for example $250,000 or less. Alternatively, the commenter recommended that the Department should retain the flexibility to forgo the financial assurance. The commenter stated that the costs involved in obtaining the financial assurance in such cases will far outweigh the benefit of having the security, and that in such cases the need for financial assurance is obviated.

RESPONSE: The Department does not believe that the Water Pollution Control Act allows for the Department to forgo the financial assurance as the commenter suggests. Both the Water Pollution Control Act and the rules do, however, allow the flexibility for the Department and the permittee to consider certain facts of a particular situation and develop financial assurance in such a way to address these concerns within the requirements of the Water Pollution Control Act.

92. COMMENT: Lenox, Inc. suggested that the Department should allow flexibility to forgo the requirement of posting financial security under N.J.A.C. 7:14-8.3(h), in cases where the permittee is financially unable to do so while still remaining viable. The commenter pointed out that the ultimate goal of the compliance schedule for which financial assurance is posted is to compel compliance. Presumably, this goal would not be served if the permittee could not remain viable after posting the financial security. Therefore, the commenter recommended that the Department retain sufficient flexibility to forgo the financial security if the permittee demonstrates that it is capable of paying the cost of compliance over the time period of the compliance schedule, but is financially unable to post the security at the outset of the schedule.

RESPONSE: The Department agrees, to the extent the statute allows for such flexibility, that this may be appropriate in certain cases. For example, if the permittee has the financial resources to implement the facility improvements to meet the compliance schedule, but no additional resources with which to post separate financial assurances, one option would be to put the money in a working trust fund. Such a working trust fund would provide the financial assurance the Water Pollution Control Act requires and at the same time provide a source of funds for the permittee to meet the compliance schedule.

93. COMMENT: Lenox, Inc. commented that the rules should incorporate a mechanism for returning a portion of the posted financial assurance to the permittee as progress in the compliance effort is made. The commenter pointed out that once the permittee completes a specified intermediate step in work required under an administrative consent order, the portion of the financial assurance which was necessary to assure completion of that step is no longer needed.

Four members of the Board of Directors of the Environmental Law Section of the New Jersey State Bar Association, writing as individuals, requested that the Department consider providing in N.J.A.C. 7:14-8.3(h) for the use of rolling financial assurances, such as those used in the hazardous site remediation program, in connection with administrative consent orders which include a compliance schedule. The commenters described this type of financial assurance as allowing for the adjustment of the amount of the financial assurance, as appropriate, to reflect costs at the specific site. The commenters stated that such financial assurances allow the regulated community to appropriately modify the amount of the financial assurance throughout the remediation.

RESPONSE: The Department agrees and intends to incorporate this idea into the provisions of the administrative consent orders which would incorporate a schedule of compliance, and does not see the necessity to put it into the rule.

94. COMMENT: An individual commenter asked who determines the cost of complying with an administrative consent order for purposes of determining the amount of financial assurance required under N.J.A.C. 7:14-8.3(h).

RESPONSE: The Department asks the person entering into the administrative consent order to estimate the cost of compliance, and upon the Department's approval of these cost estimates, that amount would control the amount of financial assurance.

Several commenters questions the Department's interpretation of the Water Pollution Control Act provision requiring prior notice concerning bypasses:

95. COMMENT: Lenox, Inc. commented that the requirements under N.J.A.C. 7:14-8.3(i) for asserting the affirmative defense of anticipated bypass exceed the Department's authority under the Water Pollution Control Act. The commenter noted that the rule requires the person asserting the affirmative defense to comply with the requirements of N.J.A.C. 7:14A-3.10. These requirements include providing the Department with prior written notice of an anticipated bypass, within 30 days before the bypass if possible, but in no case less than 10 days before the bypass. The commenter pointed out that the Water Pollution Control Act requires notice "if possible, at least 10 days prior to the date of the bypass." Accordingly, the commenter stated that the rule completely negates the Legislature's recognition that notification within 10 days of the bypass date is not always possible. The commenter further stated that the rules would deprive dischargers of their due process right to raise anticipated bypass as an affirmative defense in cases in which the Legislature believed that such a defense would be valid.

In addition, the commenter noted that while the Water Pollution Control Act does not specify how either the notice of the anticipated bypass or the Department's approval must be given, the rules require both the notice and the Department's approval to be in writing. The commenter asserted that written notice is not always possible, and that the Department cannot always respond in writing within 10 days. For these reasons, the commenter believes that the rules would, in many instances, deprive a discharger of a defense which the Legislature intended to be available under appropriate circumstances.

Therefore, the commenter recommended that the rule be amended to delete the requirement in question, or to change the requirement to be consistent with the Water Pollution Control Act.

RESPONSE: The Department, as part of the adoption, has modified the regulatory language in an attempt to clarify this issue and to ensure that N.J.A.C. 7:14A-3.10(f) is in fact consistent with the Water Pollution Control Act. The Department believes that the requirements for written notice and approval is both necessary for the adequate documentation of these events and appropriate given the availability of facsimile machines and next day mail delivery. The Department does not anticipate the hardships the commenter describes.

96. COMMENT: Waste Management of North America, Inc. noted that under N.J.A.C. 7:14-8.3(i)1, a violator is not entitled to an affirmative defense based on an alleged upset if the violation is caused by operational error. The commenter requested that the Department provide a clear definition of "operational error."

RESPONSE: As both the Department and the regulated community gain experience in applying this concept to specific circumstances, the Department may be able to develop an appropriate definition. Until that time, the Department believes that it is in the best interest of all concerned if this is determined on a case-by-case basis as the situations arise.

Several commenters question the Department's authority concerning affirmative defenses:

97. COMMENT: DuPont Chambers Works commented that the requirements for asserting an affirmative defense under these rules drastically tighten a discharger's opportunity to assert an affirmative defense. The commenter specifically referred to the requirement in N.J.A.C. 7:14-8.3(i)2 that the violator is entitled to an affirmative defense only if, in the determination of the Department, the violator satisfies the reporting requirements in N.J.A.C. 7:14A-3.10. The commenter stated that the Water Pollution Control Act does not limit the assertion of affirmative defenses in this manner.

RESPONSE: The Department has revised the rule to make it clear that nothing in the rule prevents a violator from raising other affirmative defenses beyond those referenced in the Water Pollution Control Act. The Department reserves its right to object to any such affirmative defense.

98. COMMENT: Colonial Pipeline Company commented that N.J.A.C. 7:14-8.3(i)4i does not address the situation in which background conditions are responsible for violations of a permit limitation. For example, the groundwater at some of the commenter's facilities has a pH below the lower permit limit. As a result, groundwater monitoring well samples are routinely found to be out of compliance with this limit. In addition, infiltration/percolation lagoons may also be influenced by such naturally occurring groundwater conditions. The commenter noted that background conditions are not always well understood before permit limitations are established. The commenter therefore recommends this provision be revised to allow a violator to raise natural background conditions as an affirmative defense.

RESPONSE: The extent to which background conditions are relevant to a particular discharge are appropriately addressed in permitting procedures for that permit and are not relevant to these rules.

99. COMMENT: Lenox, Inc. commented that the requirements under N.J.A.C. 7:14-8.3(i) for asserting the affirmative defense of unanticipated bypass exceed the Department's authority under the Water Pollution Control Act.

RESPONSE: The Department has modified N.J.A.C. 7:14A-3.10 to exclude the two hour notification as a requirement for a permittee raising an affirmative defense for an unanticipated bypass. This change is consistent with the Water Pollution Control Act.

100. COMMENT: Lenox, Inc. commented that N.J.A.C. 7:14-8.3(i)2iv appeared to allow the use of the affirmative defense of "laboratory error" only in cases involving serious violations. The commenter stated that the affirmative defense also should be available in cases involving minor violations, and suggested revising the beginning of the subparagraph to read as follows: "A violator asserting a testing or laboratory error as an affirmative defense to a serious violation shall also have the burden of demonstrating . . ." As a result of the change, the burden provided in the subparagraph would apply only in a case involving an asserted "serious violation." [emphasis in original]

Four members of the Board of Directors of the Environmental Law Section of the New Jersey State Bar Association, writing as individuals, recommended that the availability of the affirmative defense of testing or laboratory error should not be limited to serious violations.

RESPONSE: The Department intended to have this section of the rule apply to all violations and not just serious violations. The Department has modified the rule to make this provision consistent with the rest of N.J.A.C. 7:14A-8.3(i).

101. COMMENT: Four members of the Board of Directors of the Environmental Law Section of the New Jersey State Bar Association, writing as individuals, questioned the applicability of the rules to co-permittees. The commenters noted that the rules are silent with respect to such applicability, and that this silence leaves co-permittees without guidance. The commenters specifically questioned how the Department will apply penalties under N.J.A.C. 7:14-8.3 co-permittee situation; whether penalties will be assessed against a co-permittee under N.J.A.C. 7:14-8.5; how the economic benefit analysis under N.J.A.C. 7:14-8.13 applies to co-permittees; and whether a co-permittee is entitled to an adjudicatory hearing. The commenters requested that the Department address these issues.

RESPONSE: One of the purposes of requiring co-permittees on certain permits is to ensure that the co-permittee's experience and expertise are available should the permittee be either unwilling or unable to comply with the permit. The Department does not intend to treat co-permittees any different from any other permittee.

IV. N.J.A.C. 7:14-8.3A

102. COMMENT: The New Jersey Chamber of Commerce stated that N.J.A.C. 7:14-8.3A of the proposed regulations requires a violator to provide public notice of a proposed administrative consent order, but the Act requires the Department or a delegated local agency to provide such notice. The commenter asserted that this is unreasonable and unauthorized by statute, and requested that the regulations be rewritten to require notice by the Department or delegated local agency.

The Legal Committee of the Association of Environmental Authorities commented that the burden of providing public notice of proposed administrative consent orders should be borne by the Department, and not by the alleged violator.

Lenox, Inc. objected to the requirement that the violator pay the cost of any such public hearing, and suggested that public hearings not required by the statute should be held at the Department's expense.

Lenox, Inc. commented that while the Water Pollution Control Act requires the Department or delegated local authority to publish notice of a proposed administrative consent order and notify local government officials, the rules place that burden on the violator. The commenter recommended that the requirement should be made consistent with the statute.

Colonial Pipeline Company commented that the procedures in N.J.A.C. 7:14-8.3A, for soliciting public comments on proposed interim enforcement limits in administrative consent orders, deviate from the requirements of the Water Pollution Control Act, by requiring the violator rather than the Department or delegated local agency to provide the necessary public notice.

Colonial Pipeline Company commented that the procedures in N.J.A.C. 7:14-8.3A, for soliciting public comments on proposed interim enforcement limits in administrative consent orders, are inefficient. The commenter asserted that requiring a violator to submit proposed public notification plans and proposed public hearing arrangements to the Department for written approval adds an unnecessary step to what should be a routine process. For a more streamlined approach, the commenter recommended that this section be revised to require the Department to provide public notifications and make the necessary arrangements for scheduling and holding of public meetings.

DuPont Chambers Works commented that the requirements in N.J.A.C. 7:14-8.3A, detailing procedures for public hearings on proposed compliance schedules in Administrative Consent Orders, exceed the Department's authority under the Water Pollution Control Act. The Act allows NJDEP to require a violator to pay the costs of a public hearing if the violator is entering into an Administrative Consent Order which includes a compliance schedule that extends any relaxed interim discharge limitations for more than 24 months. The commenter pointed out that the provisions of the rules requiring the violator to pay these costs do not reflect the 24 month requirement, and therefore require the violator to pay costs in circumstances not required under the statute.

Waste Management of North America, Inc. recommended that if the Department requires a public meeting on interim enforcement limits, the Department (and not the violator) should bear the costs of the public hearing.

Waste Management of North America, Inc. noted that it will be difficult to determine the Department's costs associated with a public meeting on interim enforcement limits. The commenter also stated that it would be difficult to control effective and consistent charges for these costs to the violator by the Department. These costs are imposed upon the violator under N.J.A.C. 7:14-8.3A(d)5iii.

Public Service Electric and Gas Company recommended that N.J.A.C. 7:14-8.3A be rewritten to require that the Department or the delegated local agency, rather than the violator, provide public notice of a proposed administrative consent order. The commenter stated that the rule as proposed places an unreasonable burden on the permittee and is not specifically authorized by the statute.

Public Service Electric and Gas Company noted that the decision to hold a public meeting on proposed interim enforcement limitations could result in substantial cost to the party requesting the interim limitations. The commenter recommended that the Department establish criteria for determining whether a public meeting is required, to provide advance guidance to the regulated community and ensure that such decisions are made consistently.

Mobil Oil Corporation, U.S. Marketing and Refining Division, found the provisions of N.J.A.C. 7:14-8.3A troublesome and unduly penal. The commenter stated that if public comment is to be required on proposed interim enforcement limits in administrative consent orders, the violator should not be forced to perform all tasks and pay all costs (including the Department's costs) necessary to provide notice, schedule and hold the public meeting. The commenter asserted that the provision will not foster the efficient or effective resolution of contested cases, because it will significantly decrease the willingness of a violator to consider and enter into administrative consent orders.

RESPONSE: As a condition of obtaining the benefit of a compliance schedule, the Department intends to require the permittee to bear the burden of the time and expense necessary to comply with this provision in the Water Pollution Control Act. Because the Water Pollution Control Act authorizes the Department to sue a violator to recover the Department's investigation and enforcement costs, the alternative would be to have the Department pay for these costs and then sue the permittee to recover the public funds spent on such actions. Such an alternative is clearly not in the public interest. The Department has decided that instead of the Department and the permittee paying their respective attorneys for such litigation and then have the permittee reimburse the Department for its cost, the more sensible approach is to have the permittee pay these costs in the first instance.

103. COMMENT: The Legal Committee of the Association of Environmental Authorities commented that N.J.A.C. 7:14-8.3A allows for public comment on virtually all administrative consent orders, while the Water Pollution Control Act requires public comment only on those administrative consent orders which will relax effluent standards for more than 24 months. The commenter stated that the additional public comment requirements in the rule would slow the issuance of administrative consent orders, and require the Department to commit its resources to non-productive matters when it has more important needs.

Lenox, Inc. commented that while the Water Pollution Control Act requires an opportunity for public comment on any administrative compliance order which proposes to relax current effluent limitations, N.J.A.C. 7:14-8.3A(a)1 requires public notice and comment for any proposed compliance schedule, even those which do not propose to relax current effluent limitations. The commenter stated that the Department lacks a statutory mandate to require notice and comment in such cases.

Lenox, Inc. commented that while the Water Pollution Control Act requires a public hearing on a proposed order if the order would establish interim effluent limitations that would relax for more than 24 months the effluent limitations in a permit, the rules do not limit the public hearing requirement to these circumstances. The commenter found this requirement inconsistent with the Act.

RESPONSE: The commenters are confusing two different Water Pollution Control Act provisions. The Water Pollution Control Act requires the Department to "afford an opportunity to the public to comment on a proposed administrative consent order prior to final adoption if the administrative consent order would establish interim enforcement limits that would relax effluent limitations ..." N.J.S.A. 58:10A-6.1b. The Department has included the procedures for this process in N.J.A.C. 7:14-8.3A(a) through (c). The Water Pollution Control Act further provides that the commissioner "may hold a public meeting on a proposed administrative order or administrative consent order, prior to final adoption if the order would establish interim enforcement limits that would relax for more than 24 months effluent limitations ..." N.J.S.A. 58:10A-6.1c. The Department has articulated the process for the cases in which the Department decides to hold a public meeting in N.J.A.C. 7:14-8.3A(d).

104. COMMENT: The Joint Meeting of Essex and Union Counties recommended that under N.J.A.C. 7:14-8.3A, which provides for public comment on interim enforcement limits, no public comment should be required for industrial user compliance schedules. The commenter stated that public comment in this context would be too time consuming, especially because the industrial user often must be required to begin abiding by the compliance schedule immediately. The commenter also stated that each modification of a compliance schedule should not have to go through public comment. Instead, the commenter recommended that only compliance schedules which become permanent modifications to an industrial user's permit should be the subject of public comment.

RESPONSE: The Water Pollution Control Act does not provide the Department the authority to make this distinction. The Water Pollution Control Act states that the Department "shall afford an opportunity to the public to comment on a proposed administrative consent order ... [which] would establish interim enforcement limits." [emphasis added] N.J.S.A. 58:10A-6.1. The Department is aware of the legitimate time concern and has attempted to structure the process to minimize any resulting delays.

105. COMMENT: The Joint Meeting of Essex and Union Counties questioned whether a public comment period is required for compliance issued by a delegated local agency.

RESPONSE: Yes, and the Department will address this issue in subsequent rulemaking in September 1991.

106. COMMENT: Four members of the Board of Directors of the Environmental Law Section of the New Jersey State Bar Association, writing as individuals, requested that the Department provide in these rules some criteria for the decision to hold a public meeting on proposed interim enforcement limitations in an administrative consent order, to provide advance guidance to the regulated community and to ensure that this decision is made consistently. The commenters noted that a party requesting the interim enforcement limitations would incur substantial costs in connection with the public meeting, and that delay in implementation of any remedial measures could result from a lengthy issuance process for administrative consent orders providing interim enforcement limits.

RESPONSE: The Department intends to establish these criteria as the Department gains experience in making the decisions on when it is appropriate to hold a public hearing. The Department will also consider including such criteria, once developed, in subsequent rulemaking. Some appropriate criteria include the significance of the issues involved, the controversial nature of the issues, the length of the compliance schedule, as well as other case specific factors which may be relevant.

107. COMMENT: Four members of the Board of Directors of the Environmental Law Section of the New Jersey State Bar Association, writing as individuals, recommended that the Department include in the rule a regulatory tolling procedure for penalties, interest and financial assurances during the public process and during settlement negotiations.

Public Service Electric and Gas Company recommended that the rules should include a tolling procedure for penalties, interest and financial assurances, during the public process under N.J.A.C. 7:14-8.3A and during settlement negotiations, since the public participation can require significant amounts of time.

RESPONSE: The commenters did not articulate the legal basis within the Water Pollution Control Act which would allow the Department to implement such a procedure. The Department does not interpret the legislative policy set forth in the Water Pollution Control Act as giving the Department such authority. In addition, such a tolling procedure would remove the permittee's incentive to resolve these issues as quickly as possible. This would result in an increase in the already significant number of active cases in the Office of Administrative Law, further increasing the time necessary for resolution.

V. N.J.A.C. 7:14-8.4

108. COMMENT: Counsel to the Evesham MUA commented on the requirement in N.J.A.C. 7:14-8.4(a)7 that a violator requesting an administrative hearing must include in the hearing request full documentation that the violator complied with all of the requirements of N.J.A.C. 7:14A-3.10, and that failure to submit such information would constitute a waiver of the violator's right to assert the affirmative defenses of upset, by-pass or laboratory error. The commenter stated that this provision illegally limits statutory defenses, because N.J.S.A. 58:10A-10(d) does not require any such documentation to be submitted with the hearing request. The commenter stated that for this reason, the requirement should be deleted.

The Legal Committee of the Association of Environmental Authorities commented that the rule violates due process, the Administrative Procedure Act and the Water Pollution Control Act by giving the Department the discretion to reject an appeal for failure to comply with the requirements for a notice of appeal.

The Legal Committee of the Association of Environmental Authorities commented that the rule is both draconian and inconsistent with court rules allowing liberal amendment of pleadings, by providing that failure to raise an affirmative defense in a notice of appeal would operate as an irrevocable waiver of the defense.

Four members of the Board of Directors of the Environmental Law Section of the New Jersey State Bar Association, writing as individuals, recommended that the rules should allow hearing requests to be amended, to avoid subverting the administrative procedure. The commenters noted that other processes, both in the administrative and court forums, provide for the amendment of pleadings if evidence is discovered after the initial filing. The commenters stated that no action is taken on a hearing request for six to 12 months, and therefore amendments to a hearing request would not damage either party. The commenters also stated that the purpose of the discovery process is to permit both parties to ascertain new information, and that a violator should be able to amend a hearing request to include such information in its defenses.

Four members of the Board of Directors of the Environmental Law Section of the New Jersey State Bar Association, writing as individuals, commented that other judicial and administrative processes permit amendment of pleadings, and that anything less in these rules is tantamount to an unconstitutional denial of the opportunity to be heard.

Four members of the Board of Directors of the Enviromental Law Section of the New Jersey State Bar Association, writing as individuals, requested that deletion of the requirement in N.J.A.C. 7:14-8.4(a)7, which requires a violator to provide proof of compliance with the requirements of N.J.A.C. 7:14A-3.10 as part of the hearing request in order to raise a defense of upset, bypass, testing or laboratory error. The commenters noted that the rules provide only 20 days to file a hearing request. The commenters also pointed out that members of the regulated community are not necessarily attorneys, and therefore may be unaware of proofs which would meet the requirements for asserting an affirmative defense.

The Evesham MUA commented on the provision in N.J.A.C. 7:14-8.4(b) stating that the Department shall deny a hearing request if the hearing request does not contain all required documentation. The commenter stated that the statute does not require any such documentation to be submitted with the request. The commenter stated that for this reason, the requirement should be deleted.

The Association of Environmental Authorities objected to the provision of the rule which allows the Department to dismiss an appeal for failure to include all of the required information in the notice of appeal.

RESPONSE: The Department has deleted the provision in N.J.A.C. 7:14-8.4(b) which would have resulted in a permittee waiving its right to raise certain affirmative defenses if certain documentation was not included in a hearing request. However, the obligation to provide that documentation in the hearing request remains.

109. COMMENT: Four members of the Board of Directors of the Environmental Law Section of the New Jersey State Bar Association, writing as individuals, commented that the rules are unclear about the right to raise other defenses and any limit on that right, specifically on when the defense must be raised.

The Association of Environmental Authorities stated that many non-statutory defenses could be raised in an adjudicatory hearing, while the rule seems to allow only certain defenses. The commenter suggested that the rule should provide for other defenses, such as factual errors.

The Association of Environmental Authorities commented that the rules should be clarified to state that the affirmative defenses of bypass and upset are not the only defenses available to local agencies or permittees in general.

The Legal Committee of the Association of Environmental Authorities commented that the provisions governing appeals of penalties should be revised to allow for non-statutory defenses to be raised. The commenter cited as an example a violation over which the penalized entity had no control; the commenter stated that the lack of control was a reasonable defense which should not be precluded under the rules.

Dechert Price & Rhoads commented that the rules should allow a violator the opportunity to establish the affirmative defense that a violation was the result of background conditions. The commenter cited as an example a situation in which influent water from a public water supply contains levels of volatile organic compounds which are permitted under drinking water standards; the commenter stated that these levels must be viewedas background, to which the permit limitation must be added in order to determine whether a violation had occurred and the severity of the violation. Dechert Price & Rhoads also commented that the rules should allow a violator the opportunity to establish the affirmative defense that a violation was the result of naturally occurring conditions. The commenter cited as an example a situation in which naturally occurring seasonal algae blooms cause violations of the parameters for total suspended solids and chemical oxygen demand. The commenter stated that strict application of the penalties under these rules, with no allowance for such naturally occurring conditions, would extend well beyond the spirit and intent of the Water Pollution Control Act.

The New Jersey Chamber of Commerce commented that the requirement to submit all affirmative defenses at the time of an adjudicatory hearing request is too narrow in that it limits the time a permittee needs to thoroughly investigate and prepare for a hearing.

RESPONSE: The Department did not intend to limit any other affirmative defense which may legitimately be raised in an enforcement proceeding. "[B]ackground conditions" and "naturally occurring conditions" are not legitimate defenses to an enforcement action, but are issues which the permittee should have brought up and resolved in the permitting process. "Lack of control," unless in the context of upset, bypass or laboratory error, is not a legitimate defense.

110. COMMENT: Counsel to the Evesham MUA commented on the requirement in N.J.A.C. 7:14-8.4(a)8 that a violator requesting an administrative hearing or notice of correction for penalties imposed for failure to properly conduct monitoring or sampling requirements must submit certain documentation with the request. The commenter stated that the statute does not require any such documentation to be submitted with the request. The commenter stated that for this reason, the requirement should be deleted.

RESPONSE: The documentation in N.J.A.C. 7:14-8.4(a)8 to which the commenter refers is only applicable to a permittee's failure to submit a complete discharge monitoring report. "A permittee may contest the assessment of the civil administrative penalty [for a permittee's failure to submit a complete discharge monitoring report] by notifying the commissioner in writing, . . . of the existence of extenuating circumstances beyond the control of the permittee. . . ." [emphasis added] N.J.S.A. 58:10A-10.1d.

111. COMMENT: Lenox, Inc. commented that the Water Pollution Control Act provides that no penalty will be assessed for an inadvertent omission in a discharge monitoring report if the violator submits the omitted information within 10 days after receipt of notice of the omission. However, N.J.A.C. 7:14-8.4(a)8 adds that the violator must also submit to the Department written notice of extenuating circumstances. The commenter found this requirement contrary to the statute, and illogical as well, because a discharger which merely omitted to file certain data would be unable to file an extenuating circumstances report; since the data was available but inadvertently omitted, no extenuating circumstances would exist to justify the unavailability of the information. The commenter recommended that the provision in question should be revised consistent with the statute.

RESPONSE: The Department has amended the rule to be the same as the language in the Water Pollution Control Act.

112. COMMENT: Lenox, Inc. commented that under the Water Pollution Control Act, a person appealing a penalty must post a refundable bond or other security approved by the Commissioner. The rules provide for the person challenging the penalty to post a surety bond, letter of credit or fully funded trust. The commenter recommended that the Department provide more flexible means of satisfying the security requirement, such as self-insurance. The commenter also suggested that the Department should allow flexibility to forgo the requirement of posting financial security, in cases where the person challenging the penalty is financially unable to post security while still remaining viable. The commenter also suggested that the Department should not require financial assurance if the amount of the disputed penalty is relatively small, for example $250,000 or less.

Colonial Pipeline Company expressed concern over N.J.A.C. 7:14-8.4(a)9i, which requires a violator who requests a hearing on a penalty assessment to post financial assurance in the form of a surety bond, irrevocable letter of credit or fully funded trust. The commenter questioned whether it was necessary to limit financial assurance to the three forms provided within the rules, especially when other forms can provide equal financial assurance. For this reason, the commenter recommended that this section be revised to authorize other forms of financial assurance approved by the commissioner. The commenter stated that this revision would parallel the language in the Water Pollution Control Act, and would provide some flexibility while still ensuring that financial assurance satisfactory to the Department is obtained.

Four members of the Board of Directors of the Environmental Law Section of the New Jersey State Bar Association, writing as individuals, commented that the rules should provide for the financial assurance requirement under N.J.A.C. 7:14-8.4(a)9 to be satisfied by self-bonding, as in the ECRA program.

RESPONSE: One of the purposes of the requirement for financial assurance in this instance is to ensure that the penalty money is readily available to the Department upon a Final Order for a civil administrative penalty, not as evidence of ability to pay as one commenter suggests. Self-bonding and self-insurance do not satisfy this objective. The Department believes that the financial assurance mechanisms in the rules provide for this. The Water Pollution Control Act does not authorize the Department to waive this requirement in any circumstances. The Department has added the following language to the end of N.J.A.C. 7:14-8.4(a)9i: "or in another form the Department approves in writing for this purpose."

113. COMMENT: Colonial Pipeline Company expressed concern over N.J.A.C. 7:14-8.4(a)9i, which requires a violator who requests a hearing on a penalty assessment to post financial assurance. The commenter questioned whether it is premature to require a violator to post financial assurance upon receipt of a notice of civil administrative penalty assessment or notice of civil administrative cost assessment. The commenter pointed out that at this stage, the Department might be unaware of facts within the violator's knowledge, which might justify recission of the notice or constitute an affirmative defense to the violation. The commenter suggested that it would be more appropriate to require financial assurance when the Department issues a final order or upon the notice of civil administrative penalty or notice of civil administrative cost assessment becoming a final order by the passage of time within which the violator does not request a hearing.

RESPONSE: The regulatory requirements for financial assurance are expressly included in the Water Pollution Control Act.

114. COMMENT: Four members of the Board of Directors of the Environmental Law Section of the New Jersey State Bar Association, writing as individuals, requested that the Department review the requirement of the posting of a refundable bond or other security approved by the Commissioner in the amount of the civil administrative penalty assessed, as a condition of filing an appeal. The commenters stated that this requirement will create a real hardship for many businesses. The commenter suggested that in light of the statutory authority for other forms of financial assurances acceptable to the Commissioner, the Department could consider a sliding scale formula for financial assurances

posted by small, medium or large scale business operations. The sliding scale would require posting only a specific percentage of the penalty, which percentage would be lower for smaller businesses.

RESPONSE: The Water Pollution Control Act does not give the Department the authority to establish such a sliding scale. The Water Pollution Control Act requires that "as a condition of filing the appeal, [a permittee must] post with the commissioner a refundable bond, or other security approved by the commissioner, *in the amount of the penalty assessed.*" [emphasis added] N.J.S.A. 58:10A-10d(5).

115. COMMENT: Four members of the Board of Directors of the Environmental Law Section of the New Jersey State Bar Association, writing as individuals, commented that the requirement for financial assurance under N.J.A.C. 7:14-8.4(a)9 is patently unfair when large penalty amounts are involved, and is potentially unconstitutional as violative of equal protection and due process rights. The commenters reasoned that the requirement increases the cost of appealing a civil administrative penalty sufficiently to effectively preclude members of the regulated community from exercising their constitutional rights to due process and equal protection; one who is economically precluded from seeking a hearing is obviously denied that right. The commenters added that the financial assurance requirement also tramples upon the violator's right to equal protection, because the right to request a hearing will become a right that is meaningful only for the rich. The commenters recommended that if the Department could not provide flexibility for small businesses in this requirement in a manner which preserves a meaningful hearing right, the Commissioner should seek judicial relief from the requirement. At a minimum, the commenter recommended that the Department obtain an opinion from the Attorney General regarding the constitutionality of the statutory requirement.

Mobil Oil Corporation, U.S. Marketing and Refining Division, commented that N.J.A.C. 7:14-8.4, which requires a violator contesting a civil administrative penalty to post financial assurance, will place a significant economic burden upon those who wish to appeal alleged violations.

RESPONSE: The rules to which the commenters refer are expressly required in the Water Pollution Control Act.

116. COMMENT: The New Jersey Public Interest Research Group/ Clean Ocean Action/Delaware Riverkeeper commented that persons such as the commenter should have a right to intervene in adjudicatory hearing proceedings as interested third parties.

RESPONSE: The Water Pollution Control Act does not grant third party intervention as of right nor do these rules. The Water Pollution Control Act only provides, under certain circumstances, third party intervention in contested cases involving the granting, modification, denial, suspension or revocation of a permit. However, the Department is preparing Department-wide procedures concerning third party hearing requests.

117. COMMENT: The Joint Meeting of Essex and Union Counties requested clarification of the requirement, if any, for adjudicatory hearings by a delegated local agency if requested by an industrial user in violation. The commenter recommended that the delegated local agencies have discretion over the conduct of hearings and enforcement proceedings.

RESPONSE: At this time there is no requirement that delegated local agencies must follow all of the Department's procedures concerning adjudicatory hearings. The Department is reviewing this matter and will be soliciting public comment in September 1991.

VI. N.J.A.C. 7:14-8.5

Several commenters made general comments about the rules concerning civil administrative penalty determination:

118. COMMENT: The Legal Committee of the Association of Environmental Authorities commented that the rules should provide that a local agency, as co-permittee, should not be penalized if a permittee exceeds its NJPDES parameters.

RESPONSE: The amendment the commenter proposes would erase the purpose of having the local agency as a co-permittee. The Department requires co-permittees in certain situations in response to problems the Department has had with permittees operating small package plants, often associated with developments, in conformance with a NJPDES permit. By having the local agency as a co-permittee there has been improved compliance at such facilities. The Department will retain this requirement establishing that a co-permittee has the same potential penalty liability as a permittee.

119. COMMENT: The Legal Committee of the Association of Environmental Authorities noted that if there is a violation admitted in a DMR, the rule provides that a penalty assessment would be issued automatically. The commenter stated that the Department should reserve the discretion to issue a warning (such as a notice of violation) rather than a notice of civil penalty assessment, especially when the violation had no serious environmental impact. The commenter pointed out the following advantages of such discretion: first, since the notice of violation would typically request a response from the facility, the Department would be able to review the defenses asserted and either compromise or forgo the penalty; second, the Department would be able to concentrate its resources on the "bad" companies, rather than those which promptly remedy any problems resulting in violations.

RESPONSE: The Department has limited discretion to issue such a warning only until the six-month review which reveals that the permittee has committed a serious violation. After that time, the Water Pollution Control Act requires that the Department assess a minimum mandatory penalty.

120. COMMENT: The Legal Committee of the Association of Environmental Authorities noted that the rules do not provide for mitigation of penalties when a violation has caused no appreciable environmental harm, but provide only for penalties to be increased based upon environmental harm.

RESPONSE: The Water Pollution Control Act is a strict liability statute reflecting a public policy that the Department need not prove environmental harm in order to establish that a violation has occurred. The Department's civil administrative penalty policy in these rules starts from this position and the Department has the discretion to increase a penalty if actual harm results.

121. COMMENT: The New Jersey Food Processors Association, Inc. commented that the frequency and duration of power failures and other upsets are difficult to predict. The commenter recommended that such factors should be recognized in the handling of a violation.

RESPONSE: The Water Pollution Control Act defines the scope of events which are considered upsets and available as affirmative defenses to penalty liability. Any such issues which a violator raises as affirmative defenses must be consistent with the statutory requirements.

122. COMMENT: Lenox, Inc. requested that the Department allow for reduction or elimination of a penalty when the violation is wholly or partly due to errors on the facility's preprinted discharge monitoring report forms. The commenter stated that the Department itself has acknowledged that the form commonly will state the wrong effluent limitation, sampling frequency or method of calculation. For this reason, the commenter recommended that the rules should state explicitly that there will be no penalty for violations which are only the result of DMR erros, but which are otherwise in compliance with a permit.

RESPONSE: The commenter is incorrect in the assumption that penalty liability would be based in whole or in part on errors on a permittee's DMRs. The permit controls the permittee's discharge and penalty liability results from violations of that permit and not an incorrect DMR.

123. COMMENT: The Joint Meeting of Essex and Union Counties recommended that in the determination of a civil administrative penalty under N.J.A.C. 7:14-8.5, agency discretion be maintained to consider the following:

1. Whether a particular violation harms the POTW:
2. Whether there is a problem with an industrial user discharging a particular amount;
3. Whether sludge disposal options are affected; and
4. Whether the POTW's permit limitations are affected.

The commenter suggested that if the responses to all of these issues were negative, the POTW should have the discretion to impose fines in minimum amounts lower than $1,000 and $5,000.

RESPONSE: The Water Pollution Control Act establishes minimum mandatory penalties and prohibits the assessment of civil administrative penalties for serious violations below $1,000 and for serious violations which cause a violator to become or remain a significant noncomplier below $5,000, regardless of which factors are considered. N.J.S.A. 58:10A-10.1.

124. COMMENT: Colonial Pipeline Company questioned whether under N.J.A.C. 7:14-8.5, a violation of a monthly average effluent limitation would be considered a single violation for the month or a separate offense for each day of the month. The commenter stated that the latter interpretation would result in substantial and unjustified penalties, especially when the effluent is sampled only a few times each month. For this reason, the commenter requested that the rules expressly provide that noncompliance with a monthly (or weekly or quarterly) limitation is considered to be a single violation for that monitoring period.

RESPONSE: The Department could consider a violation of a monthly average as 30 violations. The Department, however, will exercise its enforcement discretion and decide this issue on a case-by-case basis, upon consideration of all relevant factors, including, but not limited to, the extent and severity of the violation, the historical pattern of violations, and the permittee's response to the violations.

One commenter questioned the Department's use of the midpoint of the penalty range:

125. COMMENT: The New Jersey Water Pollution Control Association, Inc. commented that penalties should not be assessed starting at the mid-point of a given range, especially when dealing with public entities which are not deriving an economic benefit for their services. The commenter requested that penalties for municipal bodies be started at the low level of the range for any of the ranges contained in the matrices.

RESPONSE: The Department disagrees with this comment. By starting at the midpoint of the range, the Department may then adjust the penalty, either up or down, according to the facts of the specific case. Over the next several months the Department will be re-evaluating the appropriateness of the matrix and its application to situations such as those the commenter raises. The Department expects to propose any regulatory changes resulting from this effort in early 1992.

Several commenters questioned the penalty ranges in N.J.A.C. 7:14-8.5(f):

126. COMMENT: Lenox, Inc. opposed the increase in the upper penalty amounts for violations of minor conduct/moderate seriousness and moderate conduct/minor seriousness. The commenter stated that the existing penalties were already stringent, need not be raised further, and that the increase was not justified.

RESPONSE: The Department increased the upper limit of two of the ranges so that the midpoint of the ranges would be $5,000, consistent with the minimum mandatory penalty in the Water Pollution Control Act for significant noncompliance.

127. COMMENTS: The Association of Environmental Authorities questioned whether there was a discrepancy between the $1,000 minimum penalty for a serious violation under N.J.A.C. 7:14-8.5(a), and the range of penalties for a violation of moderate seriousness under the matrix in N.J.A.C. 7:14-8.5(f).

Four members of the Board of Directors of the Environmental Law Section of the New Jersey State Bar Association, writing as individuals, recommended that the matrices in N.J.A.C. 7:14-8.5(f) must be clarified, because they are not consistent with stated minimum assessments of $1,000 and $5,000 for serious violations and significant noncompliers, respectively.

The Association of Environmental Authorities requested clarification of an inconsistency it perceived between the minimum penalty of $1,000 for serious violations under 7:14-8.5, and the midpoint penalty of $5,000. The commenter stated that if the inconsistency is not clarified or resolved, a minimum penalty of $5,000 would be assessed for each serious violation.

The Evesham MUA commented that N.J.A.C. 7:14-8.5(a)2 provides minimum fines of $1,000 for a serious violation, while a violation of an effluent limitation for a non-hazardous pollutant by 40 percent or more, as a moderate violation, would result in a mid-point fine of $5,000. The commenter stated that this is an inconsistency which must be resolved; if the inconsistency is not resolved, the $1,000 minimum fine (which was an important part of the legislative negotiations) will rarely be imposed, and most minimum fines will be $5,000 instead.

Waste Management of North America, Inc. suggested that the provision in N.J.A.C. 7:14-8.5(g), which allows the Department to assign a different level of seriousness to a violation than the level which would normally be assigned under the rules, should be deleted because it is arbitrary and contradictory. The commenter questioned why the Department should establish guidelines for seriousness if it can always assign a different level of seriousness.

The Legal Committee of the Association of Environmental Authorities commented that N.J.A.C. 7:14-8.5 provides that the minimum penalty for a "serious violation" is $1,000, while the penalty matrix in the same section would require a midpoint penalty of $5,000 for the same violation even without consideration of the flow and receiving water factors. The commenter suggested that this inconsistency should be resolved by redfining "moderate" seriousness as a serious violation with environmental impact. Otherwise, the $1,000 minimum penalty required by statute will rarely be imposed; the commenter stated that this result is contrary to the Legislative intent.

RESPONSE: The Water Pollution Control Act establishes minimum mandatory penalties, but does not limit the Department's authority to assess higher penalties. The Department begins its penalty assessment process at the midpoint of the lowest penalty range in the matrix—minor conduct and minor seriousness. This penalty range is from $1,000, the minimum mandatory penalty for a serious violation, up to $2,500. If both the conduct of the violator and the seriousness of the violation were minor, then the Department would either assess a penalty of $1,750, the midpoint of the range, or adjust the penalty from the midpoint, up or down as the circumstances warrant. But in no case can the Department go outside of the range. Similarly, the Department would move to other ranges within the matrix for minor conduct according to any change in the seriousness of the violation.

If the Department determined that the conduct of the alleged violator was moderate, the Department would then start at the midpoint of the range for moderate conduct and minor seriousness. The midpoint of this range is $5,000, which is the minimum mandatory penalty for a violation which causes a permittee to be, or continue to be, a significant noncomplier. The Department would then apply the same process described above for identifying the appropriate range for moderate violator conduct, according to the seriousness of the violation.

Likewise, the Department would apply this same process if the violator's conduct was major, that is intentional. The only thing that changes is the increasing dollar amounts of the penalty ranges as the conduct of the violator and the seriousness of the violation increase.

Therefore, the Department disagrees that there is any discrepancy as the commenters suggest.

128. COMMENT: The Joint Meeting of Essex and Union Counties recommended that the civil administrative penalty determination matrix under N.J.A.C. 7:14-8.5(f) exclude percent removals.

RESPONSE: Percent removals are conditions of permits and a permittee's violation of such a condition would be a permit violation subjecting the violator to penalty liability. It is unclear whether the commenter is suggesting to exclude percent removals from N.J.A.C. 7:14-8.5(f) and include it in another section of the rules, or to exclude it from the rules altogether. Within the existing structure of the rules, civil administrative penalties for violations of percent removals are best determined under N.J.A.C. 7:14-8.5.

Several commenters questioned the amendments concerning the serious component of a penalty:

129. COMMENT: Hackensack Water Company commented that the rule uses the term "mass" apparently as an equivalent to the terms "quantity" or "loading" used in discharge monitoring reports.

RESPONSE: The commenter is correct.

130. COMMENT: Lenox, Inc. strenuously opposed the criteria for determining that a violation is of major seriousness under N.J.A.C. 7:14-8.5(g)1iii(1) and (2). The commenter found the criteria nebulous, and so vague and ambiguous that the regulated community would have absolutely no idea of when or how a violation would be deemed of major seriousness; the Department could increase a penalty by up to 50 times based upon a determination of major seriousness under these criteria, which would be tantamount to a denial of due process. The commenter stated that in applying the criteria, the Department would be acting in the quasi-judicial capacity which the Department has decried in other rules; while the statute directs the Department to adopt a uniform penalty policy, the criteria would not be "uniform" in any respect. The commenter added that many if not all dischargers charged with violations of major seriousness on this basis would challenge such findings. The commenter recommended that these criteria be deleted from the rules, and that the similar criteria for violations of "moderate" seriousness under N.J.A.C. 7:14-8.5(g)2iv be deleted for the same reasons.

RESPONSE: The Department disagrees with this comment. The first factor to which the commenter objects, N.J.A.C. 7:14-8.5(g)1iii(1), is already in the rule and the Department merely proposed to move the provision in a reordering of the rule. To date the Department has not had the kinds of problems the commenter predicts. Similarly, the Department has used the second provision to which the commenter objects, N.J.A.C. 7:14-8.5(g)1iii(2), in penalty rules under other statutes and has not had the kinds of problems the commenter predicts. Finally, the Department notes that for penalties assessed for permit violations the criteria in N.J.A.C. 7:14-8.5(g)1i and ii generally apply.

131. COMMENTS: Lenox, Inc. disagreed with the revisions to the definition of "moderate" seriousness under N.J.A.C. 7:14-8.5(g)2ii(1) and

(2). The commenter stated that the existing thresholds of 26 percent for hazardous pollutants and 51 percent for nonhazardous pollutants were already sufficiently stringent, especially in light of the extremely low effluent limitations in many permits. For the same reasons, the commenter objected to the lowering of thresholds for violations of minor seriousness under N.J.A.C. 7:14-8.5(g)3ii(1) and (2).

Colonial Pipeline Company found no justification for changing the criterion for a moderate level of seriousness for violations of concentration or mass-based effluent limitations under N.J.A.C. 7:14-8.5(g)2ii. The commenter stated that the existing exceedance ranges used to determine the level of seriousness provide adequate incentives for permittees to avoid violating effluent limitations. For this reason, the commenter requested that the changes in the exceedance ranges for differentiating between moderate and minor levels of seriousness be deleted from the proposed regulations, and that the ranges found in the existing regulations be retained.

RESPONSE: The Department proposed these changes to have the seriousness ranges in the rule coincide with the definition of serious violation in the Water Pollution Control Act.

132. COMMENT: Four members of the Board of Directors of the Environmental Law Section of the New Jersey State Bar Association, writing as individuals, requested that the Department reconsider the requirement under N.J.A.C. 7:14-8.5(g) for a violator seeking a payment schedule of greater than 90 days to post financial assurance with the Department for the full amount of the civil administrative penalty, in light of the 225 small businesses determined to be impacted by these rules. The commenter asked how the Department could expect that money will be available for financial assurance when no money is available to pay the penalty in full. The commenter also pointed out that it is often difficult, if not nearly impossible, for a small business operator to obtain financial assurances; banks may be unwilling to issue the documents for a small business, and the business may not have the necessary collateral to obtain the assurance. The commenter noted that the financial assurance requirement may defeat the purpose of seeking a payment schedule of over 90 days, which is often to prevent a business from becoming inviable.

RESPONSE: The Department included financial assurance options in the proposed rules which do not require the violator to put up the full amount of the penalty, but rather to purchase such financial assurance mechanisms as bonds, at a fraction of their face value. The Department will address hardships such as those described as they arise. The Department notes, however, that the commenters argue for the Department to remove this requirement even though it can fulfill its intended purpose when applied to the vast number of violators.

133. COMMENTS: Four members of the Board of Directors of the Environmental Law Section of the New Jersey State Bar Association, writing as individuals, recommended that the terms "serious harm" and "substantial harm," as used in N.J.A.C. 7.14-8.5(g), should be clarified and defined in the rule.

Waste Management of North America, Inc. commented that many of the terms used in establishing levels of seriousness under N.J.A.C. 7:14-8.5 are completely subjective, and difficult for the regulated public to clearly define. The commenter specifically referred to phrases such as "seriously deviates," "complete contravention," "substantially deviates," "substantial contravention," and "severely impair or undermine the operation or intent of the requirement."

Mobil Oil Corporation, U.S. Marketing and Refining Division, recommended that the terms "seriously deviates" and "severely impair or undermine," as used in the determination of major seriousness under N.J.A.C. 7:14-8.5(g)iii2, must be more precisely defined. The commenter stated that as proposed, the terms are inherently subjective, unduly vague and susceptible of too broad an interpretation. Accordingly, the commenter believes that it will be impossible to defend adequately against an alleged violation of these provisions.

RESPONSE: These penalty rules apply to not only violations of the Water Pollution Control Act and regulations promulgated pursuant thereto, but to other statutes and regulatory programs, including the Act Concerning Pretreatment of Industrial Wastewater, the Water Supply and Wastewater Operators' Licensing Act, the Water Supply Management Act, and the Underground Storage of Hazardous Substances Act. The purpose of this regulatory provision is to provide for an effective penalty for violations under this complex of regulatory programs. In many such circumstances there are complex and unforeseen factors involved which do not allow for the prior publication of standardized terms. In addition, the Department must have general penalty provisions for violations which do not otherwise fit within the other seriousness definitions within this provision. Given these purposes, the Department believes that the standards in this provision provide sufficient guidance to the regulated community. Not only are the questioned provisions already in the existing rules in N.J.A.C. 7:14-8.5, but also in other penalty rules under other statutes (see, for example N.J.A.C. 7:26-5).

134. COMMENT: Mobil Oil Corporation, U.S. Marketing and Refining Division, recommended that in calculating any penalty, the Department must consider background levels, that is, the levels of pollutants in the influent to a violator's facility. The commenter stated that consideration of this factor is particularly necessary in considering violations of pH limits. The commenter found it unfair and arbitrary to punish a violator for violation of NJPDES limitations when the contaminant levels of influents to the violator's facility are higher than the effluent limits themselves.

RESPONSE: This issue is more appropriately considered during the permitting process. An exceedance of a final and effective effluent limitation is a violation, whatever the cause.

135. COMMENT: Schering-Plough Research commented that the definition of a violation of major seriousness, as used in the matrix in N.J.A.C. 7:14-8.5, does not correspond to the definition of "serious violation" in N.J.A.C. 7:14-8.2. The commenter suggested rewriting these definitions to correspond more closely with one another.

RESPONSE: The definition of serious violation is, consistent with the Water Pollution Control Act, for the purpose of identifying those violations to which minimum mandatory penalties apply. The purpose of the serious component of a penalty in this section is to allow the Department to differentiate among different magnitudes of violations in assessing a civil administrative penalty. There is, therefore, no reason to make these two uses of seriousness identical to one another.

136. COMMENT: The Legal Committee of the Association of Environmental Authorities commented that under N.J.A.C. 7:14-8.5(g), the same violation can be of "major" or "moderate" seriousness. The commenter stated that a violation of major seriousness includes any violation which has caused or has the potential to cause serious harm to human health or the environment.

RESPONSE: The Department disagrees with this comment. The major and moderate levels of seriousness of a violation are mutually exclusive.

Several commenters questioned the Department's reference to pH in the definition of seriousness:

137. COMMENT: The New Jersey Public Interest Research Group/Clean Ocean Action/Delaware Riverkeeper commented that for purposes of the penalty matrix set forth in N.J.A.C. 7:14-8.5(f) of the proposal, a violation of an effluent limitation for pH would not be considered of major seriousness until it is more than three standard units outside the range of the limitation. The commenter found this definition unacceptable, because a violation would not be considered of major seriousness unless it was sufficient to have "taken the skin off of all the fish." The current classification for pH violations of three units or more as the level of determining "major" seriousness is totally unacceptable. This would classify any pH violation less than 1000 times under or over the permit limit as of "less than major" seriousness.

Merck & Co., Inc. commented that the rules appear to provide that discharges at pH 3 or pH 11 are not violations, because neither discharge fits any of the categories of seriousness in N.J.A.C. 7:14-8.5(g).

RESPONSE: Based on the comments received the Department has concluded that the pH ranges proposed for the seriousness factor were not the most appropriate. The Department, therefore, will not adopt the proposed amendments in this provision concerning pH, but rather has, simultaneous with this adoption, proposed alternate pH ranges.

138. COMMENTS: The Chemical Industry Council of New Jersey commented that most permits requiring continuous monitoring of pH provide that in any month, the permittee may exceed its pH limitation one percent of the time, but for no more than one hour for any individual exceedance. The commenter noted that the penalty matrix in N.J.A.C. 7:14-8.5 does not provide for this temporary exceedance, and it is therefore unclear how the Department will treat such a pH exceedance. The commenter recommended that the Department clarify the rules by expressly stating that notwithstanding the penalty rules, any exceedance which conforms to the permit conditions is not a violation.

DuPont Chambers Works questioned the determination of the seriousness of a violation for pH, in connection with the matrix in N.J.A.C. 7:14-8.5. The commenter noted that when a permit requires continuous monitoring of pH and maintenance of pH within a particular range, the

permit usually contains a provision allowing the permittee to exceed its pH limitation one percent of the time, but for no more than one hour for any individual exceedance. Such an exceedance, while in compliance with the permit limitations, is not excepted from the penalty matrix. The commenter recommended that the Department clarify the rules to provide that the rules do not supersede the permit limitations, and that accordingly such exceedances are not considered violations.

E.I. DuPont questioned the determination of the seriousness of a violation of an effluent limitation for pH under N.J.A.C. 7:14-8.5. The commenter stated that when a permit requires the permittee to monitor pH continuously, it also usually contains a provision allowing the permittee to exceed the pH limitation one percent of the time, but for no longer than one hour for an individual exceedance. The commenter suggested that the rule should be clarified to provide that the rule would not supersede such specific language in an individual permit.

RESPONSE: The Department shall apply the requirement of 40 CFR 401.11 to determine when a permittee is in violation of a pH effluent limitation when required to continuously monitor pH. However, once a permittee has been determined to be in violation, the determination as to the seriousness and conduct of those violations shall be based upon the criteria in N.J.A.C. 7:14-8.5.

139. COMMENT: An individual commenter recommended that the definition of major seriousness in N.J.A.C. 7:14-8.5(g)1 should be revised to provide for a violation of "three or more" standard units outside the range of the pH effluent limitation, rather than "more than three" as provided in the proposal. The commenter pointed out that the definition in the proposal leaves a gap between moderate seriousness and major seriousness, because a violation of moderate seriousness includes a violation of "at least two but less than three" standard units. The commenter added that the definition of moderate seriousness should be revised to include a violation of "two or more, but less than three" standard units. The commenter noted that if the definition of "serious violation" for pH is revised to include a violation of one standard unit, the definitions of moderate and major seriousness would need to be revised as well.

RESPONSE: Based on the comments the Department received concerning the seriousness ranges from pH in N.J.A.C. 7:14-8.5(g), the Department has decided not to adopt any pH seriousness ranges at this time. Instead, the Department has, simultaneous with this adoption, proposed new pH seriousness ranges.

140. COMMENTS: The New Jersey Petroleum Council commented that the range of penalties associated with pH is in keeping with the intent of the Water Pollution Control Act. The commenter stated that the Department's selection of penalties for pH violations appears correct, because pH may cause a detrimental effect only when it extends to the lower or upper ranges, and then may show an effect only when it is present at that range for extended periods.

Merck & Co., Inc. commented that, regarding N.J.A.C. 7:14-8.5(g), discharges at pH 3 and pH 11 are not violations since neither fits into the categories of this section. The commenter also stated the regulations require penalties to be based on flow from the last monitoring event if a flow value is not available, but that due to differences in storm events, the last prior flow is irrelevant to the current discharge for stormwater. The commenter suggested that an estimated flow should be allowed.

The Western Monmouth Utilities Authority commented that pH should be addressed through the issuance of a permit, which can be structured to allow effluent pH's in a range that would not adversely affect the stream.

RESPONSE: The impact of pH upon receiving water is appropriately dealt with through the permit limit. However, non-compliance with the permit limits must be addressed in N.J.A.C. 7:14-8.5.

Several commenters questioned the Department's reference to whole effluent toxicity in the definition of seriousness:

141. COMMENT: The New Jersey Water Pollution Control Association, Inc. commented that the rules include whole effluent toxicity limitations which were not included in the Act. The commenter thus asserts that these factors should not be included in the final rules.

RESPONSE: The Department disagrees with this comment. The Water Pollution Control Act expressly required the Department to "prescribe an equivalent exceedance factor" for any parameter not measured by concentration or mass. N.J.S.A. 58:10A-3v.

Many commenters objected to or otherwise questioned the Department's use of the flow factor in the determination of the penalty amount:

142. COMMENTS: Hackensack Water Company commented that basing the seriousness of a violation only upon concentration does not address the environmental damage from the violation. For example, a discharge with an iron concentration of three mg/liter at a flow rate of 1,000 gallons per day would cause much less environmental damage than a discharge with the same concentration of 10 million gallons per day. However, the commenter also stated that the flow factor in the rule does not address environmental impairment. Since the flow factor calculation uses a minimum of .01 million gallons per day for discharges to surface water, and .001 million gallons per day for discharges to ground water, the commenter asserts that calculation results in too high a penalty for discharges with no measurable effect upon the receiving stream. Accordingly, the commenter recommended that the flow factor calculation should be revised.

Waste Management of North America, Inc. asked that the Department explain how it derived the formula for calculating the flow factor.

Ciba-Geigy Corporation recommended that the discharge flow should not necessarily be a factor in determining the amount of the penalty. The commenter noted that a facility's permit limits already frequently take this factor into account; the commenter felt that such facilities should not be doubly penalized when the Department also uses multipliers based upon these factors in determining the amount of a penalty.

The Chemical Industry Council of New Jersey stated that the Department's use of the flow factor goes beyond the scope of the authority which the Legislature delegated to the Department. The commenter noted that the Water Pollution Control Act does not require the use of this factor to determine the amount of the civil administrative penalty.

The Chemical Industry Council of New Jersey commented that the Department's use of the flow factor is contrary to the Water Pollution Control act, which requires the Department to establish a civil penalty policy governing the uniform assessment of civil penalties. The commenter stated that the use of this factor will not provide for the uniform assessment of civil penalties; instead, the penalty assessment for identical violations can vary from violator to violator depending upon the discharger's flow.

Public Service Electric and Gas Company questioned whether the flow factor applies only to permitted deliberate discharges to ground water, such as injection wells, where flow is easily determined, or others as well. The commenter questioned how flow would be calculated if the flow factor is intended to be applied to other types of discharges to ground water; for example, if a facility was required to obtain a DGW permit because of the potential to discharge, but actual discharges have not been identified, the determination of flow would be difficult or impossible.

Public Service Electric and Gas Company asked that the Department present the basis and background for the construction and use of the flow factor equations. The commenter found this aspect of the rule to be arbitrary and without basis. The commenter noted that NJPDES permit limits are written with consideration for flow; therefore, there is no basis for additional consideration for this factor in penalty calculations.

Lenox, Inc. commented that there is neither authority nor need to use the flow factor to increase a penalty against a larger-volume discharger. The commenter noted that the environmental harm from the non-complying discharge was taken into account in establishing permit limits and in measuring the degree of exceedance to determine the seriousness of the violation. The commenter stated that it is unreasonable to increase the penalty further based upon greater discharge volume, because the environmental harm has already been taken into account in determining seriousness.

Hackensack Water Company commented that the flow factoring formula does not address actual environmental damage to streams. The commenter recommended that the Department revise the flow factoring formula for either discharges to surface water or discharges to groundwater to give greater emphasis to the quantity of the pollutant released (loading and concentration), and to the toxicity of the pollutant as well.

Hackensack Water Company commented that the flow factor gives no relevance to the toxicity value of a pollutant. Since very small concentrations of some pollutants could pollute enormous amounts of ground water, the commenter recommended that the toxicity value of the pollutant should be address along with the flow factor.

Hackensack Water Company recommended that loading rates should be incorporated into the flow factor for discharges to ground water.

Hackensack Water Company recommended that for flows less than 0.01 million gallons per day for discharges to surface water, the flow factor calculation should either be adjusted downward to reflect the lower loading rate on the receiving stream, or such flows should be recorded as "no discharge" or "no measurable discharge" for the purpose of calculating the flow factor.

Lenox, Inc. commented that the rules provide no guidance concerning how to apply the flow factor to a discharge that does not have a regular or constant flow. The commenter suggested that if the Department's intent is to have the penalty reflect the relationship between volume and environmental impact, the Department should consider using a flow factor equivalent to a discharge of 1,000 gallons per day or some other appropriate factor for intermittent discharges.

Lenox, Inc. commented that the Department had offered no rational explanation why the fixed minimum flow value of .01 million gallons per day is appropriate for surface water discharges, while a fixed value of .001 million gallons per day is appropriate for ground water discharges.

DuPont Chambers Works commented that for several reasons, the use of the flow factor in calculating civil administrative penalties goes beyond the Department's authority under the Water Pollution Control Act. The commenter stated that the Act does not require the use of this factor to determine the amount of a penalty, and that the use of these factors does not allow for uniform assessment of civil penalties, in accordance with the Legislative intent expressed in N.J.S.A. 58:10A-4(g).

The Camden County Municipal Utilities Authority requested that the flow factor be eliminated from the penalty section. The commenter stated that the Act does not dictate or require the implementation of this factor in the penalty matrices.

The New Jersey State Chamber of Commerce requested clarification of the calculation of flow for discharges to ground water. The commenter questioned whether the flow factor under N.J.A.C. 7:14-8.5(j)2 applies only to permitted discharges to ground water, such as injection wells, where flow is easily determined. The commenter stated that if the paragraph is intended to apply to a facility required to obtain a discharge to ground water permit because of the potential to discharge, but for which no actual discharge has been identified, it is not clear how the facility's flow would be calculated.

The Western Monmouth Utilities Authority commented that the difference in penalties resulting from the use of a logarithmic scale is not great enough to justify the time and effort of performing the calculations.

The Western Monmouth Utilities Authority recommended that the flow factor should be deleted from the rule. The commenter stated that a publicly-owned treatment works has about the same ability to meet effluent requirements whether its design flow is 50,000 gallons or one million gallons. The commenter questioned how the Department could add factors which were not part of the decision-making process when a publicly-owned treatment facility was planned and designed.

The New Jersey Public Interest Research Group/Clean Ocean Action/ Delaware Riverkeeper commented that the flow factor for violations of effluent limitations in N.J.A.C. 7:14-8.5(j), and the flow factor for the violation of whole effluent toxicity limitations in N.J.A.C. 7:14-8.12(g), are six orders of magnitude less stringent or six times less stringent than the standards for unapproved activities in N.J.A.C. 7:14-8.8.

The New Jersey Public Interest Research Group/Clean Ocean Action/ Delaware Riverkeeper strongly opposed the use of the flow factor, asserting that it will have the practical effect of reducing penalty assessments for all but a handful of the approximately 1,500 surface water dischargers in the State.

The New Jersey Public Interest Research Group/Clean Ocean Action/ Delaware Riverkeeper disagreed with the Department's position, as the commenter understands it, that the same penalties should not be imposed for a high flow as for a low flow. The commenter stated that the flow factor is not in and of itself a measure of the quantity of the pollutant discharged. The commenter suggested that rather than flow, the appropriate factor should be harm to the environment or toxicity.

The New Jersey Public Interest Research Group/Clean Ocean Action/ Delaware Riverkeeper commented that the use of the flow factor undermines the objectivity of the penalty matrices.

The New Jersey Public Interest Research Group/Clean Ocean Action/ Delaware Riverkeeper commented that the use of the flow factor may undermine the economic benefit provisions of the rule, because it is not clear whether the flow factor results in a discount of the economic benefit.

The Association of Environmental Authorities commented that the flow factor is reflected in permit conditions; the commenter stated that incorporating this factor into the penalty determination is duplicative and unnecessary.

E.I. DuPont commented that the Water Pollution Control Act does not require the use of either the flow factor in determining the amount of a penalty. The commenter stated that the use of this factor is contrary to the intent of the statute; while the statute requires the Department to establish a policy governing the uniform assessment of civil administrative penalties, the use of this factor will not result in a uniform assessment. Instead, the commenter stated that the penalty assessment for identical violations can vary from violator to violator.

E.I. DuPont commented that the flow factor may give exaggerated importance to a discharge with low toxicity solely because it has a large flow, even though the discharge may have a significantly lesser environmental impact than a discharge with a lesser flow.

The New Jersey Environmental Federation commented that the use of the flow factor in N.J.A.C. 7:14-8.5(j) contradicts the purpose of the Water Pollution Control Act. The commenter stated that the flow factor will reduce penalties for almost ninety percent of the facilities affected by the Act. The commenter requested that this subsection be eliminated from the rule.

Schering-Plough Research questioned the use of the flow factor in calculating a penalty under N.J.A.C. 7:14-8.5 and 8.12. The commenter also noted that the matrix for assessing penalties already allows for variation in the assessment of penalties.

DuPont Chambers Works commented that the use of the flow factor in the calculation of civil administrative penalties unfairly penalizes and discriminates against large volume treaters. The commenter pointed out that discharges which contain various constituents with very low concentrations or low toxicities are given exaggerated importance because of a large flow, even though the environmental impact of such discharges on a receiving water can be significantly less than a discharge that has a large concentration of various constituents or high toxicity emitted by a low volume discharger.

The Association of Environmental Authorities commented that the use of the flow factor is unjust, and should be deleted from the rules. The commenter noted that the discharge limitations in permits already reflect consideration of characteristics of the estimated flow of the plant. Since these factors are already incorporated into permit limitations, the commenter questioned why they also should be incorporated into penalties. The commenter also suggested that the use of this factor in calculating the permit limitations and the penalties would result in penalizing permittees twice.

The commenter illustrated its point with an analogy to highway speed limits. If a motorist exceeds a speed limit by 10 miles per hour, the fine is the same whether the speed limit is 25 miles per hour or 55 miles per hour. The commenter suggested that the same reasoning should apply to violations of a permit limitation by a particular percentage, and that the penalty for the violations should not be increased or decreased by multipliers already considered in determining the limitations. The commenter suggested, however, that these factors would be useful in determining penalties for non-permitted discharges.

The New Jersey Public Interest Research Group commented that the flow factor must be scrapped. The flow factor as proposed throughout the regulations appears to serve no purpose other than to reduce penalties for surface water discharges of less than 10 MGD and ground water discharges of less than one MGD. The factor does not consider the toxicity of the pollutant(s), size of the receiving stream, or the potential harm to public health or the environment. In addition, it is incorrect to assume that larger flows contain higher pollutant concentrations. The actual mass of any pollutant is unrelated to the flow from a facility.

If the Department's intention in adding a flow factor was to take into account a violator's ability to pay, then ability to pay is the factor that should be included in the regulations. It should be noted that EPA permits the use of ability to pay in its penalty policy but only as a last resort, only if a payment schedule cannot be employed, and only where the violator carries a heavy burden to prove that it is unable to pay an otherwise appropriate penalty. The burden of complying with the Clean Water Act is shared equally among all dischargers. The diligent use of the Water Pollution Control Act's mandatory minimum penalties will keep initial penalties low and encourage permittees in violation to meet with the Department to discuss measures to aid compliance.

Merck & Co., Inc. commented that N.J.A.C. 7:14-8.5(j) requires that if the flow at the time of the discharge is unavailable, the flow factor is calculated based upon the last prior flow reported. The commenter

noted that due to differences in storm events, the last prior flow will have nothing to do with the discharge in question. The commenter recommended that the flow factor be based upon an estimated flow in such cases.

RESPONSE: In proposing to include the flow factor in the penalty assessment procedures, the Department had attempted to make the penalties commensurate with the environmental harm caused by the violation. Although the Department need not prove environmental harm to establish a violation, the Department had attempted to incorporate this as a factor to differentiate between violations of different potential environmental consequences. Upon a reevaluation of this concept in light of the many responses included above, the Department concluded that the proposal fell short of its intended goal. The Department has, therefore, decided not to include the flow factor in the adopted rules.

Many commenters objected to or otherwise questioned the Department's use of the receiving water factor in the determination of the penalty amount:

143. COMMENTS: The New Jersey Water Pollution Control Association, Inc. commented that the rules include a factor that includes the receiving water which was not included in the Act. The commenter thus asserts that this factor should not be included in the final rules.

The Association of Environmental Authorities commented that the use of the receiving water factor is unjust, and should be deleted from the rules. The commenter noted that the discharge limitations in permits already reflect consideration of characteristics of the receiving water. Since this factor is already incorporated into permit limitations, the commenter questioned why it also should be incorporated into penalties. The commenter also suggested that the use of this factor in calculating the permit limitations and the penalties would result in penalizing permittees twice.

The commenter illustrated its point with an analogy to highway speed limits. If a motorist exceeds a speed limit by 10 miles per hour, the fine is the same whether the speed limit is 25 miles per hour or 55 miles per hour. The commenter suggested that the same reasoning should apply to violations of a permit limitation by a particular percentage, and that the penalty for the violations should not be increased or decreased by muttipliers already considered in determing the limitations. The commenter suggested, however, that these factors would be useful in determining penalties for non-permitted discharges.

Schering-Plough Research questioned the use of the receiving water factor in calculating a penalty under N.J.A.C. 7:14-8.5 and 8.12. The commenter stated that permits are developed with the quality of the receiving water factored in; therefore, a proportionately more stringent permit limitation makes the allowable margin of error more stringent automatically. The commenter also noted that the matrix for assessing penalties already allows for variation in the assessment of penalties.

The Legal Committee of the Association of Environmental Authorities noted that the rules include a receiving water factor which provides increased penalties for violations occurring in more sensitive areas. The commenter stated that this provision makes little sense, because the receiving water factor is already reflected in the calculation of the permit limitations, so the use of the factor in the penalty calculation treats a violation as more serious than it is.

The commenter also stated that the receiving water factor makes little sense from a policy point of view. The commenter illustrated its point with an analogy to highway speed limits. If a motorist exceeds a speed limit by 10 miles per hour, the fine is the same whether the speed limit is 25 miles per hour or 55 miles per hour. The establishment of the 25 miles per hour speed limit already reflects that a high speed could cause public danger, just as the establishment of more stringent permit limits reflect the presence of an environmentally sensitive waterway. The commenter therefore proposed the elimination of the receiving water and flow factors from the rules.

The Association of Environmental Authorities commented that the receiving water factor is reflected in permit conditions; the commenter stated that incorporating this factor into the penalty determination is duplicative and unnecessary.

E.I. DuPont commented that the Water Pollution Control Act does not require the use of the water classification factor in determining the amount of a penalty. The commenter stated that the use of this factor is contrary to the intent of the statute; while the statute requires the Department to establish a policy governing the uniform assessment of civil administrative penalties, the use of this factor will not result in a uniform assessment. Instead, the commenter stated that the penalty assessment for identical violations can vary from violator to violator.

DuPont Chambers Works commented that for several reasons, the use of the receiving water factor in calculating civil administrative penalties goes beyond the Department's authority under the Water Pollution Control Act. The commenter stated that the Act does not require the use of this factor to determine the amount of a penalty, and that the use of this factor does not allow for uniform assessment of civil penalties, in accordance with the Legislative intent expressed in N.J.S.A. 58:10A-4(g).

The Camden County Municipal Utilities Authority requested that the receiving water category be eliminated from the penalty section. The commenter stated that the Act does not dictate or require the implementation of this factor in the penalty matrices.

The Chemical Industry Council of New Jersey stated that the Department's use of the receiving water factor goes beyond the scope of the authority which the Legislature delegated to the Department. The commenter noted that the Water Pollution Control Act does not require the use of this factor to determine the amount of the civil administrative penalty.

The Chemical Industry Council of New Jersey commented that the Department's use of the receiving water factor is contrary to the Water Pollution Control Act, which requires the Department to establish a civil penalty policy governing the uniform assessment of civil penalties. The commenter stated that the use of this factor will not provide for the uniform assessment of civil penalties; instead, the penalty assessment for identical violations can vary from violator to violator depending upon the location of the discharge and the discharger's flow.

The New Jersey State Chamber of Commerce commented that the table of receiving water factors in N.J.A.C. 7:14-8.5(k) appeared to be arbitrary. The commenter requested that the Department present its basis and background or the construction and use of the table.

The New Jersey Public Interest Research Group/Clean Ocean Action/ Delaware Riverkeeper strongly opposed the Department's proposal to include a receiving water factor in the penalty assessment, and asserted that this aspect of the proposal violates the intent of State and Federal law. The commenter stated that the goal of the Federal Water Pollution Control Act is to restore and maintain the chemical, physical and biological integrity of the nation's waters, regardless of current quality or intended use. The commenter stated that the proposal to treat violations of high quality waters as more significant then violations occurring on lower quality stream segments and sewage treatment plants was inconsistent with the Federal policy.

The New Jersey Public Interest Research Group/Clean Ocean Action/ Delaware Riverkeeper commented that the receiving water factor would encourage discharges of industrial toxics to sewage treatment plants rather than to all but the lowest quality waterways. The commenter stated that this result was inconsistent with the Department's efforts to encourage the beneficial use of clean sewage sludge as a fertilizer, soil amendment or soil conditioner.

The New Jersey Public Interest Research Group/Clean Ocean Action/ Delaware Riverkeeper commented that in using the receiving water factor, the Department has failed to recognize that low-quality stream segments may flow into high-quality waters or waters which require high levels of protection.

The New Jersey Public Interest Research Group/Clean Ocean Action/ Delaware Riverkeeper commented that the receiving water factor provides a financial reward for discharges into waters we most need to improve. The commenter stated that it is unconscionable to reward discharges into waters that have already been seriously misused.

The New Jersey Public Interest Research Group/Clean Ocean Action/ Delaware Riverkeeper commented that the appropriate place in which the Department should distinguish levels of protection of water quality is in the permit, not in the penalty rules. For extremely sensitive waterways, permit provisions should either disallow discharges into the waterway or seriously restrict such discharges.

The New Jersey Public Interest Research Group/Clean Ocean Action/ Delaware Riverkeeper commented that harm to public health was a more appropriate factor than the receiving water factor.

The New Jersey Public Interest Research Group/Clean Ocean Action/ Delaware Riverkeeper objected to the use of the receiving water factor. The commenter cited a recent case concerning a discharge into the Arthur Kill, in which the court had rejected the discharger's defense that there was no harm to that body of water. The commenter also suggested that violations affecting lower-quality waters arguably should carry higher penalties, because of Federal laws requiring states to create

mechanisms to enable certain bodies of water to meet water quality standards.

The New Jersey Public Interest Research Group commented that in enacting the New Jersey Water Pollution Control Act in 1977 (P.L. 1977, c.74) the Legislature declared that "[i]t is the policy of this State to restore, enhance, and maintain the chemical, physical and biological integrity of its waters . . . . " N.J.S.A. 58:10A-2. The receiving water factor as proposed in N.J.A.C. 7:14-8.5(k) and elsewhere in the proposed regulations provides for reductions in penalties for dischargers to poor quality waters and, thus, is inconsistent with the state goal of the State and Federal Water Pollution Control Acts. The Department should eliminate the receiving water factor from all of its regulations. It has no place in a strong and environmentally protective enforcement program.

The Department has proposed to decrease penalties, by half, for discharges to SE3 (C2) waters. These waters include many that have been designated as 304(l) toxic hotspot) waters under the Federal Act (see 33 U.S.C. 1314(l). The Department is required to strengthen the permits for all discharges to these waters. Weakening the enforcement tools that could be used to upgrade these waters will reduce the effectiveness of the 304(l) provisions.

The Department has proposed to increase penalties for discharges into high quality waters based solely on the receiving stream classification. The Department can and should restrict pollutant loadings to an appropriate level in all waterways through the permits. NJPIRG opposes increasing or decreasing penalties based on stream classification rather than based upon the potential or actual harm to public health or the environment.

The Department's purpose in adding the receiving stream factor could be better met by replacing the factor with two of the standard adjustment factors used throughout the proposed regulations and found *inter alia* at N.J.A.C. 7:14-8.5(i):

6. Any unusual or extraordinary costs or impacts directly or indirectly imposed on the public or the environment as a result of the violation; and

7. Any impacts on the receiving water, including stress upon the aquatic biota, or impairment of receiving water uses, such as for recreational or drinking water supply, resulting from the violation."

These factors could be applied using the same method proposed for the receiving stream factor, that is, to increase the proposed penalty.

The New Jersey Environmental Federation commented that it is sheer bad environmental policy to lower the penalty structure for violations that occur in low-quality waters or stream segments. The commenter questioned why a polluter in polluted waters should receive a lesser penalty, and suggested that the penalties for such violations should be higher instead.

The West New York Municipal Utilities Authority commented that the stream rating factors are based upon data gathered in 1984. The commenter suggested that the data should be updated.

The Western Monmouth Utilities Authority opposed the utilization of a receiving water factor in connection with penalties. The commenter reasoned that the penalty should not depend upon where the violation occurs. The commenter stated that discharges were located years before the development of this concept, and that the location decision might have been different if the cost imposed under these rules had been known at the time. The commenter analogized the receiving water factor to a policy that a rape in a white suburban upper-class neighborhood merits a greater penalty than a rape in a lower-class black urban neighborhood.

Hackensack Water Company commented that the rule appeared to equate recreational use of receiving streams with drinking water uses of receiving streams. The commenter noted that while certain pollutant discharges to streams or reservoir systems used for public drinking water can have acute effects upon public water supplies, pollution of recreational streams may not have the same immediate impact upon the public. Accordingly, the commenter recommended that the highest penalties should be assessed for impairment of receiving water streams used for drinking water supplies.

Hackensack Water Company recommended that the receiving water factor should provide for maximum penalties to be assessed when water used for a public water supply is affected by a violation, based upon the commenter's belief that the best ultimate use of water is as a public water supply. The commenter recommended that penalties for such violations should be even higher than penalties for violations affecting recreational water supplies.

Lenox, Inc. objected to the use of the "receiving water quality factor," for two reasons: there is no express statutory authority to include such a factor, and dischargers located on high-quality streams are already penalized more than others. Those dischargers already have more stringent effluent limitations, and a violation of the same magnitude will be a higher percentage exceedance for those dischargers than for dischargers with higher limitations, so that the violation will be more likely to be of major seriousness. For these reasons, the commenter recommended that this factor be eliminated from the rules.

Lenox, Inc. asked the Department to consider including a factor to reflect the flow rate of the receiving stream, because a high-volume discharge will have much less impact on a large-volume river than on a comparatively small-flow stream.

Lenox, Inc. commented that applying a "flow factor" and "receiving water factor" to violations of toxicity test results may penalize a discharger twice. The commenter suggested that to the extent that both effluent flow and receiving water quality are addressed when toxicity limits are imposed in a permit, these factors should not be considered again when penalties are assessed.

The Borough of Mendham commented that for those communities which discharge from a publicly-owned treatment works into a receiving water category FW2 TP or FW2 TM, the use of the receiving water factor results in a double penalty and is patently unfair. The commenter noted that the NJPDES permits for discharges into surface waters of these types impose more stringent controls through an increased number of parameters and smaller alllowable concentrations; as a result, permittees dicharging to these waters already must spend substantial amounts of money to meet the permit limitations. The commenter added that penalizing the degradation of certain waters more than the degradation of others is analogous to a mother favoring one child over another. Accordingly, the commenter recommended that the receiving water factor be deleted from the rule.

The Western Monmouth Utilities Authority commented that a violation of a permit requirement at the levels specified in the Water Pollution Control Act probably will not result in the pollution or measurable degradation of a receiving stream. The commenter noted that in drafting effluent requirements, the Department uses extremely conservative criteria, which are actually necessary for the protection of the receiving stream only .19 percent of the time. According to the commenter, it is possible that a violation of a permit limitation by 20 percent or even 40 percent would not result in a significant decrease in water quality. In the case of ocean discharges, such violations have even less impact as a result of the greater dilution provided by the design of the outfalls. Therefore, the commenter concluded that enforcement of the statute as written will not reduce pollution of the State's waters, but will only drain the resources of those persons who hold permits, and those who enforce them.

Four members of the Board of Directors of the Environmental Law Section of the New Jersey State Bar Association, writing as individuals, requested clarification of the receiving water factor in N.J.A.C. 7:14.8.5(k), and of how this factor is to be used in calculating penalties.

The Association of New Jersey Environmental Commissions opposed the receiving water factor, because it goes against the intent of Federal and State Clean Water Acts. The commenter stated that the intent behind the statutes is to have all waterways fishable and swimmable; if the Department adopts a policy which encourages different discharge limits based upn a waterway's current quality classification, that intent will never be achieved. Accordingly, the commenter recommended that this provision of the rules should be modified to reflect the purposes of the legislation more accurately.

Public Service Electric and Gas Company commented that the table of receiving water factors in N.J.A.C. 7:14-8.5(k) appeared to be arbitrary. The commenter requested that the Department present its basis and background for the construction and use of the table.

Merck & Co., Inc. recommended that the rules should not provide for a penalty if a noncomplying discharge from a significant indirect user does not result in a violation at the POTW, because a significant indirect user does not discharge to surface water. Specifically, the commenter requested that the rules provide that the receiving factor for a significant indirect user is zero if the facility can show that the excursion did not result in a violation at the POTW. Alternatively, the commenter suggested that if a penalty must be assessed, it should be the minimum allowed under the rules.

RESPONSE: In proposing to include the receiving water factor in the penalty assessment procedures, the Department had attempted to

provide an additional disincentive to discharge in violation of a permit in the State's higher quality waters. Upon a reevalutaion of this concept in light of the many responses included above, the Department concluded that this issue is presently and appropriately dealt with in the permitting process. The Department has, therefore decided not to include the receiving water factor in the adopted rules.

Several commenters questioned the Department's definition of conduct:

144. COMMENT: DuPont Chambers Works recommended that N.JA.C. 7:14-8.5(h)3 should provide that "Minor shall include any other conduct," since it is conceivable that there could be an unintentional but unforeseen act.

RESPONSE: The existing language already covers the type of conduct to which the commenter refers. Since any unintentional but unforeseen act would not be included in N.J.A.C. 7:14-8.5(h)1 or 2, it would be included in 3.

145. COMMENTS: The Association of Environmental authorities expressed concern over the definitions of conduct used in the penalty matrix under N.J.A.C. 7:14-8.5. The commenter stated that since "major" conduct includes all intentional, deliberate, purposeful, knowing or willful acts or omissions, and "moderate" conduct includes all unintentional but foreseeable acts or omissions, no conduct would ever be considered "minor." Accordingly, the commenter recommended revisions to the definitions of "major" and "moderate" conduct.

The Legal Committee of the Association of Environmental Authorities commented that under N.J.A.C. 7:14-8.5(h), "major" conduct includes intentional acts or omissions, "moderate" conduct includes unintentional acts or omissions, and "minor" conduct includes any other conduct. The commenter stated that under these definitions, no conduct ever would be "minor."

RESPONSE: The Department disagrees with these comments. The commenters apparently neglected to include unintentional but unforeseen acts in their analysis.

146. COMMENT: The New Jersey Public Interest Research Group/ Clean Ocean Action/Delaware Riverkeeper commented that the Department should not consider the intent of the violator in determining the amount of the penalty.

RESPONSE: The Department disagrees with this comment. The Department factors in the intent of the violator to distinguish, for example, between violators who intentionally commit violations and those violators whose violations are unintentional. The Department does agree, however, that the intent of the violator does not bear upon other aspects or objectives of assessing a penalty: capturing economic benefit and achieving compliance.

147. COMMENT: Colonial Pipeline Company commented that the "significant noncomplier" provisions would constrain the discretion of the Department in determining the conduct factor of the penalty matrix under N.J.A.C. 7:14-8.5.

RESPONSE: The Department disagrees with this comment. While the commenter did not elaborate on how the Water Pollution Control Act provisions concerning a significant noncomplier might possibly impact the Department's discretion concerning the conduct factor in N.J.A.C. 7:14-8.5, the Department does not see any such impact. The Water Pollution Control Act identifies significant noncompliers to require minimum mandatory penalties, without any reference to a violator's intent. The Department uses the conduct factor in N.J.A.C. 7:14-8.5, on the other hand, to vary the amount of penalties based upon the type of intent involved on the part of the violator.

Several commenters suggested that the Department include a violator's ability to pay as a factor in assessing civil administrative penalties:

148. COMMENTS: Four members of the Board of Directors of the Environmental Law Section of the New Jersey State Bar Association, writing as individuals, recommended that the list of affirmative defenses in N.J.A.C. 7:14-8.5(i) should include the ability of the violator entity to pay the imposed civil administrative penatly. The commenter noted that the U.S. Environmental Protection Agency already connsiders this factor in the assessment of civil administrative penalties. The commenter stated that the Department could include the violator's ability to pay as an affirmative defense under the authority of N.J.S.A. 58:10A-10(d).

Lenox, Inc. urged the Department to consider a violator's inability to pay as a basis for adjusting a penalty assessment, to prevent forcing marginal companies out of business or into bankruptcy. The commenter noted that the "ability to pay" concept has been an integral part of the U.S. Environmental Protection Agency's civil penalty policy for more than a decade, and has been adopted by many other states.

RESPONSE: The purpose of N.J.A.C. 7:14-8.5(i) is not to identify affirmative defenses, but rather to list factors which the Department may, in its discretion, apply to the midpoint of a penalty range to adjust the penalty to more accurately reflect specific circumstances surrounding a particular violation. The Department has decided to retain the language in the rule which would allow the Department to consider a violator's ability to pay when assessing the penalty.

Several commenters questioned the penalty adjustment factors:

149. COMMENTS: The Chemical Industry Council of New Jersey commented that N.J.A.C. 7:14-8.5, 8.6, 8.7, 8.9 and 8.12 all provide for the Department to adjust penalties based upon any unusual or extraordinary costs or impacts directly or indirectly imposed on the public or the environment as a result of the violation. The commenter questioned how far removed an impact could be while still being deemd an indirect imposition on the public or the environment. For this reason, the commenter recommended that the word "indirectly" be deleted or defined.

Mobil Oil Corporation, U.S. Marketing and Refining Division, opposed the proposal to include in penalty calculations any "unusual or extraordinary cost or impacts directly or indirectly imposed on the public or the environment" as the result of a violation. The commenter believes that the existing penalty calculation already covers such costs, to the extent they are appropriate factors to consider in assessing penalties. The commenter added that it will be impossible to calculate such costs meaningfully, and that the provision therefore is subject to unduly broad and thus potentially abusive interpretation.

RESPONSE: The Department adopted this provision directly out of the Water Pollution Control Act. The application of this phrase will be subject to judicial interpretation.

150. COMMENT: The Chemical Industry Council of New Jersey commented that N.J.A.C. 7:14-8.5, 8.6, 8.7, 8.9 and 8.12 all provide for the Department to adjust penalties based upon any impacts on the receiving water, including stress upon the aquatic biota, or impairment of receiving water uses, such as for recreational or drinking water supply resulting from the violation. The commenter questioned the use of the term "any impacts." Broadly construed, all discharges of pollutants, including those in conformance with a permit, cause stress upon the aquatic biota or impairment of receiving water uses. Therefore, the commenter urged that the Department define or limit the phrase "any impact," to put the regulated community on notice of what adverse impacts will result in adjustments of penalties.

RESPONSE: The Department has used the term "any impacts" to provide the regulated community with notice as to which impacts the Department could consider. Any further limitation such as the commenter suggests could prevent the Department from considering particular impacts on the environment when assessing a penalty.

151. COMMENT: Ciba-Geigy Corporation recommended that the rules should be revised to provide for the Department to consider additional factors in determining the amount of a penalty. Specifically, the commenter cited a provision of the Water Pollution Control Act requiring the Department to take into account "the type, seriousness, including extent, toxicity and frequency of a violation based upon the harm to public health or the environment resulting from the violation . . ." The commenter recommended several particular changes. First, the Department should modify N.J.A.C. 7:14-8.5(i)5 to provide for the Department to consider the cooperation of the violator in correcting the violation, remedying any environmental damage caused by the violation, "or" ensuring that the violation does not reoccur. The commenter noted that N.J.A.C. 7:14-8.5(i)6 and 7 also use "or" rather than "and." Second, the Department should not delete the provision in the existing rules allowing the Department to consider "other specific circumstances of the violator or violation." The commenter added that the same changes should be made to N.J.A.C. 7:14-8.6, 8.7, 8.9, 8.12 and 8.15.

RESPONSE: The Department believes that it has already included in the rules all of the factors listed in the Water Pollution Control Act. In addition, the Department is not going to delete, as originally proposed, the language which allows the Department to consider other facts concerning the violator or the violation.

152. COMMENT: The Camden County Municipal Utilities Authority inquired as to why, pursuant to N.J.A.C. 7:14-8.5, the violation of an effluent limitation violation should start at the mid-point of the range. The commenter stated that this imposes an artificial starting point and that the Department should have more latitude in assessing penalties, especially in the case of municipalities. The commenter suggested that

in the case of municipal discharges or public bodies which are not operating for profit purposes, the starting point should be at the floor or entry level of the range rather than the mid-point. The commenter also stated that, regarding the same section, the limitations for pH be re-evaluated because they are too broad. The commenter suggested that POTWs be subject to a narrower range which would trigger a major or moderate penalty assessment.

RESPONSE: The Department disagrees with this comment. By starting at the midpoint of the range, the Department may then adjust the penalty either up or down as the situation warrants. Over the next several months the Department will be re-evaluating the appropriateness of the matrix and its application to situations such as those the commenter raises. The Department expects to propose any regulatory changes resulting from this effort in early 1992.

VII. N.J.A.C. 7:14-8.6

Several commenters questioned the rules concerning penalties for submitting false or inaccurate information:

153. COMMENT: The New Jersey Public Interest Research Group commented that there are a number of regulations for which the Department has proposed that the "floor" or lower limit of the potential penalty be set at zero. NJPIRG submits that these penalty floors should be significantly raised. The regulations of concern include N.J.A.C. 7:14-8.6 (submitting inaccurate or false information); N.J.A.C. 7:14-8.7 (failure to allow lawful entry and inspection); N.J.A.C. 7:14-8.9 (failure to properly conduct monitoring or sampling); and N.J.A.C. 7:14-8.14 (failure to comply with an information request, administrative subpoena, and the destruction of records). These regulations are of particular importance and the penalty for violation of these regulations should be substantial because the regulations address the willingness of the permittee to supply information and access to data and information to the Department. Since this information is the basis for the entire system of regulation under the State and Federal Clean Water Acts, failure to supply such information should not be tolerated and should result in significant penalties.

For instance, N.J.A.C. 7:14-8.6(c)1 and 2 set upper penalties for submitting inaccurate or false information at $50,000 and $30,000 respectively. Currently, the floor for penalties is set at zero. NJPIRG submits that the floors must be set at $40,000 and $20,000 respectively. The Clean Water Act is dependent on the accurate reporting of discharge and monitoring data. Any violation under this section denies the public and regulators critical information on pollutant loadings and potential harm to public health and the environment and should be viewed as extremely serious violations.

RESPONSE: The Department agrees with the commenter's indication of the importance of the violations dealt with under this provision. Based on the Department's experience in dealing with matters such as these, however, the Department expects a wide range of violation situations to occur. As a result, the Department decided that it is necessary that the low end of these penalty ranges be made zero to allow for the appropriate distinctions among violations. Starting at the mid-point may in some cases make the penalty lower; however, the Department has the ability to increase the initial assessment pursuant to N.J.A.C. 7:14-8.6(d).

154. COMMENT: DuPont Chambers Works recommended that N.J.A.C. 7:14-8.6(d)6, which provides for the Department to adjust a penalty for submitting inaccurate or false information based upon "any unusual or extraordinary costs or impacts directly or indirectly imposed on the public or environment," should be revised to delete the word, "indirectly." The commenter stated that the provision, as proposed, is entirely too broad because it would allow almost any interpretation and could be extended to cover all occurrences and incidents. For the same reason, the commenter also recommened that N.J.A.C. 7:14-8.6(d)7, which provides for the Department to adjust a penalty based upon "any impacts on the receiving water," should be revised to delete the word "any". The commenter added that this provision could increase a discharger's liability even if the discharger was not, in fact, responsible for any impact on receiving waters or activities attributed to the receiving waters. The commenter made the same recommendation for provisions proposed at N.J.A.C. 7:14-8.7(d)6 and 7, 7:14-8.9(d)6 and 7, and 7:14-8.12(f)6 and 7.

RESPONSE: The Department disagrees with these comments. The text of this rule is the same as the provision in the Water Pollution Control Act. Just how far removed an impact could be which would be included here is ultimately up to the courts to decide. The Department simply could not adjust a penalty based upon the violator causing impacts on the receiving water when in fact the permittee has not caused impacts on the receiving water.

155. COMMENTS: The New Jersey State Chamber of Commerce questioned the factors listed in N.J.A.C. 7:14-8.6(d)5 through 7, 8.7(d)5 through 7 and 8.9(d)5 through 7, which the Department may use as a basis for adjusting the amounts of civil administrative penalties. The commenter noted that environmental damage is not relevant to these factors, and suggested that they should be deleted as unnecessary and confusing.

Public Service Electric and Gas Company questioned the factors listed in paragraphs N.J.A.C. 7:14-8.6(d)5 through 7, 8.7(d)5 through 7 and 8.9(d)5 through 7, which the Department may use as a basis for adjusting the amounts of civil administrative penalties. The commenter noted that environmental damage is not relevant to these factors, and suggested that they should be deleted as unnecessary and confusing.

RESPONSE: The statutory foundation of the regulatory program established by the Water Pollution Control Act is based upon the self-reporting of information from permittees to the Department. The commenters suggestion that environmental harm is not relevant for violations which could include falsification of monitored effluent pollutant concentrations in discharge monitoring reports, failure to allow the Department lawful entry to assess and respond to potentially life threatening situations, and for violators who completely refuse to conduct monitoring required to determine the extent of the potential impact of the permittee's discharge has on the environment, is contrary to the statute.

VIII. N.J.A.C. 7:14-8.7

Several commenters questioned the rules on unlawful entry:

156. COMMENT: Waste Management of North America, Inc. commented that the term "lawful entry," as used in N.J.A.C. 7:14-8.7 in connection with penalties for failure to allow lawful entry, is not defined.

RESPONSE: Simultaneous with this adoption the Department has proposed a definition of "lawful entry" to address this comment.

157. COMMENT: Waste Management of North America, Inc. commented that while N.J.A.C. 7:14-8.7 provides penalties for prohibiting "immediate lawful entry," immediate entry is not possible at closed, unmanned facilities. The commenter recommended that Department inspectors contact the general manager of a facility at least 24 hours before the time planned for the inspection.

RESPONSE: N.J.A.C. 7:14-8.7 pertains to violators who refuse, inhibit or prohibit immediate lawful entry and inspection. The Department recognizes that logistical problems associated with providing access to unmanned facilities may sometimes delay immediate lawful entry. Any delay which is beyond the control of the violator is not a refusal, inhibition or prohibition, provided that the person takes all reasonable measures to minimize any such delay. Unannounced inspections are one of the most important components of a regulatory system based on self-monitoring. Accordingly, the Department will not usually provide prior notice of planned inspections.

158. COMMENTS: The Chemical Industry Council of New Jersey commented on the use of the word "immediate" in the provision for penalties to be assessed against a person who fails to allow lawful entry and inspection by the Department. The commenter recommended that the word "immediate" be qualified to provide for adequate safety of the Department's inspectors and plant personnel, by allowing the permittee to provide trained and qualified personnel to escort a Department inspector through a facility without fear that the permittee will be issued a civil administrative penalty for failing to allow for immediate entry. The commenter suggested that this change would help to ensure the safety of all plant personnel and Department inspectors without impinging upon the Department's right to conduct an inspection.

DuPont Chambers Works recommended that N.J.A.C. 7:14-8.7, which provides penalties for failure to allow immediate lawful entry and inspection, should be revised to clarify the term "immediate." The commenter recommended that the Department use a time limitation to define "immediate," and that the provision provide penalties only for prohibition of "the safe" immediate lawful entry and inspection.

RESPONSE: The Department agrees with these comments that any immediate entry be conditioned upon legitimate and appropriate health and safety concerns.

159. COMMENT: The Camden County Municipal Utilities Authority commented that the mid-point established for right of entry is too high, but agrees with the elimination of the basement fine for refusing entrance to a permitted plant. The commenter stated that for purposes of the inspector's health and safety as well as that of plant personnel, unless

the inspector has proper training in such areas as confined space entry or other related issues, access cannot be allowed to all areas of the facility.

RESPONSE: Because N.J.A.C. 7:14-8.7(d) provides for the penalty amount to be adjusted below the midpoint where appropriate, the Department does not believe it is necessary to lower the midpoint in the penalty range. With regard to confined space entry and related issues, a facility should have a program in place to expeditiously accommodate Department inspectors. Where it is beyond the control of the violator to provide access without contravening duly promulgated confined space entry statutes and regulations, such inability to provide access may not constitute a refusal, inhibition or prohibition.

160. COMMENT: ARA Services recommended that the prohibition on refusing lawful entry should be limited to refusals during reasonable working hours.

RESPONSE: Because environmental emergencies and violations do not occur solely during reasonable working hours, the prohibition on refusing lawful entry can not be limited to refusals during reasonable working hours.

161. COMMENT: The New Jersey Public Interest Research Group commented that N.J.A.C. 7:14-8.7(c)1 sets upper penalties for failure to allow lawful entry and inspection at $50,000. The floor for penalties is currently set at zero. Verification of self-reported data from a permittee is an important element of the Water Pollution Control Act. Refusal of entry by a permittee is an extremely serious violation. NJPIRG submits that the penalty floor for failure to allow lawfu entry and inspection must be set at $40,000.

RESPONSE: The Department believes that more flexibility is needed to deal with the circumstances peculiar to each case than that which is provided in a range of $40,000 to $50,000.

IX. N.J.A.C. 7:14-8.8

162. COMMENTS: The Camden County Municipal Utilities Authority questioned the appropriateness of imposing a penalty pursuant to N.J.A.C. 7:14-8.8 upon authorities or municipalities that endorse the CP-1 application and, unknown to the public entity, the applicant proceeds to perform an illegal or unapproved activity. The commenter requested re-examination of this issue. The commenter expressed concern that local agencies have fine capabilities similar to the Department in enforcing this section. The commenter would like clarification as to what constitutes unauthorized approval, endorsement or allowing to commence or proceed to build. The commenter asked whether the Department intends to issue fines against authorities or municipalities, or whether it primarily intends to issue fines against builders.

The Western Monmouth Utilities Authority questioned whether penalties for conducting unapproved activities could be assessed against an individual within an organization who approves, endorses, etc. a facility or treatment works. The commenter suggested that it is the owner of the property on which construction occurs who should be liable for the penalty. The commenter noted that the individual within the organization cannot monitor every item of construction which potentially could be the source of a penalty. The commenter suggested that if a local agency could be subject to fines if a developer constructs facilities without a permit, because the local agency "allows construction or operation to commence or proceed," then the rules should clarify this possibility and also clarify the responsibilities of the local agency.

The Association of Environmental Authorities opposed the imposition of penalties under N.J.A.C. 7:14-8.8, for authorities who "approve, endorse, allow construction or operation to commence or proceed, build, substantially modify, install, replace, expand or operate a facility or treatment works without the proper authorization or in violation of any rules, administrative order," etc. The commenter stated that this provision would allow local agencies to be fined for construction over which they have no control. The commenter suggested that penalties for such unauthorized construction or operation should be levied against persons in control of the construction or operation, such as builders and owners. The commenter pointed out that local agencies lack the police powers of the State to halt unauthorized construction or operation.

RESPONSE: Authorities or municipalities that endorse the CP-1 application are not subject to penalties if any such endorsement complies with the requirements set forth in N.J.A.C. 7:14A, specifically, but not limited to, N.J.A.C. 7:14A-12. Unauthorized approval, endorsement, or allowing to proceed would be actions which contravene the requirements of N.J.A.C. 7:14A-12. The agencies liable under this section do indeed have control over the construction and operation via their own lawfully established authority and responsibilities. The Department will assess the penalties in N.J.A.C. 7:14-8.8 specifically against any person with specific authority and responsibility to issue formal approvals for projects to proceed (such as site plan approvals, construction approvals, certificates of occupancy, and sewer connection approvals) and have done so in violation of the applicable rules. This liability of the approving agency are necesssary in addition to the liabilities against the property owner/builder, because the approving agency thereby allows the violator to build up equity and improve its legal position by granting an approval to proceed on a project which does not possess the necessary enviromental permits. Endorsement of a CP-1 is not in and of itself a violation of this section.

163. COMMENT: Lenox, Inc. commented that delays in the processing of permit applications provide an incentive for commencement of construction of facilities before final approval is granted; treatment facilities may be needed to achieve permit limits, and the failure to install the facilities while awaiting approval could subject the permittee to liability for failure to achieve those limits. The commenter suggested that the rules should allow the Department to consider equitable factors which made the unauthorized construction necessary; if delayed approval is partly at fault, the penalty assessment should be reduced.

RESPONSE: Delays in issuance of necessary Department approvals, even if in no way the fault of the violator, do not justify or excuse the commencement of the project in the absence of those approvals. It should be noted, however, that nothing in the regulations prevents the Department from exercising discretion both in terms of deciding whether to assess penalties and settling penalties, based on valid mitigating circumstances.

164. COMMENT: Lenox, Inc. commented that the Water Pollution Control Act prohibits any person from building, installing, modifying or operating any facility for the collection, treatment or discharge of pollutants without the Department's approval; however, the statute contains no provision authorizing penalties for unlawfully **endorsing** or unlawfully **allowing** a person to construct and operate a facility without Department authorization. The commenter objected to the inclusion of such a provision in N.J.A.C. 7:14-8.8, and recommended that such a person should not be subject to penalties.

RESPONSE: The Department disagrees with this comment. One of the goals of the Water Pollution Control Act is to ensure that no person constructs or operates any facility for the collection, treatment, or discharge of a pollutant without the required Department approval. As part of the regulatory process under this statute, it is appropriate to condition certain approvals and endorsements of such activities. Any person who unlawfully grants such endorsement or approval is in violation and therefore subject to penalties.

165. COMMENT: The Legal Committee of the Association of Environmental Authorities noted that under N.J.A.C. 7:14-8.8(a) and (b)1, a local agency could be liable for the construction or operation of a treatment facility or treatment works which commenced without Department approval. The commenter recommended that a local agency should not be assessed a penalty when a "bandit" contractor commenced a project without either Department or local agency approval; instead, the commenter suggested that only the person commencing construction should be subject to penalties. The commenter noted that the local agencies lack the manpower to cover every square inch of their jurisdiction or to determine whether construction is commencing without appropriate permits.

RESPONSE: Local agencies woud be liable under this section only if they issued approvals, endorsements or allowances to proceed not in conformance with N.J.A.C. 7:14A-12. Activities taking place without the approval of local agencies would therefore not create liability for those agencies, but the construction itself would obviously be in violation of this section, the Uniform Construction Code, and local ordinances, and it is anticipated that the local agency itself would also initiate enforcement actions.

166. COMMENTS: The Association of Environmental Authorities suggested that the terms "substantially modify" and "allow" as used in N.J.A.C. 7:14-8.8 should be clearly defined.

RESPONSE: Merck & Co., Inc. recommended that the Department clarify the term "substantial" in N.J.A.C. 7:14-8.8. The commenter asked whether the replacement of a vitrified clay pipe with a terra cotta pipe would require a treatment works approval.

Lenox, Inc. commented that the term "allowed," as used in N.J.A.C. 7:14-8.8, is not defined in the rules. The commenter questioned what

actions or inactions would constitute "allowing," or what degree of control the allowing person must have over the builder to trigger liability.

RESPONSE: "Modification" is defined at N.J.A.C. 7:14A-1.9; to avoid confusion, the Department will delete the word "substantial" from this section. The definition of "modification" in N.J.A.C. 7:14A-1.9 clarifies when equipment replacement constitutes a modification. The phrase "allows construction to commence or proceed" means any approval granted by an agency with legal authority and responsibilities to regulate project development and implementation, which permits an entity to proceed with the construction and/or operation of a project in the absence of a necessary treatment works approval for the project or to serve the project's wastewater needs. Such approvals include, but are not limited to, developers agreements, building permits, sewer connection permits and certificates of occupancy. The Department will consider the inclusion of this definition in N.J.A.C. 7:14-8.2 in future revisions of these regulations.

167. COMMENTS: Merck & Co., Inc. commented that the language in N.J.A.C. 7:14-8.8(a)1 is inconsistent with N.J.A.C. 7:14A-12.4, which requires treatment works approvals for "Building, installing, modifying or operating any treatment works . . ." The proposed language adds the terms "substantially", "replaces" and "expands" into the rule. The commenter stated that the rules should be consistent to reduce the already abundant confusion regarding this approval process, and that requiring a treatment works approval for the emergency replacement of a broken sewer, or the substantial modification of toilets and other plumbing, for example, would not result in the protection of the environment. The commenter requests clarification of the term "substantial" and suggests that the regulations need to be flexible. The commenter also stated that the regulations indicate the Department's desire to become more involved in the day-to-day maintenance of treatment works, but it cannot adequately handle the approvals of ordinary new construction projects. The commenter suggested that the rules for this section should be held in abeyance until the Department develops workable regulations for industrial users and the related 90 day permit rules.

The New Jersey Petroleum Council commented that N.J.A.C. 7:14-8.8 is too restrictive to allow normal operation of a treatment works. The commenter noted that during normal maintenance, it may be necessary to replace equipment associated with the treatment works; if the operator must apply for a treatment works approval before replacing that equipment, the necessary maintenance may be delayed. Accordingly, the commenter recommended that the following should be added to N.J.A.C. 7:14-8.8(a)1, to exempt such maintenance from penalties under N.J.A.C. 7:14-8.8: "Modifications to the treatment works that are required for maintenance purposes and result in treatment that is equal to, better, or more reliable than existing treatment shall be exempt from a violation or penalty."

DuPont Chambers Works commented that the provision in N.J.A.C. 7:14-8.8(a)1, concerning penalties for unapproved activities, should exempt routine or required maintenance activities. As written this section would not allow for such maintenance and would, in fact, treat it as a violation.

E.I. DuPont commented that N.J.A.C. 7:14-8.8 should exempt routine or required maintenance activities from penalties for conducting unapproved activities.

The Association of Environmental Authorities commented that N.J.A.C. 7:14-8.8 should exempt those activities which do not require a permit, such as repairs and replacement of treatment works.

Colonial Pipeline Company contended that the replacement of a treatment works or a component of a treatment works with a similar type should not require department authorization, and should not be subject to penalties under N.J.A.C. 7:14-8.8. The commenter stated that including "replacements" in this provision served no useful purpose, since significant changes to an existing treatment system are adequately addressed by the terms "substantially modifies" and "expands," without using the terms "replace" and "replacement."

RESPONSE: The Department has deleted the word "substantially" from this section. However, because "replaces" and "expands" are included in the definition of "modification" as defined in N.J.A.C. 7:14A-1.9, these terms will not be deleted. With respect to the comment that these regulations indicate the Department's desire to become more involved in the day-to-day maintenance of treatment works, please refer to the definition of "modification" in N.J.A.C. 7:14A-1.9 for clarification as to when equipment replacement constitutes a modification. The stated purpose for the amendments to N.J.A.C. 7:14A-8.8 is to revise the basis for determining civil administrative penalties for conducting unapproved activities. While the Department acknowledges that delays in the issuance of approvals do occur, the Department does not believe that delays justify anyone ignoring these rules.

168. COMMENT: The New Jersey State Chamber of Commerce commented that due to the long lead time required for treatment works approval for treatment works modifications, it has been common industrial practice in some cases to proceed with construction (but not commencing operations) before receiving full treatment works approval. The commenter noted that industry follows this practice with the recognition that it is assuming a financial risk, since the construction would have to be modified in accordance with the requirements of the Department's approval. The commenter expressed concern that penalties would be assessed under N.J.A.C. 7:14-8.8 for this practice, eliminating industry's option to accelerate the construction schedule, without any clear benefit to the environment.

RESPONSE: N.J.A.C. 7:14A-12.1 specifically states that no person shall build, install, modify or operate any facility for the collection, treatment or discharge of any pollutant except after approval by the Department. Industry is and has been liable for penalties under N.J.A.C. 7:14-8.8 for the commencement of construction without required Department approvals.

169. COMMENTS: Colonial Pipeline Company pointed out that the prohibition on unapproved activities in N.J.A.C. 7:14-8.8 could have the effect of delaying maintenance work.

The Chemical Industry Council of New Jersey questioned the provision in N.J.A.C. 7:14-8.8 for imposing civil administrative penalties for conducting unapproved activities. Specifically, the commenter was concerned that the provision for penalties against a violator who "installs, replaces, expands, or operates a facility or treatment works" without proper authorization could be construed to allow the Department to assess a civil administrative penalty for routine maintenance. To avoid this possibility, the commenter recommended that the provision expressly state routine or required maintenance activities do not require Department approval.

RESPONSE: The Department does not agree that the proposed wording in N.J.A.C. 7:14-8.8(a)1 implies that maintenance activities are prohibited. N.J.A.C. 7:14A-1.9 clarifies which activities constitute a modification and N.J.A.C. 7:14A-12 specifically addresses which activities require treatment works approvals, sewer ban exemptions, permits, etc.

Several commenters questioned the procedures for assessing penalties for unapproved activities:

170. COMMENT: Lenox, Inc. questioned the meaning of the phrase "each . . . allowance" in N.J.A.C. 7:14-8.8(b)liii. The commenter asked whether each facility which a person allowed or approved would constitute a separate violation, or if each day that construction continued would be a separate violation.

RESPONSE: Authorities or municipalities that endorse the CP-1 application are not subject to penalties if the endorsement complies with the requirements set forth in N.J.A.C. 7:14A, specifically, but not limited to, N.J.A.C. 7:14A-12. Unauthorized approval, endorsement, or allowing to proceed would be those which contravene the requirements of N.J.A.C. 7:14A-12.

171. COMMENT: Lenox, Inc. commented that in assessing penalties under N.J.A.C. 7:14-8.8, the Department should be able to consider the purpose of the unauthorized facility. The commenter suggested that penalties should be less severe for construction of a facility or installation of equipment to improve effluent quality, in contrast to facilities which increase flow or concentration or add new sources.

RESPONSE: The Department is not precluded from taking these types of factors into account during settlement in the exercise of its enforcement discretion.

172. COMMENT: Colonial Pipeline Company pointed out that under N.J.A.C. 7:14-8.8(b), the seriousness factor for penalties for unapproved activities is based in part upon the design flow of the facility or project expressed in gallons. The commenter recommended that this factor instead be based upon a design flow rate, such as gallons per minute or million gallons per day.

RESPONSE: The factor the Department intends to utilize is "gallons per day." The language in this section will be revised to reflect this more clearly.

173. COMMENT: Colonial Pipeline Company contended that the seriousness factor for penalties for unapproved activities should not be exclusively based on flow for unauthorized treatment systems placed in operation. The commenter recommended that the Department also

consider the water quality of the effluent from the unauthorized treatment system, since the seriousness factor should reflect actual or potential damage to the environment. Effluent water quality will be a significant element in any such damage.

RESPONSE: The Department believes that the seriousness factor for calculating the penalties required by this section is, in the majority of cases, best related to project size. The actual environmental damage from illegal construction activities, for example, would not be known until some time in the future, and therefore basing a penalty on such prospective occurrences is not satisfactory. In any case, those future environmental impacts are precisely what the Department seeks to prevent via adequate financial deterrents related to project size.

174. COMMENT: Colonial Pipeline Company recommended that the dollar amount of the penalty for unapproved activities should have upper limits. The commenter noted that the extremely large penalties that can result from the penalty calculation, particularly for facilities that process stormwater, may not reflect the environmental damage incurred.

RESPONSE: The Water Pollution Control Act has already established an upper limit for penalties of $50,000 per violation.

175. COMMENT: Merck & Co., Inc. stated that, with respect to N.J.A.C. 7:14-8.8(a)2, the Department has overstepped its bounds by including the Underground Storage Tank regulations and has not demonstrated the need for such penalties for minor violations of the new regulations. The commenter added that the civil administrative penalties are based on flow and flow is not associated with underground storage tanks.

RESPONSE: The Department agrees that the use of flow in this provision is not appropriate for violations of the Underground Storage of Hazardous Substances regulations. Therefore, the Department has deleted the reference to these rules in N.J.A.C. 7:14-8.8(a).

X. N.J.A.C. 7:14-8.9

Several commenters had general questions concerning penalties for failure to conduct monitoring or sampling activities:

176. COMMENTS: Lenox, Inc. questioned the applicability of N.J.A.C. 7:14-8.9 to underground storage tanks. The commenter noted that the reports listed in subsection (a) did not appear to be applicable to underground storage tanks.

Lenox, Inc. asked that the Department clarify whether any of the reporting obligations mentioned in N.J.A.C. 7:14-8.9(a), other than the reporting obligations in the underground storage tank rules, would subject the owner or operator of an underground storage tank to penalties under these rules.

RESPONSE: N.J.A.C. 7:14-8.9 applies to underground storage tanks to the extent that the New Jersey Undergroud Storage of Hazardous Substances Act and its implementing regulations requires monitoring, sampling or submission of reports. For example, N.J.A.C. 7:14B-6 requires that monitoring of underground storage tanks and piping systems be performed. In addition, pursuant to N.J.S.A. 58:10A-37, the Department may use N.J.A.C. 7:14-8.9 to enforce the provisions of a final Administrative Order or Administrative Consent Order issued pursuant to the New Jersey Underground Storage of Hazardous Substances Act if the provisions of the Order require monitoring, sampling or submission of reports.

Several commenters suggested changes to the procedures for assessing rules for monitoring and sampling activities:

177. COMMENT: Lenox, Inc. commented that N.J.A.C. 7:14-8.9(c) should be clarified to state that the midpoint of the ranges is calculated based upon the bottom level of the ranges equalling zero.

RESPONSE: The Department believes that it is clear in N.J.A.C. 7:14-8.9(c) that the bottom of the ranges is zero.

178. COMMENT: Lenox, Inc. commented that the penalties for unintentional acts and omissions under N.J.A.C. 7:14-8.9(c) were excessively severe, since a DMR could easily "slip throught the cracks" unintentionally. The commenter recommended that in calculating penalties, the Department should consider the discharger's past history of submitting required information.

RESPONSE: The Department has reduced the penalties for unintentional acts and omissions from those previously specified in N.J.A.C. 7:14-8.9(c) and may, in its discretion, adjust the amount determined within the specified ranges based upon certain factors set forth in N.J.A.C. 7:14-8.9(d), including the compliance history of the violator. A permittee's reporting of this type of information is critical to the Department's implementation of the programs established by the Water Pollution Control Act.

179. COMMENT: The New Jersey Public Interest Research Group commented that, as proposed, N.J.A.C. 7:14-8.9(c) 1, 2, and 3 set penalties for failure to properly conduct monitoring and sampling. The penalty ranges only include upper limits and set lower limits at zero. NJPIRG submits that the ranges be set as follows:

(c) 1. $40,000 to $50,000;
2. $30,000 to $40,000;

RESPONSE: The Department disagrees with this comment. The Department believes that the rule as proposed allows maximum flexibility to respond to the varied circumstances which may arise.

One commenter suggested the Department include a violator's ability to pay as a factor in assessing a penalty:

180. COMMENT: Lenox, Inc. commented that the discharger's inability to pay a penalty should be considered as a factor in adjusting a penalty under N.J.A.C. 7:14-8.9(d).

RESPONSE: The Department has modified N.J.A.C. 7:14-8.9(d) to include the factor "Other specific circumstances of the violator or violation" for penalty adjustment by the Department, in its discretion, within the ranges specified in N.J.A.C. 7:14-8.9(c).

Several commenters questioned the rules concerning minimum mandatory penalties:

181. COMMENT: The Evesham MUA noted that Section 6(d) of the Water Pollution Control Act recognizes two distinct types of reporting violations: first, when the permittee fails to report a required effluent parameter because of extenuating circumstances beyond the permittee's control, in which case the permittee may defend against a penalty by showing that those circumstances prevented the timely submission of the DMR or any portion thereof; and second, when there is an inadvertent omission of one or more effluent parameters, in which case the permittee has 10 days from receipt of a notice of omission to supply the omitted information and avoid liability for the omission. The commenter stated that N.J.A.C. 7:14-8.9(e) should be revised because it confuses the two situations, and does not provide separate defenses for each.

RESPONSE: The Department has modified N.J.A.C. 7:14-8.9(e)4 to correct the drafting in the proposal.

182. COMMENTS: The Association of Environmental Authorities noted that N.J.A.C. 7:14-8.9(e), concerning failure to submit a complete discharge monitoring report, provides that there is no penalty for an inadvertent omission of one or more effluent parameters if the violator submits the omitted information to the Department within 10 days after notice of the omission. The commenter stated that N.J.A.C. 7:14-8.9(e) also requires the violator to establish extenuating circumstances to benefit from this defense. The commenter asserts that under the Water Pollution Control Act, there should be no liability for the inadvertent omission even if the violator cannot establish extenuating circumstances.

The Legal Committee of the Association of Environmental Authorities commented that N.J.A.C. 7:14-8.9(e) must be rewritten to satisfy the requirements of section 6 of the Water Pollution Control Act. The commenter distinguished between a violation for an inadvertent omission, for which the permittee can avoid a penalty by supplying the omitted information within ten days, and a violation caused by extenuating circumstances.

RESPONSE: The Department has modified N.J.A.C. 7:14-8.9(e)4ii by deleting the clause "provided, however, that the Department shall not be required to consider such evidence if the violator has not complied with (c)3 above."

183. COMMENT: The Camden County Municipal Utilities Authority commented that pursuant to N.J.A.C. 7:14-8.9 there is a penalty for failure to submit baseline monitoring reports. The commenter inquired whether this penalty provision includes the submission of baseline monitoring reports to the Department only, or whether it is also delegated to local agencies.

RESPONSE: Yes, N.J.A.C. 7:14-8.9 provides for civil administrative penalty assessments by the Department for failure to submit baseline monitoring reports.

184. COMMENTS: The New Jersey State Chamber of Commerce commented that N.J.A.C. 7:14-8.9(e)4 should provide that if the preprinted discharge monitoring report form does not accurately reflect the terms and conditions of the permit, and the permittee has identified such inaccuracies, the Department would not assess a civil administrative penalty for the resulting apparent violations.

Public Service Electric and Gas Company commented that N.J.A.C. 7:14-8.9(e)4 should provide that if the preprinted discharge monitoring report form does not accurately reflect the terms and conditions of the permit, and the permittee has identified such inaccuracies, the Department would not assess a civil administrative penalty for the resulting apparent violations.

RESPONSE: The Department has intensified its efforts to correct errors identified with preprinted discharge monitoring report forms and the NJPDES database which is essential to implementing the Water Pollution Control Act requirements. Moreover, each permittee must comply with the actual requirements stated in its NJPDES permit, and the permittee will not be subject to a penalty based on a database error which does not accurately represent the NJPDES permit conditions.

185. COMMENT: Four members of the Board of Directors of the Environmental Law Section of the New Jersey State Bar Association, writing as individuals, questioned how the minimum penalty amounts prescribed in N.J.A.C. 7:14-8.5(a) and 7:14-8.9(e) affect the penalty ranges in the matrix. The commenter noted that the rules provide that the ranges cannot be exceeded or lessened, and asked if this provision meant that the original penalty must be between the ranges, but that the amount may then be reduced.

RESPONSE: N.J.A.C. 7:14-8.9(e) addresses the minimum mandatory civil administrative penalties the Department must assess for certain violations under the Water Pollution Control Act. The matrix in N.J.A.C. 7:14-8.9(c) provides the civil administrative penalty ranges for all violations under N.J.A.C. 7:14-8.9 with penalty adjustment factors specified in N.J.A.C. 7:14-8.9(d) except for the minimum mandatory penalties set forth in N.J.A.C. 7:14-8.9(e).

186. COMMENT: ARA Services commented that it may not be technically feasible to correct a violation within 10 days after learning of the violation. Therefore, the commenter concluded that it is unreasonable for the Department to require such correction.

RESPONSE: This 10-day correction period is expressly included in the Water Pollution Control Act. The 10-day correction period specified in N.J.A.C. 7:14-8.9(e)4i is reasonable since it deals only with information inadvertently omitted by the violator in submitting a discharge monitoring report.

187. COMMENT: Four members of the Board of Directors of the Environmental Law Section of the New Jersey State Bar Association, writing as individuals, recommended that if the absence of any individual item constitutes a violation, the Department should clarify that the maximum number of violations per reporting period for an incomplete discharge monitoring report is one.

RESPONSE: N.J.A.C. 7:14-8.9(e) clearly specifies the minimum mandatory civil administrative penalty for each effluent parameter omitted on a discharge monitoring report as well as the $50,000 maximum penalty per month for any one discharge monitoring report, regardless of the number of parameters omitted. This is the same as the Water Pollution Control Act.

XI. N.J.A.C. 7:14-8.12

Several commenters questioned the rules concerning penalties for violations of whole effluent toxicities:

188. COMMENTS: The New Jersey State Chamber of Commerce commented that the Department is proposing penalties associated with acute and chronic toxicities. The commenter stated that enforcement on the basis of these methods is interim, and therefore may result in inaccuracies in analyses and could result in substantial penalties where the results are incorrect by the permit level excursion.

The New Jersey Chamber of Commerce commented that all references to NOEC should be removed from the proposed rules, including N.J.A.C. 7:14-8.2, 7:14A-1.9 and 7:14-8.12. The commenter based its request on its assertion that while acute toxicity methodologies have been promulgated into the rules, chronic methodologies have not, and that without statutory basis the proposed rules would use these unpromulgated chronic toxicity methodologies for enforcement purposes. The commenter expressed concern that enforcement on the basis of methods whose status is interim and may thus contain inadequacies in analysis could result in substantial penalties where the results incorrectly indicate a permit limit excursion.

RESPONSE: The Department disagrees with these comments. The procedures for establishing whole effluent toxicity limits, both acute and chronic, are in the rules at N.J.A.C. 7:9-4.6 and 7:9-5.7. Acute toxicity testing methods are contained in N.J.A.C. 7:18-6. The Department has been assessing penalties for violations of acute toxicity limits for several years. The commenters are concerned about the meaning of the term "interim" in the title of the Department's chronic toxicity testing methods document. That word was used to indicate that the Department plans to eventually adopt chronic methods into a rule when a chronic laboratory certification program is established. The Department is not obligated to have a certification program in place for every parameter prior to assessing penalties for violations. Since they are not yet in rules, permittees and the public have the opportunity to comment on the details of the methods as part of the permit process.

The chronic methods the Department is using are based on the Environmental Protection Agency's (EPA's) methods, which are used for the National Pollutant Discharge Elimination System (NPDES) program throughout the country. Very few other Federally delegated permit states have laboratory certification programs. When a chronic laboratory certification program is established, the Department expects these same EPA methods to be the basis of the methods adopted into regulation. As such, the continued use of these methods at this time will not result in analytical inaccuracies and incorrect penalties.

189. COMMENTS: The Joint Meeting of Essex and Union Counties commented that the penalty amounts for violation of whole effluent toxicity limitations are unjustifiably high, especially for a POTW which has no control over what it takes in. The commenter recommended that the amounts should be reduced, or a justification for the range of penalties should be given.

Four members of the Board of Directors of the Environmental Law Section of the New Jersey State Bar Association, writing as individuals, commented that the penalty amounts for violation of whole effluent toxicity limitations are unjustifiably high. The commenters recommended that the penalty amounts should be reduced, or that the Department provide justification for the range given.

RESPONSE: The situations the commenters describe may meet the statutory definition of an upset, thereby relieving the local agency from penalty liability. A local agency has the same opportunity to control what it takes in as the Department has over what goes into the waters of the State. That is, they have the authority to regulate the quality of effluents discharged into their facility. In this particular case, a whole effluent toxicity limitation is enforceable just like any other permit limit, penalty amounts up to the maximum established by the New Jersey State Legislature therefore apply. Whole effluent toxicity is a measure of the potential impact a discharge may have on a receiving water, and the proposed penalty amounts reflect the environmental importance of this parameter.

190. COMMENT: The Association of Environmental Authorities opposed the use of a penalty matrix for violations of whole effluent toxicity, which the commenter stated in a very questionable test. The commenter noted that the subjectivity of whole effluent toxicity has been questioned for years, and that the tests are quite variable and subject to laboratory error. The commenter further stated that background data is inefficient to make reasonable conclusions. Accordingly, the commenter recommended that the Department use its discretion in imposing penalties for violations of whole effluent toxicity.

RESPONSE: The Department has been issuing penalty assessments for violations of acute toxicity limits for several years using the standard matrix in the 1989 penalty regulations. The Department developed a separate penalty assessment procedure for whole effluent toxicity as a result of its experience in applying the 1989 regulations and due to the implementation of chronic toxicity limits. The commenter is referred to the detailed response in Section II above, concerning the criteria used to define a "significant violation" for whole effluent toxicity for additional background information. The commenter's concerns about the questionable nature of toxicity tests and their variability have been repeatedly addressed and refuted by the Department, other states, and the United States Environmental Protection Agency (EPA). For current information about the suitability and defensibility of the use of toxicity testing in the NPDES permit program the commenter is directed to the recently published **Technical Support Document for Water Quality-based Toxics Control,** EPA, Office of Water, Washington D.C. (EPA/505/2-90-001; March 1991).

191. COMMENT: The Camden County Municipal Utilities Authority commented that the Act did not direct any penalties associated with a whole effluent toxicity and therefore requested that any reference to bioassay NOEC or whole effluent toxicity be deleted from the proposed rules. The commenter also questioned the inclusion of a definition for whole effluent toxicity as it is not included in the Act. The Camden County Municipal Utilities Authority also commented that penalties for

whole effluent toxicity limits, N.J.A.C. 7:14-8.12, should be deleted from the rules as the Water Pollution Control Act does not require the implementation of this type of penalty program.

RESPONSE: The Department disagrees with this comment. The Water Pollution Control Act expressly required the Department to "prescribe an equivalent exceedance factor" for any parameter not measured by concentration or mass. N.J.S.A. 58:10A-3(v). The Water Pollution Control Act covers all parameters limited in NJPDES discharge to surface water permits, whether or not specifically referenced. The definition of whole effluent toxicity was included to clarify the use of the term in the regulations. Department rules commonly have definitions in addition to those in the enabling statute. No change was made to the rules.

192. COMMENT: Waste Management of North America, Inc. commented that N.J.A.C. 7:14-8.12(b) provides that each violation of a whole effluent toxicity limitation constitutes an additional, separate and distinct violation. The commenter requested that the Department clarify whether this provision applies even if the different toxicity limitations are included in the same waste stream.

RESPONSE: The Department is not certain it understands the comment. In the vast majority of permits with whole effluent toxicity limits, only a single limit, either acute or chronic, will be effective at any given time for a particular waste stream. So that only one violation at a given time would be possible. Since acute limits have been in place for some time, and chronic limits are being implemented now, if a compliance schedule is included in the permit for a chronic toxicity limit which previously had an acute toxicity limit, the existing acute toxicity limit will remain in effect until the chronic limit becomes effective. If a permit for some reason were to include both acute and chronic toxicity limits, it would also include both acute and chronic toxicity testing requirements, if both toxicity test results indicated a violation of the corresponding limit it would be two violations.

193. COMMENTS: The New Jersey Petroleum Council commented that while the Department has added a penalty assessment calculation for whole effluent toxicity, the Water Pollution Control Act did not specifically require penalties to be assessed for toxicity. The commenter recommended that before the Department include these provisions in the rules, the methods, reporting and definitions need to be publicly reviewed. The commenter noted that toxicity testing is a relatively new method of monitoring the potential environmental effects of a discharge; the Department has approved only the acute biomonitoring method within its rules (N.J.A.C. 7:18-6). The penalties in these rules extend beyond the methods and definitions present in the approved biomonitoring methods. For example, there is no definition of "No Measurable Acute Toxicity" in the existing laboratory regulations but a penalty is being proposed for the violation of such a measurement.

Public Service Electric and Gas Company contended that the Department's intent to apply the penalty provisions to any whole effluent toxicity based permit limit is beyond the intent of the Water Pollution Control Act, and that to apply such provisions to permit limits for which no appropriately promulgated analytical procedure exists is arbitrary and capricious. The commenter also applied this comment to the Department's intended reliance on NOEC limits.

Public Service Electric and Gas Company commented that while the U.S. Environmental Protection Agency has promulgated analytical methods for acute toxicity testing, the analytical variability of those methods may render reliance on the results in the context of assessment of mandatory penalties inappropriate. For this reason, the commenter suggested that the Department limit the penalty provisions of these regulations to those permit terms and conditions specifically mandated by the New Jersey legislature.

Public Service Electric and Gas Company commented that neither the United States Environmental Protection Agency nor the Department has promulgated analytical methodologies for certain parameters. The commenter recommnded against the Department relying upon values reported based on methodologies which have not been subject to proper notice and comment. Specifically, the commenter noted that while the Department is imposing chronic toxicity test requirements in NJPDES permits, the protocols being prescribed in permits being issued have been neither promulgated in 40 CFR 136 nor formally adopted in a rule by the Department. The commenter stated that it is unlawful to rely on results from those methods for any purposes that may bear regulatory consequences (such as assessments of penalties) until those methods have been scientifically validated and legally adopted.

RESPONSE: The Department disagrees with these comments. The Water Pollution Control Act expressly required the Department to "prescribe an equivalent exceedance factor" for any parameter not measured by concentration or mass. N.J.S.A. 58:10A-3v. The Water Pollution Control Act covers all parameters limited in NJPDES discharge to surface water permits, whether or not specifically mentioned. The Department has been assessing penalties under existing authorities for several years for violations of acute toxicity limitations. Procedures for calculating chronic toxicity limits are contained in N.J.A.C. 7:9-4.6(c)5iii. Although the Department does plan to develop a laboratory certification program for chronic toxicity and to adopt the methods into rule, the Department is not required to have such a certification program in place and has commonly used new methods in the past before they are codified into rule. The permittee and the public have the right to comment on the specific methods as part of the permit process on each permit receiving the requirements. The chronic methods being used are based on United States Environmental Protection Agency methods, which are established and being used in the NJPDES program around the country.

The Department agrees that a definition of "NMAT" is appropriate. Therefore, simultaneous with this adoption, the Department has proposed a definition of "no measureable acute toxicity."

The United States Environmental Protection Agency (EPA) has not promulgated analytical methods for acute toxicity testing for use in the NJPDES program, but has issued public notice of a proposal including both acute and chronic toxicity testing methods for use in the NPDES program. Analytical testing methods do not have to be promulgated by EPA, before they may be used by the Department. In the case of the chronic toxicity testing methods being utilized by the Department, they are based on EPA's final published guidance.

The commenter's statements about the questionable nature of toxicity tests and their variability, are old arguments that have been repeatedly refuted by the Department, other States and the EPA. For current information about the suitability and defensibility of the use of toxicity testing in the NPDES permit program the commenter is directed to the recently published **Technical Support Document for Water Quality-based Toxics Control,** EPA, Office of Water, Washington, D.C. (EPA/505/2-90-001; March 1991). Both acute and chronic WET limit and toxicity testing requirements are commonly being included in NPDES permits throughout the country.

194. COMMENT: The Western Monmouth Utilities Authority commented that penalties for violations of LC50 and NOEC should be based upon a sliding scale, rather than a step scale as is provided in the rule. The sliding scale would provide a continuous range of determinations, rather than the discontinuity provided by steps.

RESPONSE: Although the Department recognizes that a "sliding scale" has some advantages, the approach adopted was the only one the Department found that was workable, addressed the unique characteristics of the whole effluent toxicity parameter and gave reasonable results. The commenter is referred to the detailed responses in Section II above, regarding the criteria for defining a "significant violation" for whole effluent toxicity, for the background discussion of the unique characteristics of toxicity data, which led to the development of this provision.

195. COMMENT: The New Jersey Public Interest Research Group commented that the proposed N.J.A.C. 7:14-8.12 for determining penalties for violations of whole effluent toxicity limits should be deleted from the rules. Instead, the proposed criteria for the seriousness of the violation in the matrix found in N.J.A.C. 7:14-8.5 should be applied. It was further recommended that the Department include violations of whole effluent toxicity that are more than 50 percent over the permitted limit within the major seriousness category of the matrix.

The New Jersey Public Interest Research Group also commented that civil administrative penalties for violations of the whole effluent toxicity limitations are proposed in N.J.A.C. 7:14-8.12. Those limitations include LC50s, NMATs and NOECs. Violations of these whole effluent toxicity limits indicate serious potential harm to the environment and public health. These tests are designed to indicate the toxicity of an effluent to organisms. It is outrageous that the Department would propose that no mandatory penalty be assessed for violations of LC50s, NMATs or NOECs. Whole effluent toxicity tests should be used to determine the seriousness of the violation for the matrix in N.J.A.C. 7:14-8.5. To do otherwise would completely undermine the importance of these tests. NJPIRG submits that the proposed N.J.A.C. 7:14-8.12 be deleted from the proposed regulations.

RESPONSE: As discussed at length in Section II above, concerning comments on the definition of "serious violation," there are serious

problems with applying the percent exceedance approach to violations of whole effluent toxicity (WET) limits. These problems carry over to the application of the matrix in N.J.A.C. 7:14-8.5, which is based on the percent exceedance concept. For example, for an NOEC limit of 10 percent effluent, a 50 percent exceedance would be an NOEC of 6.67 percent effluent (a difference in percent effluent of only 3.33 percent effluent). The problems with applying the N.J.A.C. 7:14-8.5 matrix to the NMAT limit were also discussed at length above. Just as the Department concluded that it must abandon the percent exceedance approach to the definition of a "serious violation," it also concluded that the approach was unworkable in assessing penalties. Although it could have been applied to violations of LC50 limits in the range of 50 to 100 percent effluent, it makes no sense to have a separate penalty assessment scheme for LC50 and NOEC limits. That meant that the penalty matrix in N.J.A.C. 7:14-8.5 should not be applied to WET.

As a result, the Department developed the separate procedures, in N.J.A.C. 7:14-8.12, for assessing violations of WET limits. These procedures are based on the criteria for determining a "serious violation" of a WET limit. It sets up what are equivalent to major and minor categories of seriousness, as those terms are used in N.J.A.C. 7:14-8.12. Although the inclusion of a third category may have been preferable for consistency, the Department concluded that based on the characteristics of WET data and the concept developed to assess penalties, doing so would have weakened the approach. The approach was therefore adopted as proposed to N.J.A.C. 7:14-8.12(d) and (e).

XII. N.J.A.C. 7:14-8.13

196. COMMENT: The New Jersey Public Interest Research Group commented that the regulations must require that in every instance that the Department assesses a penalty other than the minimum penalties mandated in the Water Pollution Control Act, it shall both determine whether an economic benefit has been gained by the violator and include an economic benefit component as a part of the penalty assessed. It appears on the face of N.J.A.C. 7:14-8.13(a) that the Department may intend not to make the determination of whether economic benefit was gained in every case. It should be made clear in the regulations that the Department must make both the determination and the assessment of economic benefit in every penalty assessment other than the mandatory minimum penalties required by the Water Pollution Control Act.

The Department must also develop in the regulations a system for obtaining the removal of all of the economic benefit through the penalty assessment. It will need the following information in order to make the economic benefit determination and assessment. The first determination that the Department must make is to identify what action(s) the violator must take or has taken to bring itself into compliance with the permit parameter which has been violated. It then must determine the increased capital expenditures and the operating and maintenance expenses that the violator has incurred or will incur to maintain compliance with the violated parameter. Finally, the Department must establish the date upon which these expenditures should have been made to avoid the noncompliance, the date that the expenditures were actually made or are expected to be made, and the date upon which penalty can reasonably be expected to be paid. Once this information is assembled, the department will be able to calculate the economic benefit which is the after-tax present value of the cost of the delayed or avoided pollution control expenditures.

In order to assure that the Department has the necessary information available to make these determinations and assessments, the Department should require the information to be submitted by the regulated community as part of its treatment works application, permit applications, discharge monitoring reports, or other submissions already required of regulated entities under the state clean water act. Of course, the Department has broad investigatory authority under the statutes and its regulations to require that this information be made available to it in a timely and appropriate fashion.

In response to the Commissioner's request for examples or models of regulatory schemes which assess economic benefit, NJPIRG suggests that the Department examine the process used by the EPA to assess penalties under § 120 of the Clean Air Act which is detailed in 40 C.F.R. Part 66. A Technical Support Document, an Instruction Manual, and a Computer Program for these regulations are available from EPA. See Appendix to 40 C.F.R. Part 66 and Part 67. These regulations were adopted by EPA in 1980, and explained in some detail with technical support documents in 45 Fed. Reg. 50086-50258 (July 28, 1980). There were amendments to these regulations proposed in 19 Fed. Reg. 9236 (March 12, 1984) and adopted in 50 Fed. Reg. 36734 (September 9, 1985).

Policy Planning & Evaluation commented that the Department should adopt a methodology for obtaining data necessary to make a determination of economic benefit.

Public Service Electric and Gas Company commented that N.J.A.C. 7:14-8.13(b) and (c) define economic benefit so broadly that it is more likely that economic benefit would be overassessed rather than underassessed.

The Association of New Jersey Environmental Authorities commented that under the rules as proposed, the Department would send out penalty notices that include penalty amounts before the Department has determined the economic benefit of the violation to the violator. The commenter recommended that since the statutes allow the Department to take six months to determine actual penalties, the Department should use this time to assess the economic benefit. The commenter further recommended that unless the Department has determined the economic benefit, the Department's initial penalty notice should identify the violation and the minimum and maximum penalties applicable, rather than containing a dollar figure.

RESPONSE: The Department agrees that removal of any economic benefit a violator gains from a violation is an integral part of an effective enforcement strategy. Economic benefit, together with a penalty and the cost to the violator to come into compliance, comprise the foundation of such a strategy. The Department wishes to obtain additional experience in economic benefit analyses and intends to explore existing methodologies and to develop standard methodologies to be put in the rules through subsequent rulemaking. Prior to formal rulemaking, the Department will share its development of these methodologies with, and solicit comments from, the regulated community and other interested parties. The Department appreciates the information the commenters have provided in this regard, and will use it in this ongoing assessment. Because of this lack of a standard methodology, it may not be possible in the short term to calculate economic benefit prior to the initial penalty assessment. However, the Department intends to explore these issues in the OAL discovery process or prior to settlement, and will amend the initial penalty assessment at an appropriate time in the process prior to a hearing, or take into account the economic benefit in any settlement agreement. The Department also believes that there may be circumstances where there is no economic benefit associated with a violation, particularly when the violation is minor in nature and of short-term duration.

The Department is eager to receive from the regulated community and other interested parties additional specific, detailed input concerning such a methodology. The Department, therefore, is convening such a series of workshops to evaluate economic benefit methodologies. The Department has published separately in this Register a Notice to this effect and encouraging anyone interested to contact in writing Ed Neafsey, Director, Office of Enforcement Policy, Department of Environmental Protection, 401 East State Street, Fourth Floor, CN 402, Trenton, New Jersey 08625.

197. COMMENT: The New Jersey Public Interest Research Group commented that in response to the Commissioner's request for comment on the criteria included in N.J.A.C. 7:14-8.13(b), NJPIRG concurs with the criteria listed in the section. With respect to the factors listed in N.J.A.C. 7:14-8.13(c), however, NJPIRG submits that the following changes should be made to these factors. Factors 1, 5, and 7 should not be changed. Factor 2 should include the amount of one-time or recurring nondepreciable expenditures. Factor 3 should include the annual operating and maintenance costs and expenses associated with the applicable capital expenditures. Factor 4 should include the useful life of the capital investment. Factor 6 should include the use and rate of low interest financing but not the corporate debt rate because corporate debt it not normally used to finance pollution control expenditures.

RESPONSE: The Department will evaluate this information and consider including some or all of it in subsequent rulemaking.

198. COMMENT: The New Jersey Public Interest Research Group/ Clean Ocean Action/Delaware Riverkeeper commented that the portion of a penalty representing the economic benefit obtained by a violator from the violation is not a penalty at all. The commenter stated that a penalty which does not exceed the economic benefit has no deterrent effect; for a deterrent effect, there must be a substantial penalty over and above a return of the economic benefit.

RESPONSE: The Department agrees that economic benefit must be a component of penalties in a successful enforcement program.

199. COMMENT: The New Jersey Public Interest Research Group/ Clean Ocean Action/Delaware Riverkeeper commented that in its experience, it has never seen a case in which the Department has calculated the violator's economic benefit. For this reason, the commenter stated that the Department has no idea whether the penalties it obtains exceed the violator's economic benefit; if the penalties do so in particular cases, it is merely by lucky coincidence.

RESPONSE: The Department acknowledges it has not had sufficient involvement with economic benefit issues in the past. The revisions to the rules are meant to stress the importance of economic benefit and the Department's intention to consider it more consistently henceforth.

200. COMMENTS: Mobil Oil Corporation commented that the inclusion in the penalty calculation of "economic benefit" gained from a violation is unworkable. The commenter believed that the calculation does not adequately reflect mitigating factors or other circumstances which may exist in particular cases, and is therefore open to arbitrary and capricious decision-making.

Policy Planning & Evaluation commented that the failure to install the necessary equipment in a facility would not necessarily bring an economic benefit to the facility. The commenter cited the example of an incorrectly designed facility, which could cost far more to correct than if the facility had been correctly designed originally.

Lenox, Inc. objected to the use of economic benefit as a component of a penalty assessment, because the rules do not allow for modification of the economic benefit factor for other costs which the violator may have incurred. The commenter recommended that the Department consider economic detriments in the penalty calculation, such as penalties, legal costs, and the costs of any interim or abatement measures taken. The commenter also recommended that the Department should consider the economic detriment when a discharger's permit limits are more stringent than its competitors', because the discharger's treatment costs and compliance risks are much greater than those of its competitors.

Lenox, Inc. objected to the use of economic benefit as a component of a penalty assessment, because the rules do not provide for consideration of why the violator did not invest in control measures sooner. The commenter recommended that the Department should reduce or eliminate a penalty for economic benefit when the violator has been unable, through no fault of its own, to construct or implement control measures which would allow it to achieve compliance. For example, a discharger may have attempted to implement appropriate control measures, but was unable to obtain the necessary permits and approvals in a timely manner.

Lenox, Inc. commented that when a permit includes discharge limitations that are virtually impossible to meet, the Department should consider in its determination of economic benefit the costs expended to meet such limits, and the fact that they may have been unattainable.

The New Jersey Petroleum Council commented that new technology performing below design expectations or changes in the influent wastewater may cause unanticipated permit violations until a system operates for several months or more, providing an opportunity to fine-tune operations to eliminate violations. In such cases, the permittee will not have obtained economic benefit from the violations; instead, the permittee is more likely to suffer economic loss as a result of the cost of redesigning the system. For this reason, the commenter suggested that the Department's penalty system assume that the extra cost of the redesign and installation offsets the economic benefit.

RESPONSE: These are many of the issues that the Department will consider in implementing this section and in developing methodologies for subsequent rulemaking.

201. COMMENT: The Association of Environmental Authorities commented that under the Water Pollution Control Act, municipalities and local agencies are not subject to penalties for economic benefits. The commenter stated that the rule proposal appears to include a local agency's economic benefit in penalty calculations.

RESPONSE: The Department disagrees; the statute does not exempt local agencies from the economic benefit component of a penalty.

202. COMMENT: Policy Planning & Evaluation commented that the economic benefit calculation should be mitigated by a credit for the cost of pollution prevention products purchased by the violator.

RESPONSE: The Department does not see this issue as relevant to economic benefit nor penalty calculation, because the costs of pollution control equipment are meant to be borne by every similarly regulated entity, including those in compliance. It would clearly be inappropriate and inequitable to offer such a credit to a violator who has derived economic benefit from non-compliance.

203. COMMENT: The New Jersey Petroleum Council commented that there is no need for these rules to provide a method to account for economic benefit in determining the amount of a penalty. The commenter noted that economic benefit is assumed to occur when a permittee violates permit limitations after neglecting to install necessary equipment; these rules will require reporting of permit limit excursions and thereby quickly expose any treatment system that is not providing the necessary treatment.

RESPONSE: The prompt identification of violations does not guarantee that a permittee will promptly install necessary equipment to abate same. Penalties assessed pursuant to N.J.A.C. 7:14-8.5 through 8.12 do not contain an economic benefit component. Thus, there is a need for N.J.A.C. 7:14-8.13.

XIII. N.J.A.C. 7:14-8.14

One commenter questioned the scope of the Department's enforcement authority concerning penalties for information requests:

204. COMMENT: The Evesham MUA commented that the Department has no statutory authority to impose civil administrative penalties under N.J.A.C. 7:14-8.14 for failure to comply with information requests or administrative subpoenas, or for destruction of records. Citing section 15(b) of the Water Pollution Control Act, the commenter stated that the Department is empowered only to assess fines for failure to appear, give testimony, or produce documents in response to a subpoena issued pursuant to the statute.

RESPONSE: The commenter has misinterpreted the Water Pollution Control Act. N.J.S.A. 58:10A-10 grants the commissioner authority to assess a civil administrative penalty for any violation of any provision of the Act.

One commenter questioned this section relative to delegated local agencies:

205. COMMENTS: The Joint Meeting of Essex and Union Counties requested clarification of whether a POTW's request to an industrial user is an "information request" for the purposes of assessing penalties under N.J.A.C. 7:14-8.14. The commenter recommended that the POTW should be able to assess a penalty under N.J.A.C. 7:14-8.14, but should retain discretion as to the amount of the penalty, depending upon the circumstances.

Four members of the Board of Directors of the Environmental Law Section of the New Jersey State Bar Association, writing as individuals, questioned whether a request by a publicly owned treatment works to an industrial user for an explanation for a violation is an "information request," for which penalties could be assessed under N.J.A.C. 7:14-8.14.

RESPONSE: Yes, a local agency's request is an "information request" as used in this rule. The Department will elaborate on this issue in subsequent rulemaking in September, 1991.

Several commenters questioned the procedures for assessing penalties for failures to comply with information requests and administrative subpoenas:

206. COMMENT: The Association of Environmental Authorities commented that the penalties in N.J.A.C. 7:14-8.14 for failure to "completely respond" to an information request or administrative subpoena, and the separate violation for each day that the violator does not "fully respond," could result in penalties for minor or unintentional omissions from a response. The commenter suggested that there should not be penalties for violations of these requirements in good faith.

RESPONSE: As stated above, the Water Pollution Control Act established a self-monitoring program for discharges of pollutants. The permittee is in the best position to have information concerning a discharge. Frequently the Department needs such information to investigate, evaluate and respond to discharges of pollutants into the environment. The Water Pollution Control Act authorizes the Department to solicit this information via information requests and administrative subpoenas. While it is critical that there be a full and complete response so the Department can evaluate and act upon all the information which is available on a particular issue, the Department will take a common sense approach to the assessment of penalties under this provision and decide on a case-by-case basis when a violator has failed to completely respond.

207. COMMENT: The New Jersey Public Interest Research Group commented that N.J.A.C. 7:14-8.14 sets the penalty for failing to comply with an information request, administrative subpoena, and the destruction of records. Penalties in this section again fail to set penalty floors

greater than zero. These penalties are for intentional refusals to supply the Department with requested information or purposeful destruction of information. These are serious violations of the law. NJPIRG recommends that appropriate penalty floors be added to this section.

RESPONSE: The Department agrees with the commenter's indication of the importance of the violations dealt with under this provision. The Department, based on its experience in dealing with matters such as these, expects a wide range of violation situations to occur. As a result, the Department decided that it is necessary that the low end of these penalty ranges be made zero to allow for the appropriate distinctions among violations.

208. COMMENT: The Legal Committee of the Association of Environmental Authorities commented that many Department information requests are voluminous, unclear and sometimes harassing. The commenter therefore recommended that N.J.A.C. 7:14-8.14 should be modified to provide that a local agency can challenge a request for information, or assert a good faith effort to comply with the request as a defense to a penalty.

RESPONSE: A violator already has the opportunity to challenge and to raise any possible good faith defenses to an information request before penalty liability can be imposed. Therefore, there is no reason to modify the rule.

209. COMMENT: Lenox, Inc. commented that the record retention requirements in N.J.A.C. 7:14-8.14 conflict with existing rules at N.J.A.C. 7:14A-6.6(a)1 and 6.11(a). N.J.A.C. 7:14-8.14(a) provides for penalties against a violator who destroys records relating to a discharge or potential discharge to ground water at any time without the Department's permission. The commenter noted that under this provision, a person could be required to retain records indefinitely, while existing rules set a time at which records no longer need be retained. The commenter recommended that these rules be made consistent with existing rules.

RESPONSE: The Department disagrees with this comment. The two different rule retention policies to which the commenter refers have two different public policy objectives. The policy articulated in N.J.A.C. 7:14A directly supports the Department's implementation of the NJPDES permitting program. The new statutory provisions, which also form the authority for the rules in N.J.A.C. 7:14-8.14, are intended to aid the Department in identifying the persons responsible for contamination of hazardous waste sites. The rule allows a person to destroy records upon the prior written approval of the Department. It is only in this way that the Department can ensure that the information the Department needs to identify, assess and remediate situations which threaten human health or the environment is available. To the extent that any inconsistencies exist, the Department will modify the rules accordingly in subsequent rulemaking.

210. COMMENT: Lenox, Inc. objected to the use of the term "potential discharge" in N.J.A.C. 7:14-8.14(a), because it is difficult to know what is meant by a "potential" discharge if no discharge has actually occurred.

Waste Management of North America, Inc. asked that the Department clarify what is considered to be a "potential discharge to surface water "and potential" discharge to ground water" for purposes of N.J.A.C. 7:14-8.14(a).

RESPONSE: The Department has deleted this phrase from the rule.

211. COMMENT: Lenox, Inc. recommended that under N.J.A.C. 7:14-8.14(b), the Department should not assess a penalty for failure to respond to an information request or administrative subpoena until the facility has been given a reasonable opportunity to assemble the requested information and provide it to the Department.

RESPONSE: The Department agrees with this comment.

212. COMMENT: Lenox, Inc. recommended that N.J.A.C. 7:14-8.14(b) should provide criteria for determining what is a reasonable amount of time to respond to an information request or administrative subpoena, to reflect the amount and type of information requested, and the burden and complexity of the request.

RESPONSE: The Department disagrees with this comment since there may be a significant amount of variation in the time necessary to have the information identified, assembled and submitted to the Department. This is best handled on a case-by-case basis in the individual information requests and administrative subpoenas.

213. COMMENT: Lenox, Inc. questioned the Department's method for calculating the number of items in an information request, for purposes of assessing a penalty under N.J.A.C. 7:14-8.14(b).

RESPONSE: The number of items will vary with each information request but the Department will have the burden to establish the number that are not responded to in order to establish the penalty amount.

214. COMMENT: Lenox, Inc. objected to N.J.A.C. 7:14-8.14(d)2, which it interpreted as imposing a $30,000 penalty if a facility's records are destroyed by fire, storm, tornado, third party or other circumstances beyond the discharger's control.

RESPONSE: The violator would have the opportunity to raise affirmative defenses to penalty liability if the violator believes the records were destroyed by one of the indicated circumstances.

215. COMMENT: An individual commenter suggested that the penalties provided in N.J.A.C. 7:14-8.14, which apply to discharges to surface water and discharges to ground water under N.J.A.C. 7:14-8.14(a), should also apply to discharges to publicly owned treatment works.

RESPONSE: They do.

XIV. N.J.A.C. 7:14A-1.9

Several commenters questioned the definitions in the NJPDES rules:

216. COMMENT: The Joint Meeting of Essex and Union Counties requested clarification of whether or not an industrial user's SMR form is included in the definition of "Monitoring Report Form" under N.J.A.C. 7:14A-1.9.

RESPONSE: Simultaneous with this adoption, the Department has proposed to amend the definition of "Monitoring Report Form" under N.J.A.C. 7:14A-1.9 to include an SMR, or sludge management report.

217. COMMENTS: The Camden County Municipal Utilities Authority commented that the inclusion of whole effluent toxicity limits should be deleted from N.J.A.C. 7:14A-1.9 as proposed because this was not included in the Water Pollution Control Act.

RESPONSE: The Water Pollution Control Act applies to all effluent limitations, including those for toxic and hazardous pollutants. The inclusion of whole effluent toxicity limits in N.J.A.C. 7:14A-1.9 is therefore appropriate.

218. COMMENT: The New Jersey Public Interest Research Group commented that similar to the issue it raised in reference to the definition of hazardous pollutant in N.J.A.C. 7:14-8.2, there is a similar infirmity in the definition of "hazardous pollutant" as proposed in N.J.A.C. 7:14A-1.9. The proposed definition is less inclusive than the definition in the Water Pollution Control Act at N.J.S.A. 58:10A-3(u) and therefore violates the Water Pollution Control Act. The Water Pollution Control Act defines the term "hazardous pollutant" to include "any toxic pollutant," however, the definition of "hazardous pollutant" in N.J.A.C. 7:14A-8.9 includes only those toxic pollutants identified in the Federal Act and as further defined in the Water Pollution Control Act itself. This limitation violates the Water Pollution Control Act and must be removed.

RESPONSE: The Department has modified this definition to be the same as the Water Pollution Control Act definition.

XV. N.J.A.C. 7:14A-2.5

Several commenters question the NJPDES reporting requirements:

219. COMMENT: The Passaic Valley Sewerage Commissioners commented that the frequency of reporting required is arbitrary.

RESPONSE: The required reporting frequency is the same as the Water Pollution Control Act amendments to N.J.S.A. 58:10A-6f(5) for significant indirect users, major industrial dischargers, and local agencies, other than those discharging only stormwater or noncontact cooling water, and with amendments to N.J.S.A. 58:10A-6f(a), except that the Department has modified N.J.A.C. 7:14A-2.5(a)12xi to include failure to submit a completed discharge monitoring report as a trigger for six consecutive months of monthly monitoring and reporting for the parameters omitted from the discharge monitoring report.

220. COMMENT: The Passaic Valley Sewerage Commissioners questioned whether monthly reporting requirements also would result in monthly monitoring requirements.

RESPONSE: N.J.A.C. 7:14A-2.5(a)12x is the same as the Water Pollution Control Act amendments to N.J.S.A. 58:10A-6f(5) requiring significant indirect users, major industrial dischargers, and local agencies, other than those discharging only stormwater or noncontact cooling water, to report monitoring results monthly. The Water Pollution Control Act does not require monthly monitoring, but only monthly reporting. Since many of these permittees are presently required to monitor monthly, but only report quarterly, it was necessary for the Department to modify this rule.

221. COMMENTS: Lenox, Inc. objected to the provision in N.J.A.C. 7:14A-2.5(a)12ix, under which it asserts that a violation of a daily maximum or daily minimum under can be a "serious violation." The com-

menter stated that subsection 1(v) of the Water Pollution Control Act does not contemplate such violations; instead, the statute provides that in the case of an effluent limitation expressed as a daily maximum and without a monthly average, the determination of "serious violation" will be made on the basis of the monthly average of all maximum daily test results in any month. The commenter recommended that the rule be clarified to be consistent with the statute.

Lenox, Inc. disagreed with the Department imposing the requirement in these rules that all permittees with only daily maximum values to report the monthly average of those daily values. The commenter stated that the appropriate place for such a requirement is in the individual permit.

RESPONSE: The Water Pollution Control Act specifically addresses this issue in the definitions of serious violation in N.J.S.A. 58:10A-3.

222. COMMENT: Hackensack Water Company gave an example of a permittee which has a monitoring frequency of once every six months, and for which monthly monitoring becomes required because one parameter is exceeded. The commenter asked whether the permittee would be required to monitor all parameters monthly, or only the parameter which had been exceeded.

RESPONSE: N.J.A.C. 7:14A-2.5(a)xi as proposed requires monthly monitoring only for the parameter or parameters for which violations triggered monthly monitoring.

223. COMMENT: The Association of New Jersey Environmental Commissions commented that these rules fail to meet the Legislature's intent behind the Water Pollution Control Act, because the rules require violators to submit monthly reports only for the specific pollutants being emitted above standards.

RESPONSE: The Department believes that the proposed rules at N.J.A.C. 7:14A-2.5 are consistent with the Water Pollution Control Act requirements and that monthly monitoring and reporting requirements should properly focus on the parameter(s) in violation. Except violations of a specific parameter, the permittee would not have to change its monitoring frequency.

224. COMMENT: Public Service Electric and Gas Company commented that since increased monitoring frequency is required of significant noncompliers, the Department should provide a new standard form to be used as an interim form for reporting. Otherwise, the commenter stated that the permittee has no reasonable means of submitting the reports on the forms required by the Department.

RESPONSE: The Department intends to prepare and forward undated monthly reporting forms to all permittees not already reporting monthly so that they can submit monthly reports for this purpose.

225. COMMENT: Public Service Electric and Gas Company questioned whether under N.J.A.C. 7:14A-2.5(a)12xi, the permittee is responsible to determine whether it falls within the meaning of "significant noncomplier." The commenter recommended that the Department should make this determination.

RESPONSE: The Water Pollution Control Act establishes a self-monitoring program. A permittee knows when a violation occurs based upon the permittee's analysis of the discharge and its reporting of those values to the Department via the discharge monitoring reports. Although the Department must determine whether a permittee is a "significant noncomplier" in order to properly perform its mandatory inspection and penalty assessment responsibilities under the Water Pollution Control Act, the proposed amendment at N.J.A.C. 7:14A-2.5 clearly defines the Department's determination concerning when increased monitoring and reporting is required as well as the permittee's responsibility to implement the increased monitoring and reporting.

226. COMMENT: The New Jersey Department of Agriculture commented that many food processors have a NJPDES permit for the land application of food processing waste on farm fields. Under the general conditions in these permits, the processor is required to sample the waste monthly and submit quarterly monitoring reports. This requirement applies even when the processor directs food processing waste to a livestock operation for use as a feed supplement. The commenter requested that the Department exempt food processors with NJPDES permits, who redirect food processing waste to livestock operations, from the monitoring and sampling monitoring report requirement. The commenter noted that under N.J.A.C. 7:14-8.9, the Department can assess civil administrative penalties for failure to conduct sampling activities or submit monitoring reports.

RESPONSE: The Department does not consider the NJPDES permits described in the comment as discharge point sources or point source discharges under the Water Pollution Control Act and the proposed regulations, and, therefore, many of the requirements do not apply. However, the Department concurs that civil administrative penalties can be assessed for the requirements which do apply, including failure to conduct sampling activities or submit monitoring reports for NJPDES permits pursuant to N.J.A.C. 7:14-8.9. The comment that certain food processors with NJPDES permits be exempt from the monitoring and reporting requirements is beyond the Department's authority pursuant to N.J.S.A. 58:10A-6d.

XVI. N.J.A.C. 7:14A-3.10

Several commenters requested clarifications on the scope of N.J.A.C. 7:14A-3.10(a):

227. COMMENTS: Public Service Electric and Gas Company requested that the Department clarify specifically what types of discharges must be reported under N.J.A.C. 7:14A-3.10(b)5.

Public Service Electric and Gas Company requested an explanation of the Department's rationale for the reporting requirements under N.J.A.C. 7:14A-3.10(b)5.

The New Jersey State Chamber of Commerce requested that the Department clarify specifically what types of discharges must be reported under N.J.A.C. 7:14A-3.10(a)5.

The New Jersey State Chamber of Commerce requested an explanation of the Department's rationale for the reporting requirements under N.J.A.C. 7:14A-3.10(b)5.

RESPONSE: The Department has clarified this provision by changing the language to "Any discharge of a hazardous pollutant without a permit."

Several commenters requested clarification as to the discharges included under N.J.A.C. 7:14A-3.10(b):

228. COMMENT: Lenox, Inc. objected to the reporting requirement under N.J.A.C. 7:14A-3.10(b)2, for any discharge which "could" constitute a threat to human health or the environment. The commenter stated that requiring a facility to speculate whether an event could pose a threat is entirely too vague and subjective. Accordingly, the commenter suggested rewriting the provision to read, "Any discharge which threatens human health or the environment."

RESPONSE: The Department has retained this reporting requirement from the previous regulations at N.J.A.C. 7:14A-3.10(a)2 and believes that this requirement remains appropriate and reasonable.

229. COMMENT: Lenox, Inc. recommended that each individual NJPDES permit should state whether a discharger is deemed to be "upstream" of a potable water intake or well field, for purposes of these rules. The commenter recommended that a facility so far upstream that a discharge will have no effect upon the water should not be subject to the reporting requirements in N.J.A.C. 7:14A-3.10(b)4.

RESPONSE: The Department has retained this reporting requirement from the previous regulations at N.J.A.C. 7:14A-3.10(a)3 and believes that this requirement remains appropriate and reasonable. A discharger may request a determination from the Department concerning the applicability of this requirement to its discharge including during the NJPDES permit issuance or modification process.

230. COMMENTS: Lenox, Inc. objected to the requirement in N.J.A.C. 7:14A-3.10(b)5 that a permittee report any unpermitted discharge not identified in paragraphs (b)1 through (b)5. The commenter stated that this provision will require every discharger to report every single instance of permit exceedance within two hours, regardless of its impact, degree of exceedance, or the requirement being exceeded. Such an administrative burden is unreasonable to place on a discharger, and is not a reasonable use of the Department's limited resources. The commenter recommended that it should be sufficient to note the noncompliance when the discharge monitoring report is filed. The same comment applies to subsection (d).

Colonial Pipeline Company requested that the requirement under N.J.A.C. 7:14A-3.10(b)5, for the reporting of any unpermitted discharge not otherwise identified in paragraphs (b)1 through 4, should be deleted from the rules. The commenter stated that the provision could be interpreted to require reporting of any discharge that exceeds a permit effluent limitation. The commenter suggested that this requirement could result in a barrage of telephone calls and follow-up written reports to the Department, even though the violations in question were of minimal public health or environmental consequences. The commenter stated that the Department's resources could become so overwhelmed as a result that permittees with serious discharge violations would be unable to promptly report to the Department.

RESPONSE: The Department has modified N.J.A.C. 7:14A-3.10(b)5 to clarify this requirement by changing the language to "Any discharge of a hazardous pollutant without a permit."

Several commenters questioned the time frames for reporting:

231. COMMENT: The Joint Meeting of Essex and Union Counties commented that compliance with the requirements of reporting within 24 hours under N.J.A.C. 7:14A-3.10 may not be feasible, and may result in inaccuracies. Additional time is necessary for data to be reviewed by a lab manager and plant superintendent.

RESPONSE: The 24-hour reporting requirement for certain discharges is the same as the Water Pollution Control Act. The Department is unaware of any inaccuracies which result from this requirement. Twenty-four hours is sufficient time for data to be reviewed prior to reporting for this purpose.

232. COMMENT: DuPont Chambers Works commented that the reporting requirements in 7:14A-3.10(c)1 and 2 require too much paperwork, and that the time frames for compliance are too short.

RESPONSE: The reporting requirements the commenter is referring to are the minimum information the Department needs to evaluate the situation and determine if additional action is necessary to protect human health and the environment. The timeframes are necessary to ensure that the Department may make this evaluation in a timely manner, and are mandated by the statute.

233. COMMENT: The Joint Meeting of Essex and Union Counties commented that if N.J.A.C. 7:14A-3.10 mandates a specific reporting time frame, then any report must be subject to amendment and modification.

RESPONSE: The Department believes that the requirements for amendment and modification of information submitted is adequately addressed in N.J.A.C. 7:14A-3.10(c)3.

234. COMMENTS: The Association of Environmental Authorities commented that in light of the reporting requirements under the rule, the Department must have sufficient phone lines or other means of communications available for reporting violations.

The Association of Environmental Authorities commented that the requirement in N.J.A.C. 7:14A-3.10(d), for reporting a discharge in violation of a maximum daily discharge limitation within 24 hours after the commencement of the discharge, will result in clogged Department telephone lines.

The Stony Brook Regional Sewerage Authority and Association of Environmental Authorities commented that the regulated community needs a way to transmit information to the Department electronically, to avoid mistakes made by hand.

The Stony Brook Regional Sewerage Authority and Association of Environmental Authorities suggested that to avoid the need for constant telephone calls to the Department hot line, the regulated community should be allowed to send notices to the Department by telecopier.

The Association of Environmental Authorities estimated that under the reporting requirements for "any non-compliance," the Department could reasonably expect to receive 7,500 additional telephone calls each month on its hot line. The commenter based this estimate upon 1,500 NJPDES permits issued, and each permittee generating five additional calls each month. To alleviate the resulting stress on hot line personnel, the commenter recommended two solutions: first, to add personnel and telephone lines, and possibly adding fax machines; and second, to redefine "any non-compliance" in terms of seriousness. The commenter stated that the intent of the non-compliance reporting procedure is to require reporting of major violations which would have an impact upon the environment; to require reporting of minor violations with no adverse environmental impact within two hours of the violation would impose a large administrative burden with no measurable results.

Colonial Pipeline Company recommended that the two-hour reporting requirement under N.J.A.C. 7:14A-3.10(c)1 provide (1) that the two-hour period begin to run when the permittee becomes aware of a **confirmed** discharge violation, (2) that the permittee must report the violation within 24 hours of the time he initially became aware of the violation, and (3) allow reporting via facsimile transmission. The commenter suggested that these changes would reduce the number of false alarms caused by typographical and other laboratory errors, and also reduce notification delays caused by busy telephone circuits.

The Camden County Municipal Utilities Authority commented that the Department deviated from the established provisions of the Water Pollution Control Act in N.J.A.C. 7:14A-3.10, as the Act provided for a 24 hour reporting period for the assertion of an affirmative defense while the proposed regulations require, in some sections, a two hour reporting period. The commenter is also concerned that the Department's Hotline may be unable to service incoming calls, especially when there are high flows associated with rain events that may trigger numerous response calls made to the Hotline.

Public Service Electric and Gas Company recommended that the rules should be revised to apply statutory time frame of 24 hours for notification of an unanticipated bypass. The commenter stated that the requirement under N.J.A.C. 7:14A-3.10(g), to notify the Department within two hours of the commencement of an unanticipated bypass, has no statutory basis and is unreasonable. The commenter asserted that two hours is insufficient time to adequately assess the status of the system and reach the Department hotline.

RESPONSE: The Department will ensure that sufficient telephone lines are available to receive the required verbal notifications. The 24-hour notice need not be by telephone, it could also be by hand delivery or overnight delivery. The Department is looking into establishing the equipment and telephone numbers necessary for the use of facsimile (FAX) equipment as a feasible alternative to a telephone call. The Department has modified the proposed N.J.A.C. 7:14A-3.10(d) to add the language "or of the permittee becoming aware of the discharge" following the words "after the commencement of the discharge". In addition, the Department is re-evaluating permittees' access to the Department via the Hotline and is considering changes to improve the Department's acceptance of this type of reporting.

235. COMMENTS: The Association of Environmental Authorities questioned the requirement for reporting an unanticipated bypass or upset within two hours, when the statute provides 24 hours.

The Legal Committee of the Association of Environmental Authorities commented that the time frames for reporting unanticipated bypasses and upsets go beyond what is set forth in the Water Pollution Control Act.

Waste Management of North America, Inc. commented that the two-hour time limit for reporting unanticipated bypasses and upsets under N.J.A.C. 7:14A-3.10 is too severe. The commenter recommended that reporting should be required to be made within 24 hours after the permittee becomes aware of the circumstances required to be reported.

ARA Services commented that the requirement that a permittee notify the Department of discharge violations for toxic pollutants, etc. within two hours does not reflect the normal process of collecting data through laboratory analysis. The commenter stated that this process typically can require one to two weeks.

E.I. DuPont commented that N.J.A.C. 7:14A-3.10(d), concerning discharges in violation of a maximum daily discharge limitation, requires permittees to verbally advise the Department of the discharge within 24 hours after the commencement of the discharge. The commenter suggested that the 24 hours should begin to run at the time the permittee became aware of the discharge.

Merck & Co., Inc. commented that N.J.A.C. 7:14A-3.10(d) requires a permittee to report to the Department any pollutant in violation of its maximum daily discharge limit within 24 hours after the commencement of the discharge. The commenter stated that the analytical result is often not received by the permittee until days, weeks or months later, and thus the 24 hour time limit is inappropriate. The commenter suggested that the permittee could report the violation in its Discharge Monitoring Report.

Public Service Electric and Gas Company commented that the requirement to notify the Department within 24 hours after the commencement of discharges in violation of maximum daily discharge limits is unreasonable. The commenter pointed out that it may not be possible to do so in cases involving a discharge which runs 24 hours per day.

DuPont Chambers Works recommended that N.J.A.C. 7:14A-3.10(d) should be revised to require reporting of an exceedance of a maximum daily discharge limitation within 24 hours after the permittee becomes aware of the discharge, to be consistent with the requirements in N.J.A.C. 7:14A-3.10(c)1.

ARA Services commented that the requirement that a permittee notify the Department of discharge violations for toxic pollutants, etc. within two hours places unwarranted emergency emphasis on information that may not represent current conditions.

The Association of Environmental Authorities commented that while the Water Pollution Control Act makes necessary frequent notifications to the Department, to be delivered by telephone and in writing, these rules expand the frequency of contact beyond the provisions of the statute. As an example, the commenter pointed out that there is no reference in the statute to a need to report within two hours of an event.

The statute mandates reporting wtihin 24 hours after a permittee becomes aware of a problem.

The New Jersey Water Pollution Control Association, Inc. requested that the Department re-evaluate the time constraints of the reporting requirements contained in the proposed N.J.A.C. 7:14A-3.10. The commenter specifically requested that the Department re-examine the time frames for reporting to the Hot Line for bypass, upset or other excursions. The commenter stated that the Department has proposed significantly more stringent reporting requirements than intended by the Legislature in adopting the Water Pollution Control Act.

Colonial Pipeline Company questioned the value of the two-hour reporting requirements under N.J.A.C. 7:14A-3.10(c)1. The commenter noted that many effluent parameters are monitored monthly or less frequently, and the permittee does not become aware of whether a discharge is in compliance with effluent limitations until he receives the laboratory analysis report. As a result, the permittee may not become aware of a violation until weeks after the violation occurred. The commenter questioned whether it is of any value to require the permittee to notify the Department within two hours after becoming aware of a violation which occurred weeks before.

Colonial Pipeline Company comented that the two-hour reporting requirements under N.J.A.C. 7:14A-3.10(c)1 do not allow the permittee sufficient time to contact the laboratory that performed the analyses to verify the results.

RESPONSE: The Department has deleted the two-hour notice requirement for upsets and bypasses and has modified the proposed N.J.A.C. 7:14A-3.10(d) to add the language "or of the permittee becoming aware of the discharge" following the words "after the commencement of the discharge".

236. COMMENT: ARA Services commented that it is unrealistic to require reporting of certain information such as cause, threat to public health, damage and methods to reduce or minimize recurrence, within 24 hours of knowledge of a discharge. The commenter suggested that this requirement may encourage submission of valueless paperwork with little or no technical merit.

RESPONSE: The Water Pollution Control Act amendments to N.J.S.A. 58:10A-6f(8) requires reporting within 24 hours of becoming aware of an exceedance of an effluent limitations for a toxic pollutant with information concerning environmental danger and remediation and reporting within two hours where human health or environmental damage is caused or posed. In addition, N.J.A.C. 7:14A-3.10 provides for the immediate submission of additional relevant facts or corrected information when the permittee becomes aware of a deficient report.

237. COMMENT: E.I. DuPont commented that the information required to be reported under N.J.A.C. 7:14A-3.10(c)1 and 2, and the information required to be submitted in order to assert an affirmative defense, represents a substantial amount of information to be submitted within a relatively short time. The commenter suggested that the requirements for submission of information within five days after the cessation of a discharge should be extended to 20 days after the cessation of the discharge.

The Chemical Industry Council of New Jersey noted that the rules require that for the submission of information under N.J.A.C. 7:14A-3.10(c)3 to be considered timely, the Department must actually receive the information within the allotted time. The commenter recommended that this paragraph instead state that the information must be placed in the mail to the Department within the allotted time.

Colonial Pipeline Company recommended that the deadline for submission of a written report under N.J.A.C. 7:14A-3.10(c)3 be extended from five days after the cessation of the discharge to at least 30 days after cessation. The commenter also recommended that the rules include a provision for the Department to grant an extension of time for submitting the report in cases where further investigation is warranted. The commenter noted that the five-day period may not provide sufficient time to determine the source of the violation, especially for infrequently monitored effluent limitations.

DuPont Chambers Works commented that the five-day time limitation for the Department to receive information required under N.J.A.C. 7:14A-3.10(c)1 and 2 is entirely too short. The commenter recommended revising the provision to extend the allotted time to twenty days, and to require only that the necessary information must be sent to the Department (rather than received by the Department) within that time.

Merck & Co., Inc. stated that with respect to reporting requirements, the exceedance of a permit limit is not known until the analytical results for monitoring is received. These results are often not received until days, weeks or months after the exceedance has occurred. The commenter questions the appropriateness of notifying the Department wihin two hours after becoming aware of the exceedance, in light of the foregoing. The commenter suggests that the notification could be given to the Department by way of the facility's Discharge Monitoring Report. Furthermore, the commenter stated that it may be difficult to trace back the information required to be reported within the two hour period, and again suggested that the information would be more appropriately provided in the Discharge Monitoring Report. Finally, the commenter stated that the requirement to submit a written report to the Department within five working days after the cessation of the discharge is infeasible in light of the delay in receiving analytical results.

RESPONSE: The Department has modified the proposed N.J.A.C. 7:14A-3.10 to be the same as the Water Pollution Control Act amendments for asserting an unanticipated bypass or upset affirmative defense and existing regulations at N.J.A.C. 7:14A-3.10(a)1 through 3 by requiring that written documentation be submitted within five days of the occurrence or becoming aware of the occurrence rather than within five days affer the cessation of the discharge. The Department further notes that N.J.A.C. 7:14A-3.10 provides for the immediate submission of additional relevant facts or corrected information when the permittee becomes aware of same.

238. COMMENT: The Joint Meeting of Essex and Union Counties commented that the reporting requirements should include some time frame for data to be reviewed at a level higher than the shift supervisor.

RESPONSE: The Department sees no justification to delay the reporting of this important information to the Department as the commenter suggests. The permittee can further review and supplement the information as appropriate.

239. COMMENT: The Legal Committee of the Association of Environmental Authorities commented that the reporting requirements in N.J.A.C. 7:14A-3.10(c) and (d) lacked statutory basis. The commenter stated that under the Water Pollution Control Act, only exceedances which cause injuries to persons or damage to the environment or pose a threat to human health or the environment must be reported within two hours. The commenter also stated that the statute does not authorize the Department to require that the report must contain all of the information listed in the rule.

RESPONSE: The Department disagrees with this comment. While the Water Pollution Control Act requires a person to report certain events to the Department, the Water Pollution Control Act does not prohibit the Department from requiring that person to report based on other events. The provisions to which the commenter objects were in the existing rules which the Department proposed to rewrite while keeping in this particular provision. It is important that the Department receives timely notice of these events in order to take all action necessary to protect human health and the environment.

240. COMMENT: Lenox, Inc. commented that some of the information which the rules requires to be included in oral or written notifications go beyond the requirements of the statute. As an example, the commenter cited the requirement for reporting on the volume and concentration of pollutants in an unanticipated bypass or upset. The commenter stated that because of the unanticipated nature of the event, the exact nature or volume of the discharge may be unknown. While acknowledging that this information may be of interest to the Department, the commenter recommended that the discharger's right to assert an affirmative defense should not be eliminated merely because of a failure to provide information which the statute does not require.

RESPONSE: The Department disagrees that the reporting requirements of this section exceed the Department's statutory authority (see N.J.S.A. 58:10A-10.2). The permittee is in the best position to know, or make the most reasoned estimate, of the volume of the discharge.

241. COMMENT: The Passaic Valley Sewerage Commission commented that the requirement that reports be submitted within five days after the end of a reporting period is arbitrary.

RESPONSE: The commenter has misinterpreted the proposed amendment. The Department has, however, modified N.J.A.C. 7:14A-3.10 to require a written submission within five days after the cessation of the discharge, unanticipated bypass or upset rather than within five days of the time the permittee becomes aware of the circumstances as in the existing regulations. This reporting requirements timeframe is the same as the Water Pollution Control Act amendments at N.J.S.A. 58:10A-10 for submitting written documentation for an unanticipated bypass or upset affirmative defense.

242. COMMENT: The Chemical Industry Council of New Jersey commented on the requirement under N.J.A.C. 7:14A-3.10(c)3 that the permittee submit information required under N.J.A.C. 7:14A-3.10(c)1 and 2 in writing within five days after the cessation of the discharge. The commenter asserted that permittees would be unable to supply meaningful data within this time frame. For this reason, the commenter recommended extending the allotted time to 20 days, to allow the regulated community sufficient time to collect the information sought by the Department and prepare the necessary submissions.

RESPONSE: The Water Pollution Control Act expressly establishes this five-day timeframe, thereby prohibiting the Department from changing it to a 20-day period as the commenter suggests.

243. COMMENT: Lenox, Inc. commented that the rule requires the person asserting the affirmative defense to comply with requirements of N.J.A.C. 7:14A-3.10. These requirements include providing the Department with notice of an unanticipated bypass within two hours of the time at which the discharge commences or the permittee becomes aware of the discharge; the commenter stated that in some circumstances, notice could not be given within the allotted time. The commenter pointed out that the Water Pollution Control Act requires the permittee to provide notice within 24 hours after the occurrence, and to submit written documentation within five days.

The commenter acknowledged that the statute includes a provision requiring notification within two hours of any noncompliant discharge "that causes injury to persons, or damage to the environment, or poses a threat to human health or the environment." However, the commenter stated that the rule broadens this exceptional notice requirement to apply to any unanticipated bypass or upset, even when there is no threat to human health or the environment.

The commenter also objected to the requirement that the Department must receive written documentation concerning the unanticipated bypass within five days. The commenter pointed out that the statute requires the discharger to "submit" written documentation within five days. The commenter recommended that the Department should not be permitted to deny a discharger the use of the unanticipated bypass defense if the discharger has taken reasonable efforts to submit the documentation within five days after the bypass occurs, regardless of when the Department actually receives the documentation. The commenter stated that the requirements in the rule are contrary to the statute, and deprive a discharger of its due process rights to assert an affirmative defense.

RESPONSE: The Department has amended the rule for the reporting of upsets and bypasses to be the same as the Water Pollution Control Act.

244. COMMENT: Lenox, Inc. pointed out that the Water Pollution Control Act requires the permittee to provide notice within 24 hours after the occurrence. The commenter also objected to the requirement that the Department must receive written documentation concerning the unanticipated bypass within five days. The commenter pointed out that the statute requires the discharger to "submit" written documentation within five days. The commenter stated that these provisions are contrary to the statute, and deprive a discharger of its due process rights to assert an affirmative defense.

RESPONSE: The Department disagrees with this comment. The rule requiring the Department to receive the documentation within the five-day statutory period clearly implements the legislative intent that the Department receive this critical information quickly in order to respond effectively to these situations.

245. COMMENT: Colonial Pipeline Company commented that the requirement under N.J.A.C. 7:14A-3.10(c)2, for verbal communication of information concerning a discharge within 24 hours after the cessation of discharge seems to be unnecessary, since a written report containing the required information must be submitted shortly thereafter.

RESPONSE: The Department believes this prompt reporting is appropriate and notes that the Water Pollution Control Act requires such prompt verbal notification followed by a written information submission within five days by persons asserting an upset or unanticipated bypass as an affirmative defense. The existing regulations at N.J.A.C. 7:14A-3.10(a)1 through 3 also provide for 24 hour notification followed by submission of a written report within five days.

246. COMMENT: Colonial Pipeline Company recommended that N.J.A.C. 7:14A-3.10(c)2 should be deleted. The commenter stated that the requirement under N.J.A.C. 7:14A-3.10(c)2i, to communicate the "exact times and dates" of the discharge, is unrealistic in many cases because the permittee frequently does not know this information. The commenter also noted that permittees may be unable to ascertain the cause of the noncompliance within 24 hours after the cessation of the discharge, and therefore may be unable to comply with N.J.A.C. 7:14A-3.10(c)2ii.

RESPONSE: The Department has modified N.J.A.C. 7:14A-3.10(g)2i and (h)2i by deleting the word "exact" and by changing the reporting requirement to within 24 hours of the occurrence or becoming aware of the occurrence, consistent with the Water Pollution Control Act amendments for asserting an unanticipated bypass or upset affirmative defense. Additional relevant facts or corrected information must be submitted when the permittee becomes aware of them.

Several commenters questioned the reporting requirements for violations of maximum daily discharge limits:

247. COMMENT: The Association of Environmental Authorities commented that the requirement in N.J.A.C. 7:14A-3.10(d), for reporting a discharge in violation of a maximum daily discharge limitation within 24 hours after the commencement of the discharge, goes beyond what is required under the Water Pollution Control Act. The commenter questioned what the Department would accomplish with this requirement, especially if the violation is minor.

RESPONSE: The 24 hour reporting requirement for violation of a maximum daily discharge limitation is the same as the existing regulations at N.J.A.C. 7:14A-3.10(a)6 and is consistent with the Water Pollution Control Act requirements at N.J.S.A. 58:10A-6f(8) for exceedances of an effluent limitation for a toxic pollutant.

248. COMMENT: The Chemical Industry Council of New Jersey questioned the requirement that a permittee who discharges a pollutant in violation of its maximum daily discharge limitation verbally communicate the violation to the Department within 24 hours after the commencement of the discharge. The commenter recommended that N.J.A.C. 7:14A-3.10(d) be revised to require that the permittee notify the Department within 24 hours begin to run at the time the permittee becomes aware of the discharge. The commenter noted that its suggestion is consistent with the language found in N.J.A.C. 7:14A-3.10(c)1. The commenter pointed out that often, the analytical results necessary to discover a discharge violation are not available within 24 hours. Accordingly, the commenter believes that technical violations would be common if the suggested change is not made.

RESPONSE: The Department has modified the proposed N.J.A.C. 7:14A-3.10(d) to add the language "or of the permittee becoming aware of the discharge" following the words "after the commencement of the discharge".

Several commenters questioned the conditions concerning anticipated bypasses:

249. COMMENTS: The New Jersey Petroleum Council commented that a permittee should not be required to report bypasses of portions of an industrial treatment plant if the bypasses do not cause permit exceedances. The commenter stated that the changes proposed in the rule will require extensive reporting without providing useful information to the Department.

The New Jersey Petroleum Council commented that if the design and operation of a treatment plant allows portions of the treatment plant to be bypassed and still meet the permit limitations, then the plant should be exempted from the reporting requirements imposed under N.J.A.C. 7:14A-3.10.

The New Jersey State Chamber of Commerce commented that N.J.A.C. 7:14A-3.10(f) and (g) impose extensive reporting requirements for unanticipated bypasses, even when there is no exceedance of permit limits. The commenter recommended that only those bypasses which result in permit limit exceedances should be subject to the reporting requirements, to avoid an additional and needless administrative burden to the Department and the regulated community.

Public Service Electric and Gas Company commented that N.J.A.C. 7:14A-3.10(f) and (g) impose extensive reporting requirements for unanticipated bypasses, even when there is no exceedance of permit limits. The commenter recommended that only those bypasses which result in permit limit exceedances should be subject to the reporting requirements, to avoid an additional and needless administrative burden to the Department and the regulated community.

Public Service Electric and Gas Company recommended that only unanticipated bypasses that result in permit limit exceedances should be subject to the reporting requirements of N.J.A.C. 7:14A-3.10(f) and (g). The commenter stated that these reports would simply add an additional and needless administrative burden to both the Department and the regulated community.

RESPONSE: The Water Pollution Control Act expanded the definition of bypass to include any portion of a treatment works rather than of a treatment facility. The Department has therefore proposed reporting requirements for unanticipated bypasses which address this expanded definition. The Department notes that compliance with these reporting requirements should be simpler for treatment facilities where no permit exceedance occurs. The Department further notes that the 24 hour and five day reporting timeframes will be modified to be from the occurrence or from becoming aware of the occurrence, rather than from the cessation of the discharge, to be consistent with the Water Pollution Control Act requirements for asserting unanticipated bypass or upset affirmative defense.

Several commenters questioned the reporting requirements for unanticipated bypasses:

250. COMMENTS: The New Jersey State Chamber of Commerce questioned the requirement for prior notification of all anticipated bypasses, and the requirements for extensive reporting of all unanticipated bypasses even when there is no exceedance of permit limits. The commenter stated that these requirements simply add a needless administrative burden to the Department and the regulated community.

The Chemical Industry Council of New Jersey commented on the requirement under N.J.A.C. 7:14A-3.10(g) that the permittee submit information required under N.J.A.C. 7:14A-3.10(c)1 and 2 in writing within five days after the cessation of an unanticipated bypass. The commenter asserted that permittees would be unable to supply meaningful data within this time frame. For this reason, the commenter recommended extending the allotted time to 20 days, to allow the regulated community sufficient time to collect the information sought by the Department and prepare the necessary submissions.

DuPont Chambers Works commented the five days allotted under N.J.A.C. 7:14A-3.10(g)3, for submitting written documentation concerning an unanticipated bypass, is insufficient. The commenter recommended that this provision instead allow a 20-day period for submission of all relevant information.

RESPONSE: The Department believes that the five-day reporting period is appropriate and consistent with the written submission timeframe specified in the existing regulations at N.J.A.C. 7:14A-3.10(a) 1 through 3. The Department further notes that N.J.A.C. 7:14A-3.10(c)3 provides for the immediate submission of additional relevant facts or corrected information. Also, the Water Pollution Control Act requires submission of written documentation within five days concerning an upset or unanticipated bypass.

251. COMMENT: Waste Management of North America, Inc. asked who is responsible for signing the "properly signed, contemporaneous operating logs" referred to in N.J.A.C. 7:14A-3.10. The commenter suggested that the technical manager responsible for monitoring should be the signatory.

RESPONSE: The Department notes that the permittee has the responsibility for submitting the required information, including contemporaneous operating logs or other relevant evidence and that the appropriate signature may vary with the circumstances of the violation. The person with the responsibility for their accuracy is the appropriate person to sign the logs.

The Department, after reviewing the testimony presented at the public hearing and the written comments submitted, has decided to adopt the proposed amendments and new rules, with the following significant changes.

1. In responses to many written comments, the Department has amended the following definitions, in N.J.A.C. 7:14-8.2 and N.J.A.C. 7:14A-1.9, to be the same as the definitions in the Water Pollution Control Act: discharge monitoring report, Federal Act, hazardous pollutant, permit, serious violation, and toxic pollutant.

2. A new subsection N.J.A.C. 7:14-8.1(e) has been added to reiterate, as was noted in both the proposal and this adoption notice, that these amended rules apply to all violations which occur on or after July 1, 1991.

3. In response to three written comments, the Department amended N.J.A.C. 7:14-8.3(g) to include the statutory exemption from financial assurance for local agencies.

4. In response to two written comments, the Department amended N.J.A.C. 7:14-8.3(i)2iv, to not limit affirmative defenses for sampling or laboratory errors to serious violations.

5. In response to three written comments, the Department amended N.J.A.C. 7:14-8.4(a)9i, consistent with the Water Pollution Control Act, to allow other forms of financial assurance the Department approves in writing.

6. In response to many written comments, the Department amended N.J.A.C. 7:14-8.4(b) to delete the waiver of a permittee's right to amend a hearing request.

7. In response to several written comments, the Department has added language to N.J.A.C. 7:14-8.5(b)2 taken directly from the Water Pollution Control Act concerning the Department's discretion to consider multiple violations as a single violation, if the violations are the result of a single operational occurrence.

8. In response to many written comments, the Department amended N.J.A.C. 7:14-8.5 by deleting the flow factor and the receiving water from the penalty calculation procedure.

9. In response to a written comment, the Department deleted the application in N.J.A.C. 7:14-8.8 to violations of the Underground Storage of Hazardous Substances Regulations.

10. In response to a written comment, the Department modified N.J.A.C. 7:14-8.9(e), consistent with the Water Pollution Control Act, to distinguish between the two different circumstances involving violations concerning discharge monitoring reports.

11. In response to a written comment, the Department changed N.J.A.C. 7:14A-2.5(a)12xi, consistent with the Water Pollution Control Act, to include the failure to submit a complete discharge monitoring report as a trigger for the requirements of this provision (see N.J.S.A. 58:10A-3(w).

12. In response to numerous written comments, the Department modified N.J.A.C. 7:14A-3.10(b)5, to clarify which type of unpermitted discharges have to be reported to the Department.

13. In response to numerous written comments, the Department modified N.J.A.C. 7:14A-3.10, to be the same as the reporting requirements for upsets and unanticipated bypasses in the Water Pollution Control Act. Accordingly, the Department deleted the two-hour reporting requirements for upsets and unanticipated bypasses, and changed the triggering of the 24-hour and five-day reporting requirements to the commencement of the event or the permittee becoming aware of the event, which ever comes first.

In addition, the Department has decided to make additional changes, as follows:

1. Add a definition of "no measurable acute toxicity" and "lawful entry."

2. Amend the definition of "discharge" for the purposes of determining penalties for violation of the Underground Storage of Hazardous Substances regulations so that it does not include "leaks" as defined in those regulations.

3. Amend the definition of "Discharge monitoring report."

4. Define an equivalent exceedance factor for a serious violation of pH, and define the seriousness ranges for pH pursuant to N.J.A.C. 7:14-8.5.

However, in consultation with attorneys in the Department of Law and Public Safety, the Department concluded that it could not make the changes upon adoption of the rule without providing notice of the change and additional opportunity for the public to comment. The Department is, simultaneous with this adoption, proposing amendments incorporating the recommended changes.

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

SUBCHAPTER 8. CIVIL ADMINISTRATIVE PENALTIES AND REQUESTS FOR ADJUDICATORY HEARINGS

7:14-8.1 Authority and purpose

(a) The purpose of this subchapter is to establish a civil administrative penalty policy governing the uniform assessment of civil administrative penalties. This subchapter shall also govern the Department's assessement of civil administrative penalties for violations of the Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq., including violation of any rule or regulation, water quality standard, effluent limitation, administrative order or permit issued pursuant to the Water Pollution Control Act, violation of the rules governing laboratory certification and standards of performance, N.J.A.C. 7:18, and for violations of the Act Concerning Pretreatment of Industrial Wastewater, N.J.S.A. 58:11-49 et seq., the Water Supply and Waste-

water Operators' Licensing Act, N.J.S.A. 58:11-64 et seq., the Water Supply Management Act, N.J.S.A. 58:1A-1 et seq., and N.J.S.A. 58:10A-21 et seq. (also known as the New Jersey Underground Storage of Hazardous Substances Act). In addition, this subchapter shall govern the Department's administrative assessment of costs pursuant to N.J.S.A. 58:10A-10d(1)(c). This subchapter shall also govern the procedure for requesting an adjudicatory hearing on a notice of civil administrative penalty assessment or an administrative order.

(b) through (c) (No change.)

(d) Neither the assessment of a civil administrative penalty nor the payment of any such civil administrative penalty shall affect the availability of any other enforcement provision provided for by N.J.S.A. 58:10A-10, or any other statute, in connection with the violation for which the assessment is levied.

(e) This subchapter, as amended effective August 5, 1991, shall apply to all violations which occur on or after July 1, 1991.

7:14-8.2 Definitions

As used in this subchapter, the following words and terms shall, in addition to those provided in N.J.A.C. 7:14A-1.9, have the following meanings unless the context clearly indicates otherwise:

"Bypass" means the anticipated or unanticipated intentional diversion of waste streams from any portion of a treatment works.

"Delegated local agency" means a local agency with an industrial pretreatment program approved by the Department.

"Discharge" means an intentional or unintentional action or omission resulting in the releasing, spilling, leaking, pumping, pouring, emitting, emptying, or dumping of a pollutant into the waters of the State, onto land or into wells from which it might flow or drain into such waters, or into waters or onto lands outside the jurisdiction of the State which pollutant enters the waters of the State, and shall include the release of any pollutant into a municipal treatment works.

"Discharge monitoring report" or "DMR" means the Environmental Protection Agency's ***current*** uniform national form, including any subsequent additions, revisions, modifications and replacements, for the reporting of self-monitoring results by permittees, and includes Baseline Monitoring Reports and BMRs.

"Effluent limitation" means any restriction on quantities, quality, rates and concentration of chemical, physical, thermal, biological, and other constituents of pollutants established by permit, or imposed as an interim enforcement effluent limitation pursuant to an administrative order, including an administrative consent order.

"Federal Act" means the "Federal Water Pollution Control Act Amendments of 1972" (Public Law 92-500; 33 U.S.C. §1251 et seq.) ***including any subsequent amendments***.

"Hazardous pollutant" means:

1. Any toxic pollutant;

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

3. Any substance regulated as a pesticide under the Federal Insecticide, Fungicide and Rodenticide Act, Pub.L. 92-516 (7 U.S.C. §*[135]* ***136*** et seq.);

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

5. Any substance identified as a known carcinogen by the International Agency for Research on Cancer; *[and]* ***or***

6. *[Any solid waste that is defined or identified as a hazardous waste pursuant to the Solid Waste Management Act, N.J.S.A. 13:1E-1 et seq., in N.J.A.C. 7:26-8 or pursuant to 40 CFR Part 261.]* ***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. §6901 et seq.).***

"LC50" means the median lethal concentration of a toxic substance, including an effluent, expressed as a statistical estimate of the concentration that is lethal to 50 percent of the test organisms under specified test conditions, based on the results of an acute toxicity test. For purposes of this subchapter, it includes an EC50, the median effective concentration, based on daphnid immobilization.

"Local agency" means a political subdivision of the State, or an agency or instrumentality thereof, that owns or operates a municipal treatment works.

"Major facility" means any facility or activity classified as such by the Administrator of the United States Environmental Protection Agency, or his or her representative, in conjunction with the Department, and includes industrial facilities and municipal treatment works.

"Monitoring report form" means the standard Department form, including any subsequent additions, revisions or modifications, for the reporting of data pursuant to certain DGW permits.

"NOEC" or "no observable effect concentration" means the highest concentration of a toxic substance, including an effluent, that has no adverse effect on survival, growth, or reproduction of test organisms based upon the results of chronic toxicity testing.

"Permit" means an authorization, license, or equivalent control document issued by the Department to implement the requirements of this chapter even where any or all of the conditions of the permit have been stayed. ***A permittee is not subject to enforcement for an exceedance of any permit conditions which have been stayed.*** Permit does not include any permit which requires EPA review pursuant to 40 CFR Part 123.75, such as a "draft permit" or a "proposed permit." Permit includes a letter of agreement entered into between a delegated local agency and a user of its municipal treatment works, setting effluent limitations and other conditions on the user of the agency's municipal treatment works.

"Person" means any entity or natural person, including without limitation any of the following: individual, corporation, company, partnership, firm, association, owner or operator of a treatment works, political subdivision of this State and any state or interstate agency. "Person" shall also include any responsible corporate official for the purpose of enforcement action under section 10 of the State Act.

"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 waste or other residue discharged into the waters of the State.

"Schedule of compliance" or "compliance schedule" means a schedule of remedial measures including an enforceable sequence of actions or operations leading to compliance with water quality standards, an effluent limitation or other limitation, prohibition or standard.

"Serious violation" means an exceedance, at *[any]* ***a*** discharge point source, of an effluent limitation, except color, *[unless the Department uses, on a case-by-case basis, a more stringent factor of exceedance to determine a serious violation and states the specific reasons therefor, which may include the potential for harm to human health or the environment,]* ***set forth in a permit, administrative order, or administrative consent agreement, including interim enforcement limits,*** as follows:

1. For effluent limitations for pollutants that are measured by concentration or mass, except for whole effluent toxicity;

i. Violations of an effluent limitation that is expressed as a monthly average:

(1) By 20 percent or more for a hazardous pollutant; and

(2) By 40 percent or more for a nonhazardous pollutant;

ii. Violations of an effluent limitation that is expressed as a daily maximum or daily minimum without a monthly average:

(1) By 20 percent or more of the average of all of the daily maximum or minimum values for a hazardous pollutant; and

(2) By 40 percent or more of the average of all of the daily maximum or minimum values for a nonhazardous pollutant; and

2. For effluent limitations for whole effluent toxicity *[and pollutants that are not measured by concentration or mass]* as follows:

[i. Any violation of an efflucent limitation for pH of at least two but less than three standard units outside the range of the pH effluent limitation;]

*[ii.]***i.*** For any violation of an LC50 or a NOEC limit when, upon subtracting the toxicity test result from the whole effluent toxicity limit, the difference is as follows:

Whole Effluent Toxicity Limit (% Effluent)	Difference (% Effluent)
greater than or equal to 80 and less than or equal to 100	greater than or equal to 20
greater than or equal to 50 and less than 80	greater than or equal to 15
greater than 10 and less than 50	greater than or equal to 10
less than or equal to 10	greater than or equal to 9

*[iii.]***ii.*** Any violation of a No Measurable Acute Toxicity (NMAT) limit with greater than or equal to 50 percent mortality in any test concentration, including 100% effluent.

3. Notwithstanding the above, the Department may utilize, on a case-by-case basis, a more stringent factor of exceedance to determine a serious violation if the Department states the specific reasons therefore, which may include the potential for harm to human health or the environment.

"Significant noncomplier" or "SNC" means any person, except a local agency for an exceedance of an effluent limitation for flow, who commits any of the violations described below, unless the Department uses, on a case-by-case basis, a more stringent frequency or factor of exceedance to determine a significant noncomplier and the Department states the specific reasons therefor, which may include the potential for harm to human health or the environment. Violations which cause a person to become or remain an SNC include:

1. A serious violation for the same pollutant, at the same discharge point source, in any two months of any consecutive six month period;

2. Exceedance of an effluent limitation expressed as a monthly average, for the same pollutant, at the same discharge point source, by any amount in any four months of any consecutive six month period;

3. If there is not an effluent limitation for a particular pollutant expressed as a monthly average, exceedance of the monthly average of the daily maximums for the effluent limitation, for the same pollutant, at the same discharge point source, by any amount in any four months of any consecutive six month period; or

4. Failure to submit a completed discharge monitoring report in any two months of any consecutive six month period.

"Sludge Quality Assurance Report" or "SQAR" means the standard Department form, including any subsequent additions, revisions or modifications, for the reporting of sludge quality and quantity.

"State Act" means the Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq.

"Toxic pollutant" means *[those pollutants,]* ***any pollutant identified pursuant to the Federal Act or any pollutant*** or *[combinations]* ***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 food chains, *[may]* ***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 *[, identified pursuant to Section 307 of the Federal Act, 33 U.S.C. 1317, or Section 4 of the State Act, N.J.S.A. 58:10A-4]*.

"Upset" means an exceptional incident in which there is unintentional and temporary noncompliance with an effluent limitation because of an event beyond the reasonable control of the permittee, including fire, riot, sabotage, or a flood, storm event, natural cause, or other act of God, or other similar circumstance, which is the cause of the violation. "Upset" also includes noncompliance consequent to the performance of maintenance operations for which a prior exception has been granted by the Department or a delegated local agency.

"Violator" means any person against whom the Department asserts a violation of the State Act or any rules issued pursuant to the Water Pollution Control Act.

"Whole effluent toxicity" means the aggregate toxic effect of an effluent measured directly by a toxicity test.

7:14-8.3 Procedures for assessment, payment and settlement of civil administrative penalties, and affirmative defenses

(a) (No change.)

(b) Payment of the civil administrative penalty is due upon receipt by the violator of the Department's Final Order in a contested case, or when a Notice of Civil Administrative Penalty Assessment becomes a Final Order, as follows:

1. If no hearing is requested pursuant to N.J.A.C. 7:14-8.4, a Notice of Civil Administrative Penalty Assessment becomes a Final Order and is deemed received on the 21st day following receipt of the Notice of Civil Administrative Penalty Assessment by the violator;

2. through 3. (No change.)

(c) In addition to the amount of the civil administrative penalty that is due and owing pursuant to (b) above, the violator shall also pay to the Department the interest on the amount of the penalty, at the rate established by the New Jersey Supreme Court for interest rates on judgments as set forth in the Rules Governing the Courts of the State of New Jersey, as follows:

1. Interest shall accrue on the amount of the civil administrative penalty due and owing beginning on the 30th day after the date on which the penalty was due and owing and continuing until the civil administrative penalty is paid in full with interest if:

i. A violator does not pay a civil administrative penalty imposed pursuant to a final order; or

ii. A violator fails to make a civil administrative penalty payment pursuant to a payment schedule entered into with the Department; and

2. Interest, at the rate set forth in (c)1 above, shall accrue on the unpaid amount of a civil administrative penalty which is contested as a contested case under N.J.S.A. 52:14B-1 et seq., or appealed to the Appellate Division of the Superior Court, and upheld in full or in part, from the date the violator posted financial assurance under N.J.A.C. 7:14-8.4(a)9 ***or, in the case of a local agency, from the date the Department receives a local agency's hearing request,*** until the violator pays in full the civil administrative penalty and all interest accrued thereon.

(d) A civil administrative penalty imposed pursuant to a final order shall constitute a debt of the violator or discharger. The Department may docket the penalty with the clerk of the Superior Court. The penalty, as docketed, shall have the same standing as any judgment docketed pursuant to N.J.S.A. 2A:16-1, except that:

1. No lien shall attach to the property of a local agency; and

2. No lien shall attach to the real property of a violator if the violator posts a refundable bond or other security with the Commissioner pursuant to an appeal of a final order to the Appellate Division of the Superior Court.

(e) The Department may settle any civil administrative penalty assessed pursuant to this subchapter according to the factors identified in (f) below as follows:

1. In cases where the violator is a local agency which violates an administrative consent order, the Department may settle a civil administrative penalty as follows:

i. The Department may reduce the civil administrative penalty up to 50 percent, provided that the penalty as reduced is not less than any applicable minimum amount set forth in N.J.A.C. 7:14-8.5(a) or 8.9(e); and

ii. The Department may not reduce the amount of any component of a civil adminstrative penalty which represents the economic benefit gained by the violator from the violation;

2. Except as provided in (e)1 above, in the case of a violator who is a local agency which violates something other than an administrative consent order and then enters into an administrative consent order with the Department, which requires the local agency to take prescribed measures to comply with its permit, the Department shall

have full discretion to settle the amount of the civil administrative penalty assessed or due for violations occurring during a period up to 24 months preceding the effective date of the administrative consent order, except that the Department shall neither:

i. Reduce the amount of the civil administrative penalty less than the minimum amount, if applicable, prescribed in N.J.A.C. 7:14-8.5(a) or 8.9(e); nor

ii. Reduce the amount of any component of a civil administrative penalty which represents the economic benefit gained by the violator from the violation.

3. In the case of all other violators:

i. The Department may reduce the civil administrative penalty up to 50 percent, provided that the penalty as reduced is not less than any applicable minimum amount set forth in N.J.A.C. 7:14-8.5(a) or 8.9(e); and

ii. The Department may not reduce the amount of any component of a civil administrative penalty which represents the economic benefit gained by the violator from the violation:

(f) In settling a civil administrative penalty, the Department may consider the following:

1. Mitigating or extenuating circumstances not considered in the notice of civil administrative penalty assessment;

2. The implementation by the violator of pollution prevention and/or abatement measures in addition to those minimally required by applicable statute or rule;

3. The implementation by the violator of measures to clean up, reverse or repair environmental damage previously caused by the violation;

4. The full payment by the violator of a specified part of the civil administrative penalty assessed if made within a time period established by the Department in an administrative order and/or a notice of civil administrative penalty assessment and provided that the violator waives the right to request an adjudicatory hearing on the civil administrative penalty; or

5. Any other terms or conditions acceptable to the Department.

(g) Any violator ***, except a local agency,*** who is seeking a civil administrative penalty payment schedule of more than 90 days shall, as a precondition of that schedule in lieu of full payment upon the civil administrative penalty becoming due and owing, post financial assurance with the Department for the full amount of the civil administrative penalty pursuant to one of the financial assurance mechanisms in Appendix A ***or in another form the Department individually approves in writing for this purpose***.

(h) Any violator that is not a local agency which enters into an administrative consent order with the Department that includes a compliance schedule shall post financial assurance in the full amount of the cost of fully complying with all of the terms and conditions imposed by the Department pursuant to one of the financial assurance mechanisms in Appendix A, incorporated herein by reference ***, or in another form the Department individually approves in writing for this purpose***.

(i) Except as provided in (i)1 below, a violator may be entitled to an affirmative defense to liability for a violation of an effluent limitation occurring as a result of an upset, an anticipated or unanticipated bypass, or a testing or laboratory error, only if, in the determination of the Department, the violator has satisfied the provisions of this section.

1. A violator shall not be entitled to an affirmative defense based on an alleged upset, an anticipated or unanticipated bypass, or a testing or laboratory error to the extent that the violation is caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance, or careless or improper operation.

2. A violator shall be entitled to an affirmative defense only if, in the determination of the Department, the violator satisfies the following:

i. The violation occurred as a result of an upset, an anticipated or unanticipated bypass, or a testing or laboratory error;

ii. The violator complied with all of the requirements in N.J.A.C. 7:14A-3.10;

iii. The violator complied with N.J.A.C. 7:14A-8.4(a)7; and

iv. A violator asserting a testing or laboratory error as an affirmative defense shall also have the burden to demonstrate that a *[serious]* violation involving the exceedance of an effluent limitation was the result of unanticipated test interferences, sample contamination, analytical defects, or procedural deficiencies in sampling or other similar circumstances beyond the violator's control.

3. If the Department determines that an exceedance of an effluent limitation was caused by an upset, an anticipated or unanticipated bypass, or a testing or laboratory error, the Department shall not consider the exceedance a violation and the Department shall not assess a civil administrative penalty.

4. The Department shall consider the exceedance of an effluent limitation a violation if the Department determines that any of the following conditions exist:

i. The exceedance was not caused by an upset, an anticipated or unanticipated bypass, or a testing or laboratory error;

ii. The violator has not complied with the reporting requirements in N.J.A.C. 7:14A-3.10; or

iii. The violator has not complied with N.J.A.C. 7:14A-8.4(a)7.

7:14-8.3A Public comment on interim enforcement limits

(a) The procedures for soliciting public comment on proposed interim enforcement limits in administrative consent orders are provided in this section.

1. The Department will require the violator to provide notice of proposed interim enforcement limits and of an opportunity, for at least 30 days from the publication of the notice, to comment on the proposal.

2. The violator shall submit to the Department a proposed plan to provide the public notice required in (b) through (d) below.

3. Upon the violator's receipt of the Department's written approval of the violator's plan to provide public notice, the violator shall provide the public notice as approved by the Department.

(b) The violator shall provide the following public notice of the proposed interim enforcement limits:

1. At least three days prior to publication of the public notice required in (b)2 below, the violator shall mail a copy of the public notice and the draft administrative consent order or other document which includes the proposed interim enforcement limits to:

i. The mayor or chief executive officer and governing body of the municipality and county in which the violations occurred; and

ii. Any other interested persons the Department identifies.

2. The violator shall publish the public notice in a daily or weekly newspaper within the area affected by the facility which is the subject of the interim enforcement limits.

(c) The violator shall include the following in the public notice:

1. The name and address of the violator upon which the Department will impose the interim enforcement limits;

2. The beginning and ending dates of the public comment period;

3. A description of the nature of the violations necessitating the interim enforcement limits;

4. A summary of the terms and conditions of the legal document in which the interim enforcement limits is contained;

5. The name of the contact person within the Department to contact for more information;

6. The requirement that anyone submitting written comments on the proposed interim enforcement limits shall submit copies of the written comments to both the Department and the violator; and

7. The name and address of the person for the Department and the violator to whom members of the public may submit written comments.

(d) If the Department decides to hold a public meeting on the proposed interim enforcement limits:

1. The violator shall also include in the public notice:

i. The date, time and place of the public meeting; and

ii. A brief description of the nature and purpose of the public meeting, including the applicable rules and procedures;

2. The violator shall publish notice of the public meeting not more than 30 days and not less than 15 days prior to the public meeting;

3. The Department shall hold the public meeting in the municipality in which the violations necessitating the interim enforcement limits occurred;

4. The violator shall attend and participate in the public meeting at the Department's request; and

5. The violator shall, with the prior written approval of the Department, make all necessary arrangements for scheduling and holding the public meeting, including, but not limited to:

i. Scheduling of the meeting room;

ii. Arranging for a court stenographer to record the statements at the public meeting; and

iii. Payment of all costs of the public meeting, including, but not limited to, hearing room costs, security, stenographer, transcript, and the Department's cost associated with the public meeting.

(e) The violator shall submit to the Department proof of publication prior to the Department issuing an administrative order or executing the administrative consent order which includes an interim enforcement limits.

(f) After receiving the comments, but before executing an administrative order or an administrative consent order which includes the interim enforcement limits, the Department will:

1. Evaluate each of the comments received;

2. Respond to the comments received; and

3. Notify each person who submitted written comments of the main provisions of the administrative order or administrative consent order and the final interim enforcement limits and a copy of the Department's responses to the comments.

7:14-8.4 Procedures to request an adjudicatory hearing to contest an administrative order, a notice of civil administrative penalty assessment or a notice of civil administrative cost assessment; procedures for conducting adjudicatory hearings

(a) To request an adjudicatory hearing to contest an administrative order, a notice of civil administrative penalty assessment, or a notice of civil administrative cost assessment issued pursuant to the Water Pollution Control Act, the New Jersey Underground Storage of Hazardous Substances Act, the Water Supply and Wastewater Operators' Licensing Act, or the Water Supply Management Act, the violator shall submit the following information in writing to the Department:

1.-4. (No change.)

5. An estimate of the time required for the hearing (in days and/or hours);

6. A request, if necessary, for a barrier-free hearing location for physically disabled persons;

7. Proof of compliance with all of the requirements in N.J.A.C. 7:14A-3.10 if the violator intends to:

i. Raise an affirmative defense to liability for a civil administrative penalty pursuant to N.J.A.C. 7:14-8.5(a) or 8.9(e) for the violation of an effluent limitation on the basis that a violation of an effluent limitation occurred as a result of an upset, an approved anticipated bypass or unanticipated bypass, or a testing or laboratory error; and

ii. To request that the Department determine through an administrative hearing whether or not it agrees with the violator's allegations concerning the matter;

8. For a notice of civil administrative penalty assessment pursuant to N.J.A.C. 7:14-8.9(e), the following ***as applicable***:

i. Documentation of compliance with the requirements in N.J.A.C. 7:14-8.9(e) that the violator notify the Department in writing, within 30 days after the date the violator was required to submit the information to the Department, of extenuating circumstances that prevented timely submission of a complete discharge monitoring report;

ii. Documentation of the violator's correction of the violation by submitting the omitted information within 10 days after the violator's receipt of the notice of the omission; a violator's failure to comply with the notice requirements in N.J.A.C. 7:14-8.9(e) will be a waiver of the violator's right to correct the violation within the required 10-day period and thus avert liability; *[and]* ***or***

iii. If the violator intends to contest a civil administrative penalty assessed pursuant to N.J.A.C. 7:14-8.9(e) based on the existence of extenuating circumstances beyond the violator's control, documentation that the violator complied with N.J.A.C. 7:14-8.9(e)3; if the violator fails to submit the required information within this 30-day period, the violator shall have waived its right to contest the civil administrative penalty in this manner and be barred from doing so; and

9. If the violator is not a local agency, financial assurance in the full amount of the civil administrative penalty in the notice of civil administrative penalty assessment as follows:

i. Financial assurance, in the form of a surety bond guaranteeing payment, an irrevocable letter of credit or a fully funded trust, worded identically to the wording specified in N.J.A.C. 7:14-8 Appendix A ***or in another form the Department individually approves in writing for this purpose***; and

ii. A certification of acknowledgement worded identically to the wording specified in N.J.A.C. 7:14-8 Appendix A.

(b) The Department shall deny the hearing request if the Department does not receive a complete hearing request pursuant to (a) above within 20 days after receipt by the violator of the Notice of a Civil Administrative Penalty Assessment, the Administrative Order, or Notice of Civil Administrative Cost Assessment being challenged. *[A violator's failure to identify in its hearing request those affirmative defenses which the violator intends to raise, as required by (a)7i above, shall operate as a waiver of the violator's right to assert such defenses.]* A violator's failure to notify the Department in writing, within the 30 days allotted under (a)8i above, of the existence of extenuating circumstances which prevented timely submission of a complete discharge monitoring report, shall be grounds for the Department to deny any hearing request on a notice of civil administrative penalty assessment pursuant to N.J.A.C. 7:14-8.9(e).

(c) All adjudicatory hearings held pursuant to this section shall be conducted in accordance with the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.

7:14-8.5 Civil administrative penalty determination

(a) The Department may assess a civil administrative penalty pursuant to this section of not more than $50,000 for each violation of each provision of the Water Pollution Control Act or the New Jersey Underground Storage of Hazardous Substances Act and for violations of any rule, water quality standards, effluent limitation, administrative order or permit issued pursuant thereto. The Department shall assess a minimum mandatory civil administrative penalty for violations which occur after June 30, 1991 in an amount:

1. Not less than $5,000 for each violation that causes a violator to be, or continue to be, a significant noncomplier; or

2. Not less than $1,000 for each serious violation.

(b) Each violation of any provision of the Water Pollution Control Act or the New Jersey Underground Storage of Hazardous Substances Act, or any rule, water quality standard, effluent limitation, administrative order or permit issued pursuant thereto, shall constitute an additional, separate and distinct violation. In addition, the unpermitted discharge of each separate pollutant shall constitute an additional, separate and distinct violation. ***If a violator establishes, to the satisfaction of the Department, that a single operational occurrence has resulted in the simultaneous violation of more than one effluent limit, the Department may consider, for purposes of calculating the mandatory civil administrative penalties to be assessed pursuant to (a) above, the violation of interrelated effluent limits to be a single violation.***

(c) (No change.)

(d) Unless the Department assesses a civil administrative penalty pursuant to N.J.A.C. 7:14-8.6 through N.J.A.C. 7:14-8.12, the Department shall assess a civil administrative penalty for violations described in this section as described in (e) below.

(e) To assess a civil administrative penalty pursuant to this section, the Department shall:

1. Identify the civil administrative penalty range within the matrix in (f) below by:

i. Determining the seriousness of the violation pursuant to (g) below; and

ii. Determining the conduct of the violator pursuant to (h) below*[; and]* ***.***

*[2. For violations of effluent limitations for point source discharges, multiply the midpoint of the range, unless adjusted pursuant to (i) below, by:

i. The flow factor pursuant to (j) below; and

ii. The receiving water factor pursuant to (k) below; and

3. If the product of the multiplication pursuant to (e)2 above is greater than $50,000, then the civil administrative penalty shall be $50,000; or]*

[4. For all other violations, the] ***2. The*** civil administrative penalty shall be at the midpoint of the range within the matrix in (f) below, unless adjusted pursuant to (i) below.

(f) The matrix of ranges of civil administrative penalties is as follows:

		SERIOUSNESS		
		Major	Moderate	Minor
	Major	$40,000-$50,000	$30,000-$40,000	$15,000-$25,000
CONDUCT	Moderate	$30,000-$40,000	$10,000-$20,000	$ 3,000-$7,000
	Minor	$15,000-$25,000	$ 3,000-$ 7,000	$ 1,000-$ 2,500

(g) The Department shall determine the seriousness of the violation as major, moderate or minor as set forth in (g)1 through 3 below. Nothing in the description of seriousness in one level shall prevent the Department from assigning a different level of seriousness to the violation.

1. Major shall include:

i. Any violation of an effluent limitation which is measured by concentration or mass for any discharge exceeding the effluent limitation as follows:

(1) By more than 50 percent for a hazardous pollutant; or

(2) By more than 100 percent for a nonhazardous pollutant; ***and***

[ii. Any violation of an effluent limitation for pH more than three standard units outside the range of the pH effluent limitation; or]

*[iii.]***ii.*** Any other violation not included in (g)1i or ii above which either:

(1) Has caused or has the potential to cause serious harm to human health or the environment; or

(2) Seriously deviates from the requirements of the Water Pollution Control Act or the New Jersey Underground Storage of Hazardous Substances Act and for violations of any rule, water quality standards, effluent limitation, administrative order or permit issued pursuant thereto; serious deviation shall include, but not be limited to, those violations which are in complete contravention of the requirement, or if some of the requirement is met, which severely impair or undermine the operation or intent of the requirement.

2. Moderate shall include:

i. Any violation, other than a violation of an effluent limitation identified in (g)2ii *[or iii]* below, which has caused or has the potential to cause substantial harm to human health or the environment;

ii. Any violation of an effluent limitation which is measured by concentration or mass of any discharge exceeding the effluent limitation as follows:

(1) By 20 to 50 percent for a hazardous pollutant; or

(2) By 40 to 100 percent for a nonhazardous pollutant;

[iii. Any violation of an effluent limitation for pH of at least two but less than three standard units outside the range of the pH effluent limitation; or]

*[iv.]***iii.*** Any violation, other than a violation of an effluent limitation identified in (g)2ii *[or iii]* above, which substantially deviates from the requirements of the Water Pollution Control Act or the New Jersey Underground Storage of Hazardous Substances Act and for violations of any rule, water quality standards, effluent limitation, administrative order or permit issued pursuant thereto; substantial deviation shall include, but not be limited to, violations which are in substantial contravention of the requirements or which substantially impair or undermine the operation or intent of the requirement.

3. Minor shall include:

i. Any violation, other than a violation of an effluent limitation identified in (g)3ii *[or iii]* below, not included in (g)1 or 2 above; or

ii. Any violation of an effluent limitation which is measured by concentration or mass for any discharge exceeding the effluent limitation as follows:

(1) By less than 20 percent for a hazardous pollutant; or

(2) By less than 40 percent for a nonhazardous pollutant; *[or]***.***

[iii. Any violation of an effluent limitation for pH less than two standard units outside the range of the pH effluent limitation.]

(h) The Department shall determine the conduct of the violator as major, moderate or minor as follows:

1. Major shall include any intentional, deliberate, purposeful, knowing or willful act or omission by the violator;

2. Moderate shall include any unintentional but foreseeable act or omission by the violator; or

3. Minor shall include any other conduct not included in (h)1 or 2 above.

(i) The Department may, in its discretion, move from the midpoint of the range to an amount no greater than the maximum amount nor less than the minimum amount in the range on the basis of the following factors:

1. through 3. (No change.)

4. The deterrent effect of the penalty;

5. The cooperation of the violator in correcting the violation, remedying any environmental damage caused by the violation and ensuring that the violation does not reoccur;

6. Any unusual or extraordinary costs or impacts directly or indirectly imposed on the public or the environment as a result of the violation; *[and]*

7. Any impacts on the receiving water, including stress upon the aquatic biota, or impairment of receiving water uses, such as for recreational or drinking water supply, resulting from the violation*[.]***; and***

8. Other specific circumstances of the violator or violation.

*[(j) The flow factor shall be determined as follows:

i. For discharges to surface water, the flow factor is the product of the following equation, using the flow at the time of the discharge, or if that flow is unavailable the last prior flow reported, expressed in million gallons per day (MGD), except that if the actual flow is less than 0.01MGD then use 0.01MGD in the following equation:

$$\text{DSW flow factor} = (0.25 \times \text{Log(flow)}) + 0.75$$

2. For discharges to ground water the flow factor is the product of the following equation, using the flow at the time of the discharge, or if that flow is unavailable the last prior flow reported, expressed in million gallons per day (MGD), except that if the actual flow is less than 0.001MGD then use 0.001MGD in the following equation:

$$\text{DGW flow factor} = (0.25 \times \text{Log(flow)}) + 1$$

(k) The receiving water factor shall be determined pursuant to the following table:

Receiving water category[1]	Receiving water factor		
	C1	C2	Other
Surface Water			
FW1			2.5
FW2, TP	2.0		
FW2, TM	2.0	1.5	
FW2, NT	1.5	1.0	
PL			2.25
SC	1.5	1.0	
SE1	2.0	1.5	
SE2	1.5	1.0	
SE3	1.0	0.5	

Delaware River			
Zone 1		1.5	
Zone 2		1.5	
Zone 3		1.0	
Zone 4		1.0	
Zone 5		1.0	
Zone 6	1.5		
Ground Water			
GW1			2.0
GW—all other			1.0
Indirect Discharge			1.0

[1]The receiving water classifications in this table are based on definitions of surface water classifications in N.J.A.C. 7:9-4, ground water classifications in N.J.A.C. 7:9-6, and indirect discharge in N.J.A.C. 7:14A-1.9.]*

7:14-8.6 Civil administrative penalty for submitting inaccurate or false information

(a) through (b) (No change.)

(c) The Department shall assess a civil administrative penalty for violations described in this section based on the conduct of the violator at the midpoint of the following ranges except as adjusted pursuant to (d) below:

1. For each intentional, deliberate, purposeful knowing or willful act or omission by the violator, the civil administrative penalty shall be in an amount up to $50,000 per act or omission;

2. For each other violation not identified pursuant to (c)1 above for which the violator does not correct the violation within 10 days after becoming aware of the violation, the civil administrative penalty shall be in an amount up to $30,000; and

3. For each other violation not identified pursuant to (c)1 above for which the violator corrects the violation within 10 days after becoming aware of the violation, the civil administrative penalty shall be in an amount up to $1,000.

(d) The Department may, in its discretion, adjust the amount determined pursuant to (c) above to assess a civil administrative penalty in an amount no greater than the maximum amount nor less than the minimum amount in the range on the basis of the following factors:

1. through 3. (No change.)

4. The deterrent effect of the penalty;

5. The cooperation of the violator in correcting the violation, remedying any environmental damage caused by the violation and ensuring that the violation does not reoccur;

6. Any unusual or extraordinary costs or impacts directly or indirectly imposed on the public or the environment as a result of the violation; *[and]*

7. Any impacts on the receiving water, including stress upon the aquatic biota, or impairment of receiving water uses, such as for recreational or drinking water supply, resulting from the violation*[.]***; and***

8. Other specific circumstances of the violator or violation.

7:14-8.7 Civil administrative penalty for failure to allow lawful entry and inspection

(a) through (b) (No change.)

(c) The Department shall assess a civil administrative penalty for violations described in this section at the midpoint of the following ranges except as adjusted pursuant to (d) below:

1. For refusing, inhibiting or prohibiting immediate lawful entry and inspection of any premises, building or place for which an administrative order or permit exists under the Water Pollution Control Act or the New Jersey Underground Storage of Hazardous Substances Act, the civil administrative penalty shall be in an amount up to $50,000; and

2. For any other refusal, inhibition or prohibition of immediate lawful entry and inspection, the civil administrative penalty shall be in an amount up to $8,000.

(d) The Department may, in its discretion, adjust the amount determined pursuant to (c) above to assess a civil administrative penalty in an amount no greater than the maximum amount nor less than the minimum amount in the range on the basis of the following factors:

1. through 3. (No change.)

4. The deterrent effect of the penalty;

5. The cooperation of the violator in correcting the violation, remedying the damage caused by the violation and ensuring that the violation does not reoccur;

6. Any unusual or extraordinary costs or impacts directly or indirectly imposed on the public or the environment as a result of the violation; *[and]*

7. Any impacts on the receiving water, including stress upon the aquatic biota, or impairment of receiving water uses, such as for recreational or drinking water supply, resulting from the violation*[.]* ***; and***

8. Other specific circumstances of the violator or violation.

7:14-8.8 Civil administrative penalty for conducting unapproved activities

(a) The Department may assess a civil administrative penalty pursuant to this section against each violator who*[:

1. Approves]* ***approves***, endorses, allows construction or operation to commence or proceed, builds, *[substantially]* modifies, installs, replaces, expands or operates a facility or treatment works, as defined by N.J.A.C. 7:14A, without the proper authorization or in violation of any rule, administrative order, sewer connection ban, or permit issued or imposed pursuant to the Water Pollution Control Act*[; or]* ***.***

[2. Replaces, expands, or substantially modifies a facility as defined by N.J.A.C. 7:14B, in violation of any rule, administrative order or permit issued pursuant to the New Jersey Underground Storage of Hazardous Substances Act.]

(b) The Department shall determine the amount of the civil administrative penalty for violations described in this section based on the seriousness of the violation and the conduct of violator based on the following:

1. For any unauthorized approval, endorsement or allowance to commence or proceed to build, *[substantially]* modify, install, replace, expand or operate a facility or treatment works the civil administrative penalty shall be in an amount determined as follows:
civil administrative penalty = (seriousness) × (conduct) × ($1.00)

i. The seriousness factor shall be equal to one-half of the design flow (in gallons ***per day***) indicated in the CP-1 Permit Application for that facility or project, or if there is no CP-1 Permit Application or if the design flow is not indicated on the CP-1 Application, then from the Contributory Design Flow table in N.J.A.C. 7:9-1; and

ii. The conduct factor is either:

(1) 1.00 if the conduct is intentional, deliberate, purposeful, knowing or willful; or

(2) 0.75 for any other conduct.

iii. Each approval, endorsement or allowance to commence or proceed shall be considered an additional, separate and distinct violation;

2. For the building, installation, *[substantial]* modification, replacement or expansion of a facility or treatment works without the required Department approval, the civil administrative penalty shall be in an amount determined as follows:
civil administrative penalty = (seriousness) × (conduct) × $1.00)

i. The seriousness factor shall be equal to one-half of the design flow (in gallons ***per day***) as determined from the CP-1 Permit Application for that facility or project, or if there is no CP-1 Permit Application or if the design flow is not indicated on the CP-1 Application, then from the Contributory Design Flow table in N.J.A.C. 7:9-1.

ii. The conduct factor is either:

(1) 1.00 if the conduct is intentional, deliberate, purposeful, knowing or willful; or

(2) 0.75 for any other conduct.

iii. Each day or part thereof that the construction of the facility or treatment works continues without the required Department approval shall be considered an additional, separate and distinct violation.

3. For the operation of any facility or treatment works, the civil administrative penalty shall be in an amount equal to, at the sole discretion of the Department*[;]* *,* either:

i. Twice the total penalty for the illegal building, installation, *[substantial]* modification, replacement or expansion of a facility of treatment works calculated pursuant to (b)2 above; or

ii. Equal to the product of the following equation:

civil administrative penalty = (seriousness) × (conduct) × ($1.00)

(1) The seriousness factor shall be equal to the total design flow (in gallons ***per day***) as determined from the CP-1 Permit Application for that facility or project, or if there is no CP-1 Permit Application or if the design flow is not indicated on the CP-1 Application, then from the Contributory Design Flow table in N.J.A.C. 7:9-1.

(2) The conduct factor shall be either:

(A) 1.00 if the conduct is intentional, deliberate, purposeful, knowing or willful; or

(B) 0.75 for any other conduct.

(3) Each day or part thereof that the operation of the facility or treatment works continues without the required Department approval shall be considered an additional, separate and distinct violation.

7:14-8.9 Civil administrative penalty for failure to properly conduct monitoring or sampling under the Water Pollution Control Act or the New Jersey Underground Storage of Hazardous Substances Act

(a) The Department may assess a civil administrative penalty pursuant to this section against each violator who fails to carry out monitoring or sampling activities or to submit discharge monitoring reports, baseline monitoring reports, monitoring report forms or sludge quality assurance reports required by the Water Pollution Control Act or the New Jersey Underground Storage of Hazardous Substances Act or any rule, water quality standard, effluent limitation, administrative order or permit issued pursuant thereto.

(b) (No change.)

(c) Except as provided in (e) below, the Department shall assess a civil administrative penalty for violations described in this section based on the conduct of the violator at the midpoint of the following ranges except as adjusted pursuant to (d) below:

1. For any intentional, deliberate, purposeful, knowing or willful act or omission by the violator, the civil administrative penalty shall be in an amount up to $50,000;

2. For any unintentional but foreseeable act or omission by the violator, the civil administrative penalty shall be in amount up to $40,000; or

3. For any other violations the civil administrative penalty shall be in an amount up to $20,000.

(d) The Department may, in its discretion, adjust the amount determined pursuant to (c) above to assess a civil administrative penalty in an amount no greater than the maximum amount nor less than the minimum amount in the range on the basis of the following factors:

1. through 3. (No change.)

4. The deterrent effect of the penalty;

5. The cooperation of the violator in correcting the violation remedying the damage caused by the violation and ensuring that the violation does not reoccur;

6. Any unusual or extraordinary costs or impacts directly or indirectly imposed on the public or the environment as a result of the violation; *[and]*

7. Any impacts on the receiving water, including stress upon the aquatic biota, or impairment of receiving water uses, such as for recreational or drinking water supply, resulting from the violation*[.]* ***; and***

8. Other specific circumstances of the violator or violation.

(e) For any person's failure to submit a complete discharge monitoring report, the Department shall assess a minimum mandatory civil administrative penalty of not less than $100.00 for each effluent parameter omitted on a discharge monitoring report, nor greater than $50,000 per month for any one discharge monitoring report, for any discharge monitoring report required to be submitted after June 30, 1991.

1. The civil administrative penalty assessed pursuant to (e) above shall begin to accrue on the fifth day after the date on which the discharge monitoring report was due and shall continue to accrue at least for 30 days if the violation is not corrected.

2. The Department may continue to assess civil administrative penalties for the failure to submit a complete discharge monitoring report beyond the 30-day period referenced in (e)1 above until the violation is corrected.

3. *[A]* ***To contest a civil administrative penalty assessed pursuant to this section, a*** violator shall submit evidence of extenuating circumstances beyond the control of the permittee***, including circumstances that prevented timely submission of a complete discharge monitoring report, or portion thereof,*** within 30 days after the date on which the effluent parameter information was required to be submitted to the Department *[in order to contest a civil administrative penalty assessed pursuant to this section]*. If the violator fails to submit the required information within this 30-day period, the violator shall have waived its right to contest the civil administrative penalty in this manner and be barred from doing so.

4. A violator will not be subject to a civil administrative penalty ***for the inadvertent omission of one or more effluent parameters in a discharge monitoring report*** if both of the following conditions are met:

i. The violator submits the omitted information to the Department within 10 days after receipt by the violator of notice of the omission; and

ii. The violator demonstrates to the satisfaction of the Department that the violation for which the Department assessed the civil administrative penalty was due to an inadvertent omission by the violator of one or more effluent parameters*[, provided, however, that the Department shall not be required to consider such evidence if the violator has not complied with (e)3 above]*.

7:14-8.12 Civil administrative penalty for violation of whole effluent toxicity limitations

(a) The Department may assess a civil administrative penalty for violations of whole effluent toxicity limitations expressed as median Lethal Concentration (LC50), a No Observable Effect Concentration (NOEC), or No Measureable Acute Toxicity (NMAT) pursuant to this section.

(b) Each violation of a whole effluent toxicity limitation shall constitute an additional, separate and distinct violation.

(c) To assess a civil administrative penalty pursuant to this section the Department shall*[:

1. Identify]* ***identify*** the civil administrative penalty range pursuant to (d) or (e) below*[;]*****.***

*[2. Multiply the midpoint of the range, unless adjusted pursuant to (f) below, by:

i. The flow factor pursuant to (g) below; and

ii. The receiving water factor pursuant to (h) below; and

3. If the product of the multiplication pursuant to (c)2 above is greater than $50,000, then the civil administrative penalty shall be $50,000.]*

(d) The Department shall determine the range for the civil administrative penalty for violations of whole effluent toxicity limitations expressed as median Lethal Concentration (LC50) or a No Observable Effect Concentration (NOEC), described in this section as follows, except as adjusted pursuant to *[(e)]* ***(f)*** below:

1. For any violation of an LC50 or a NOEC limit included in the following table, the civil administrative penalty shall be in an amount up to $50,000, when upon subtracting the toxicity test result from the whole effluent toxicity limit, the difference is as follows:

Whole Effluent Toxicity Limit (% Effluent)	Difference (% Effluent)
greater than or equal to 80 and less than or equal to 100	greater than or equal to 20
greater than or equal to 50 and less than 80	greater than or equal to 15
greater than 10 and less than 50	greater than or equal to 10
less than or equal to 10	greater than or equal to 9

2. For any other violation of an LC50 or a NOEC limit the civil administrative penalty shall be in an amount up to $40,000.

(e) The Department shall assess a civil administrative penalty for violations of whole effluent toxicity limitations expressed as No Measurable Acute Toxicity (NMAT) based on the extent of the violator's exceedance of the whole effluent toxicity limitation at the midpoint of the following ranges except as adjusted pursuant to (f) below:

1. For any violation of a NMAT limit with greater than or equal to 50% mortality in any test concentration, including 100 percent effluent, the civil administrative penalty shall be in an amount up to $50,000;

2. For any other violation of a NMAT limit the civil administrative penalty shall be in an amount up to $40,000.

(f) The Department may, in its discretion, adjust the amount determined pursuant to (d) or (e) above to assess a civil administrative penalty in an amount no greater than the maximum amount nor less than the minimum amount in the range on the basis of the following factors:

1. The compliance history of the violator;

2. The number, frequency and severity of the violation(s);

3. The measures taken by the violator to mitigate the effects of the current violation or to prevent future violations;

4. The deterrent effect of the penalty;

5. The cooperation of the violator in correcting the violation, remedying the damage caused by the violation and ensuring that the violation does not reoccur;

6. Any unusual or extraordinary costs or impacts directly or indirectly imposed on the public or the environment as a result of the violation; *[and]*

7. Any impacts on the receiving water, including stress upon the aquatic biota, or impairment of receiving water uses, such as for recreational or drinking water supply, resulting from the violation*[.]* ***; and***

8. Other specific circumstances of the violator or violation.

*[(g) The flow factor shall be determined as follows:

1. For discharges to surface water, the flow factor is the product of the following equation, using the flow at the time of the discharge, or if that flow is unavailable the last prior flow reported, expressed in million gallons per day (MGD), except that if the actual flow is less than 0.01MGD then use 0.01MGD in the following equation:

DSW flow factor = (0.25 × Log(flow)) + 0.75

2. For discharges to ground water the flow factor is the product of the following equation, using the flow at the time of the discharge, or if that flow is unavailable the last prior flow reported, expressed in million gallons per day (MGD), except that if the actual flow is less than 0.001MGD then use 0.001MGD in the following equation:

DSW flow factor = (0.25 × Log(flow)) + 1

(h) The receiving water factor shall be determined pursuant to the following table:

Receiving water category[2]	Receiving water factor		
	C1	C2	Other
Surface Water			
FW1			2.5
FW2, TP	2.0		
FW2, TM	2.0	1.5	
FW2, NT	1.5	1.0	
PL			2.25
SC	1.5	1.0	
SE1	2.0	1.5	
SE2	1.5	1.0	
SE3	1.0	0.5	
Delaware River			
Zone 1		1.5	
Zone 2		1.5	
Zone 3		1.0	
Zone 4		1.0	
Zone 5		1.0	
Zone 6	1.5		
Indirect Discharge			1.0

[2]The receiving water classifications in this table are based on definitions of surface water classifications in N.J.A.C. 7:9-4, ground water classifications in N.J.A.C. 7:9-6, and indirect discharge in N.J.A.C. 7:14A-1.9.]*

7:14-8.13 Civil administrative penalty for economic benefit

(a) When the Department determines that the violator has gained an economic benefit from a violation, the Department shall, in addition to any other civil administrative penalty assessed pursuant to this subchapter, include as part of a civil administrative penalty the economic benefit (in dollars) which the violator has realized as a result of not complying, or by delaying compliance, with the requirements of the Water Pollution Control Act, the New Jersey Underground Storage of Hazardous Substances Act or any rule, water quality standard, effluent limitation, administrative order or permit issued pursuant thereto.

(b) Economic benefit shall include:

1. The amount of savings realized from avoided capital or non-capital costs resulting from the violation;

2. The return earned or that may be earned on the amount of the avoided costs;

3. Any benefits accruing to the violator as a result of a competitive market advantage enjoyed by reason of the violation; and

4. Any other benefits resulting from the violation.

(c) The Department shall consider the following factors in determining economic benefit:

1. The amount of capital investments required, and whether they are one-time or recurring;

2. The amount of one-time nondepreciable expenditures;

3. The amount of annual expenses;

4. The useful life of capital;

5. Applicable tax, inflation and discount rates;

6. The amount of low interest financing, the low interest rate, and the corporate debt rate; and

7. Any other factors relevant to economic benefit.

(d) If the total economic benefit was derived from more than one violation, the total economic benefit amount may be apportioned among the violations from which it was derived so as to increase each civil administrative penalty assessment to an amount no greater than $50,000 per violation.

7:14-8.14 Civil administrative penalty for failing to comply with an information request or administrative subpoena, and the destruction of records

(a) The Department may assess a civil administrative penalty pursuant to this section against each violator who fails to completely respond to an information request or administrative subpoena, or destroys records relating to a discharge *[or potential discharge]* to surface water within five years of the discharge, or to a discharge *[or potential discharge]* to ground water at any time without the prior written permission of the Department.

(b) Each day that the violator does not fully respond to any item in an information request or administrative subpoena and each item in an information request or administrative subpoena that is not fully responded to shall be an additional, separate and distinct violation.

(c) The Department shall assess a civil administrative penalty for each failure to completely respond to an information request or administrative subpoena in an amount up to $50,000 based on the following factors:

1. The substantive responsiveness of the violator's response to the information request or administrative subpoena;
2. Number of items in the information request or administrative subpoena which the violator attempted to respond to;
3. Number of items in the information request or administrative subpoena which the violator did not respond to;
4. The timeliness of the violator's response; and
5. Any other relevant factors.

(d) The Department shall assess a civil administrative penalty for the destruction of records in violation of P.L. 1990, c. 28, section 15, based on the conduct of the violator at the midpoint of the following ranges:

1. For each intentional, deliberate, purposeful, knowing or willful act or omission by the violator, the civil administrative penalty shall be in an amount up to $50,000; and
2. For each other violation not identified pursuant to (d)1 above the civil administrative penalty shall be in the amount up to $30,000.

7:14-8.15 Water Supply and Wastewater Operators' Licensing Act and Water Supply Management Act civil administrative penalties

(a) (No change.)

(b) The Department shall consider each violation of each provision of the Water Supply and Wastewater Operators' Licensing Act and the Water Supply Management Act, or any rule, license or administrative order adopted or issued pursuant thereto, as a separate and distinct violation. Each day during which a violation continues shall constitute an additional, separate and distinct offense subjecting the violator to the penalty schedule set forth in (c) below.

(c) through (e) (No change.)

(f) The Department may, in its discretion, adjust the amount determined pursuant to (c) through (e) above to assess a civil administrative penalty in an amount no greater than the maximum amount nor less than the minimum amount in the ranges on the basis of the following factors:

1. The compliance history of the violator;
2. The number, frequency and severity of the violation(s);
3. The measures taken by the violator to mitigate the effects of the current violation or to prevent future violations;
4. The deterrent effect of the penalty;
5. The cooperation of the violator in correcting the violation, remedying any environmental damage caused by the violation and ensuring that the violation does not reoccur; *[and]*
6. Any unusual or extraordinary costs directly or indirectly imposed on the public by the violation*[.]* ***; and***

7. Other specific circumstances of the violator or violation.

7:14-8.16 (No change in text.)

APPENDIX D
WORDING OF FINANCIAL ASSURANCE DOCUMENTS

LETTER OF CREDIT

A letter of credit required by N.J.A.C. 7:14-8.4(a) shall be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted.

Irrevocable Letter of Credit

New Jersey Department of Environmental Protection
CN 029
Trenton, New Jersey 08625

ATTN: Assistant Director, Enforcement
Division of Water Resources

RE: [Name of Violator]
Adjudicatory Hearing Request

Dear Sir or Madam:

We hereby establish our irrevocable standby Letter of Credit No. _____ in the favor of the New Jersey Department of Environmental Protection, at the request and for the account of [violator's name and address of facility at which violation occurred] up to the aggregate amount of [in words] U.S. dollars _____, available upon presentation by the New Jersey Department of Environmental Protection of (1) a sight draft, bearing reference to this irrevocable standby Letter of Credit No. _____, and (2) a signed statement reading as follows:

"I certify that the amount of the draft is payable pursuant to the authority of the Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq.

This Letter of Credit is effective as of [insert month, day, and year] and shall expire on [date at least 1 year later], but such expiration date shall be automatically extended for a period of at least one (1) year on [date] and on each successive expiration date, unless, at least 120 days before the current expiration date, we notify both NJDEP's Assistant Director for Enforcement, Division of Water Resources, CN-029, Trenton, New Jersey, 08625, and [name and address of violator] by certified mail that we have decided not to extend this Letter of Credit beyond the current expiration date. In the event you are so notified, any unused portion of the credit shall be available upon presentation of your sight draft for 120 days after the date of receipt by both NJDEP and [name and address of violator], as shown on the signed return receipts.

Whenever this Letter of Credit is drawn on under and in compliance with the terms of this credit, we shall duly honor such draft upon presentation to us, and we shall deposit the amount of the draft directly into the standby trust fund of [name of violator] or in accordance with your instructions.

We certify that the wording of this Letter of Credit is identical to the wording specified in N.J.A.C. 7:14-8 Appendix A, as such regulations were constituted on [the date shown immediately below].

[Name of issuing institution] shall not cancel this Letter of Credit on the basis of a request from [name violator] until [name of issuing institution] has received written authorization from NJDEP.

This irrevocable standby Letter of Credit is subject to [insert either "the most recent edition of the 'Uniform Customs and Practice for Documentary Credits,' published by the International Chamber of Commerce," or "the Uniform Commercial Code"].

This letter of credit sets forth in full our undertaking, and such undertaking shall not in any way be modified, amended, amplified or limited by reference to any other document, instrument or agreement referred to herein, except for the sight draft and your signed statement referred to herein. Any such reference shall not be deemed to incorporate herein by reference any document, instrument or agreement except for such sight draft and signed statement.

Very truly yours,

[Name of Issuing Institution]
[Signature and Title of Official]
[Printed Name of Official]
[Date]

SURETY BOND

A surety bond guaranteeing payment into a trust fund required by N.J.A.C. 7:14-8.4(a) shall be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted.

Financial Guarantee Bond

RE: ADJUDICATORY HEARING REQUEST
NAME OF VIOLATOR _____
ADDRESS OF FACILITY AT WHICH VIOLATION OCCURRED _____

Date bond executed: _____

Effective date: _____

Principal: [Legal name and business address of violator]

Type of organization [insert "individual", "joint venture", "partnership", or "corporation"]

State of incorporation: _____

[Insert name of violator, location of facility at which the violation occurred, including street address, lot and block number, municipality and county, and the financial assurance guaranteed by this bond]

Total penal sum of bond: _____

Surety bond number: _____

Know All Persons By These Presents, That we, the Principal and Surety(ies) hereto are firmly bound to the New Jersey Department of Environmental Protection, hereinafter NJDEP, in the above penal sum for the payment of which we bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally; provided that, where the Surety(ies) are corporations acting as co-sureties, we, the Sureties, bind ourselves in such sum "jointly and severally" only for the purpose of allowing a joint action or actions against any or all of us, and for all other purposes, each Surety binds itself, jointly and severally with the Principal, for the payment of such sum only as is set forth opposite the name of such Surety, but if no limit of liability is indicated, the limit of liability shall be the full amount of the penal sum.

WHEREAS, the Principal is required to provide financial assurance in an amount equal to the amount of the civil administrative penalty in the Notice of Civil Administrative Penalty Assessment dated [date] as a precondition to requesting an adjudicatory hearing on the Notice of Civil Administrative Penalty Assessment pursuant to N.J.A.C. 7:14-8.4(a), and

WHEREAS, the Principal shall establish a standby trust fund as is required by N.J.A.C. 7:14-8(a)9. when a surety bond is used to provide a mechanism for access by NJDEP to assure payment of the civil administrative penalty in the Notice of Civil Administrative Penalty Assessment dated [date];

NOW, THEREFORE, the conditions of this obligation are such that if the Principal pays the full amount of the civil administrative penalty that is due and owing pursuant to the Notice of Civil Administrative Penalty Assessment, then this obligation shall be null and void, otherwise, it is to remain in full force and effect.

The Surety(ies) shall become liable on this bond obligation only when the Principal has failed to pay the civil administrative penalty when due and owing. Upon notification by the NJDEP that the Principal has failed to perform as guaranteed by this bond, the Surety(ies) shall place funds in the amount guaranteed for the violator into the standby trust fund as directed by the NJDEP.

The liability of the Surety(ies) shall not be discharged by any payment or succession of payments hereunder, unless and until such payment or payments shall amount in the aggregate to the penal sum of the bond, but in no event shall the obligation of the Surety(ies) hereunder exceed the amount of the penal sum.

The Surety(ies) may cancel the bond by sending notice of cancellation by certified mail to the Principal and to the NJDEP Assistant Director for Enforcement, Division of Water Resources, CN-029, Trenton, N.J., 08625; provided, however, the cancellation shall not occur during the 120 days beginning on the date of receipt of the notice of cancellation by both the Principal and the NJDEP, as evidenced by the return receipts.

The Principal may terminate this bond by sending written notice to the Surety(ies); provided, however, that no such notice shall become effective until the Surety(ies) receive(s) written authorization for termination of the bond by the NJDEP.

In Witness Whereof, the Principal and Surety(ies) have executed this Financial Guarantee Bond and have affixed their seals on the date set forth below.

The persons whose signatures appear below hereby certify that they are authorized to execute this surety on behalf of the Principal and Surety(ies) and that the wording of this surety bond is identical to the wording required in N.J.A.C. 7:14-8 Appendix A as constituted on the date the bond was established.

Principal _____

[Signature(s)] _____

Date _____

[Name(s)] _____

[Title(s)] _____

[Corporate seal] _____

[Name and address] _____

State of incorporation: _____

Liability limit: _____

[Signature(s)] _____

Date _____

[Name(s) and title(s)] _____

[Corporate seal] _____

[For every co-surety, provide signature(s), corporate seal, and other information in the same manner as for Surety above.]

Bond premium: _____

STANDBY TRUST AGREEMENT

A Standby Trust Agreement required by N.J.A.C. 7:14-8.4(a) shall be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted.

Standby Trust Agreement

RE: ADJUDICATORY HEARING REQUEST
NOTICE OF CIVIL ADMINISTRATIVE PENALTY ASSESSMENT DATED [date] _____
NAME OF VIOLATOR _____
ADDRESS OF FACILITY AT WHICH VIOLATION OCCURRED _____

This Standby Trust Agreement, hereinafter "Agreement", entered into as of [date] by and between [name and address of the violator], a New Jersey [insert "corporation", "partnership", "association", or "proprietorship"], hereinafter "Grantor" and [name and address of corporate trustee], [insert "incorporated in the State of " or "a national bank"], hereinafter "Trustee".

WHEREAS, the Grantor is required to provide financial assurance in an amount equal to the amount of the civil administrative penalty in the Notice of Civil Administrative Penalty Assessment dated [date] as a precondition to requesting an adjudicatory hearing on the Notice of Civil Administrative Penalty Assessment pursuant to N.J.A.C. 7:14-8.4(a), and

WHEREAS, The Grantor, acting through its duly authorized officer or management official, has selected the Trustee under this Agreement, and the Trustee is willing to act as Trustee.

NOW, THEREFORE, the Grantor and the Trustee agree as follow:

Section 1. Definitions

As used in this Agreement:

(a) The term "Grantor" means the violator who is requesting an adjudicatory hearing on the Notice of Civil Administrative Penalty Assessment referenced above, and any successors or assigns of the Grantor.

(b) The term "Trustee" means the Trustee who enters into the Agreement and any successor Trustee.

Section 2. Identification of Site or Facility at which the Violation(s) referenced in the Notice of Civil Administrative Penalty Assessment Occurred and Amount of Financial Assurance

This Agreement pertains to the site or facility at which the violation(s) referenced in the Notice of Civil Administrative Penalty Assessment occurred and the full amount of the civil administrative penalty in the Notice of Civil Administrative Penalty Assessment dated [date] which is included herein as Attachment A.

Section 3. Establishment of Fund

The Grantor and the Trustee hereby establish a trust fund, hereinafter the "Fund", for the benefit of NJDEP. The Grantor and the Trustee intend that no third party shall have access to the fund except as herein provided. The Fund is established initially as consisting of the total sum of [dollar amount] which is acceptable to the Trustee and NJDEP. Such property and any other property subsequently transferred to the Trustee is referred to as the Fund, together with all earnings and profits thereon, less any payments or distributions made by the Trustee pursuant to this Agreement. The Fund shall be held by the Trustee, IN TRUST, as hereinafter provided. The Trustee shall not be responsible nor shall it undertake any responsibility for the amount or adequacy of, nor any duty to collect from the Grantor, any payments necessary to discharge any liabilities of the Grantor established by the NJDEP.

Section 4. Payment for The Civil Administrative Penalty in the Notice of Civil Administrative Penalty Assessment dated [date]

The Trustee shall make payment from the Fund as the NJDEP Commissioner, or his designee, shall direct, in writing, to provide for the payment of the civil administrative penalty in the Notice of Civil Administrative Penalty Assessment dated [date]. In addition, the Trustee shall refund to the Grantor such amounts the NJDEP specifies in writing. Upon refund such funds shall no longer constitute part of the Fund as defined herein.

Section 5. Payments Comprising the Fund

Payments made to the Trustee for the Fund shall consist of cash or securities acceptable to the Trustee.

Section 6. Trustee Management

At such time as the corpus of the Fund is funded with more than one dollar, the Trustee shall invest and reinvest the principal and income of the Fund and keep the Fund invested as a single fund, without distinction between principal and income, in accordance with general investment policies and guidelines which the Grantor may communicate in writing to the Trustee from time to time, subject, however, to the provisions of this Section. In investing, reinvesting, exchanging, selling and managing the Fund, the Trustee shall discharge his duties with respect to the Fund solely in the interest of the NJDEP as the beneficiary and with the care, skill, prudence and diligence under the circumstances then prevailing which persons of prudence, acting in a like capacity and familiar with such matters, would use in the conduct of an enterprise of a like character and with like aims; except that:

(i) Securities or other obligations of the Grantor, or any other owner or operator of the site or facility at which the violation(s) occurred or any of their affiliates, as defined in the Investment Company Act of 1940, as amended, 15 U.S.C. 80a-2(a), shall not be acquired or held, unless they are securities or other obligations of the Federal or a state government;

(ii) The Trustee is authorized to invest the Fund in time or demand deposits of the Trustee, to the extent insured by an agency of the Federal or state government; and

(iii) The Trustee is authorized to hold cash awaiting investment of distribution univested for a reasonable time and without liability for the payment of interest thereon.

Section 7. Commingling and Investment

The Trustee is expressly authorized in its discretion:

(a) To transfer from time to time any or all of the assets of the Fund to any common, commingled or collective trust fund created by the Trustee in which the Fund is eligible to participate, subject to all of the provisions thereof, to be commingled with the assets of other trusts participating therein; and

(b) To purchase shares in any investment company registered under the Investment Company Act of 1940, 15 U.S.C. 80a-1 et seq., including one which may be created, managed, underwritten, or to which investment advice is rendered or the shares of which are sold by the Trustee. The Trustee may vote such shares in its discretion.

Section 8. Express Powers of Trustee

Without in any way limiting the powers and discretions conferred upon the Trustee by the other provisions of this Agreement or by law, the Trustee is expressly authorized and empowered:

(a) To sell, exchange, convey, transfer or otherwise dispose of any property held by it, by public or private sale. No person dealing with the Trustee shall be bound to see to the application of the purchase money or to inquire into the validity or expedience of any such sale or other disposition;

(b) To make, execute, acknowledge and deliver any and all documents of transfer and conveyance and any and all other instruments that may be necessary or appropriate to carry out the powers herein granted;

(c) To register any securities held in the Fund in its own name or in the name of a nominee and to hold any security in bearer form or in book entry, or to combine certificates representing such securities with certificates of the same issue held by the Trustee in other fiduciary capacities, or to deposit or arrange for the deposit of such securities in a qualified central depository even though, when so deposited, such securities may be merged and held in bulk in the name of the nominee of such depository with other securities deposited therein by another person, or to deposit or arrange for the deposit of any securities issued by the Federal Government of the United States or any agency or instrumentality thereof, with a Federal Reserve bank, but the books and records of the Trustee shall at all times show that all securities are part of the Fund;

(d) To deposit any cash in the Fund in interest-bearing accounts maintained or savings certificates issued by the Trustee, in its separate corporate capacity, or in any other banking institution affiliated with the Trustee, to the extent insured by an agency of the Federal or state government; and

(e) To compromise or otherwise adjust all claims in favor of or against the Fund.

Section 9. Taxes and Expenses

All taxes of any kind that may be assessed or levied against or in respect of the fund and all brokerage commissions incurred by the Fund shall be paid from the Fund. All other expenses incurred by the Trustee in connection with the administration of this Trust, including fees for legal services rendered to the Trustee, the compensation of the Trustee to the extent not paid directly by the Grantor and all other proper charges and disbursements of the Trustee, shall be paid from the Fund.

Section 10. Annual Valuation

The Trustee shall, annually, at least 30 days prior to the anniversary date of establishment of the Fund, furnish to the Grantor and to the NJDEP a statement confirming the value of the Trust. Any securities in the Fund shall be valued at market value as of no more than 60 days prior to the anniversary date of establishment of the Fund. The failure of the Grantor to object in writing to the Trustee within 90 days after the statement has been furnished to the Grantor and the NJDEP shall constitute a conclusively binding assent by the Grantor, barring the Grantor from asserting any claim or liability against the Trustee with respect to matters disclosed in the statement.

Section 11. Advice of Counsel

The Trustee may, from time to time, consult with counsel, who may be counsel to the Grantor, with respect to any questions arising as to the construction of this Agreement or any action to the taken hereunder. The Trustee shall be fully protected, to the extent permitted by law, in acting upon the advice of counsel.

Section 12. Trustee Compensation

The Trustee shall be entitled to reasonable compensation, from time to time, for its services, as agreed upon in writing with the Grantor.

Section 13. Successor Trustee

The Trustee may resign or the Grantor may replace the Trustee, but such resignation or replacement shall not be effective until the Grantor has appointed a successor trustee and this successor accepts the appointment. The successor trustee shall have the same powers and duties as those conferred upon the Trustee hereunder. Upon the successor trustee's acceptance of the appointment, the Trustee shall assign, transfer and pay over to the successor Trustee the funds and properties constituting the Fund. If for any reason, the Grantor cannot or does not act in the event of the resignation of the Trustee, the Trustee may apply to a court of competent jurisdiction for the appointment of a successor Trustee or for instructions. The successor trustee shall specify the date on which it assumes administration of the trust in writing sent to the Grantor, the NJDEP and the present Trustee by certified mail 10 days before such change becomes effective. Any expenses incurred by the Trustee as a result of any of the acts contemplated by this Section shall be paid as provided in Section 9.

Section 14. Successor Grantor

Sixty days prior to the Grantor ceasing to exist, if dissolution is contemplated, the Grantor must notify and provide NJDEP with the names and addresses of any and all successors and assigns along with a notarized acknowledgement from same stating that the successors and assigns assume responsibilities concerning financial assurance.

Section 15. Instructions to the Trustee

All orders, requests and instructions by the Grantor to the Trustee shall be in writing, signed by such persons as are designated in Attachment B or such other designees as the Grantor may designate by amendment to Attachment B. The Trustee shall be fully protected in acting without inquiry in accordance with the Grantor's orders, requests and instructions. All orders, requests and instructions by the NJDEP to the Trustee shall be in writing, signed by the NJDEP Commissioner or his/her designee and the Trustee shall act and shall be fully protected in acting in accordance with such orders, requests and instructions. The Trustee shall have the right to assume, in the absence of written notice to the contrary, that no event constituting a change or a termination of the authority of any person to act on behalf of the Grantor of NJDEP hereunder has occurred.

The Trustee shall have no duty to act in the absence of such orders, requests and instructions from the Grantor and/or NJDEP, except as provided for herein.

Section 16. Amendment of Agreement

This agreement may be amended by an instrument in writing executed jointly by the Grantor or the Grantor's principals, successors, and assigns if Grantor has dissolved, the Trustee and the NJDEP or by the Trustee and the NJDEP if the Grantor ceases to exist and no successors or assigns are named.

Section 17. Irrevocability and Termination

Subject to the right of the parties to amend this Agreement, as provided in Section 16, this Trust shall be irrevocable and shall continue until terminated at the written agreement of the Grantor, the Trustee and the NJDEP or of the Trustee and the NJDEP, if the Grantor ceases to exist. Upon termination of the Trust, all remaining trust property, less final trust administration expenses, shall be delivered to the Grantor.

Section 18. Immunity and Indemnification

The Trustee shall not incur personal liability of any nature in connection with any act or omission, made in good faith, in the administration of this Trust or in carrying out any directions by the Grantor or the NJDEP issued in accordance with the Agreement. The Trustee shall be indemnified and saved harmless by the Grantor or from the Trust Fund, or both, from and against any personal liability to which the Trustee may be subjected by reason of any act or conduct in its official capacity, including all expenses reasonably incurred in its defense in the event the Grantor fails to provide such defense.

Section 19. Choice of Law

This Agreement shall be administered, construed, and enforced according to the laws of the State of New Jersey.

Section 20. Interpretation

As used in this Agreement, words in the singular include the plural and words in the plural include the singular.

The descriptive headings for each Section of this Agreement shall not affect the interpretation or the legal efficacy of this Agreement.

In Witness Whereof, the parties have caused this Agreement to be executed by their respective officer or management officials, duly authorized, and their corporate seals to be hereunto affixed and attested, as of the date set forth below:

[NAME OF GRANTOR]

DATE: _____ By: _____

TITLE: _____

[NAME OF TRUSTEE]

DATE: _____ BY: _____

TITLE: _____

[Grantor shall attach Attachments A and B.]

FULLY FUNDED TRUST

A fully funded trust required by N.J.A.C. 7:14-8.4(a) shall be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted.

Trust Agreement

RE: ADJUDICATORY HEARING REQUEST
NOTICE OF CIVIL ADMINISTRATIVE PENALTY
ASSESSMENT DATED [date] _____
NAME OF VIOLATOR _____
ADDRESS OF FACILITY AT WHICH VIOLATION
OCCURRED _____

This Fully Funded Trust, hereinafter "Agreement", entered into as of [date] by and between [name and address of the violator], a New Jersey [insert "corporation", "partnership", "association", or "proprietorship"], hereinafter "Grantor" and [name and address of corporate trustee], [insert "incorporated in the State of " or "a national bank"], hereinafter "Trustee".

WHEREAS, the Grantor is required to provide financial assurance in an amount equal to the amount of the civil administrative penalty in the Notice of Civil Administrative Penalty Assessment dated [date] as a precondition to requesting an adjudicatory hearing on the Notice of Civil Administrative Penalty Assessment pursuant to N.J.A.C. 7:14-8.4(a), and

WHEREAS, The Grantor, acting through its duly authorized officer or management official, has selected the Trustee under this Agreement, and the Trustee is willing to act as Trustee.

NOW, THEREFORE, the Grantor and the Trustee agree as follow:

Section 1. Definitions

As used in this Agreement:

(a) The term "Grantor" means the violator who is requesting an adjudicatory hearing on the Notice of Civil Administrative Penalty

Assessment referenced above, and any successors or assigns of the Grantor.

(b) The term "Trustee" means the Trustee who enters into the Agreement and any successor Trustee.

Section 2. Identification of Site or Facility at which the Violation(s) referenced in the Notice of Civil Administrative Penalty Assessment Occurred and Amount of Financial Assurance

This Agreement pertains to the site or facility at which the violation(s) referenced in the Notice of Civil Administrative Penalty Assessment occurred and the full amount of the civil administrative penalty in the Notice of Civil Administrative Penalty Assessment dated [date] which is included herein as Attachment A.

Section 3. Establishment of Fund

The Grantor and the Trustee hereby establish a trust fund, hereinafter the "Fund", for the benefit of NJDEP. The Grantor and the Trustee intend that no third party shall have access to the fund except as herein provided. The Fund is established initially as consisting of the total sum of [dollar amount] which is acceptable to the Trustee and NJDEP. Such property and any other property subsequently transferred to the Trustee is referred to as the Fund, together with all earnings and profits thereon, less any payments or distributions made by the Trustee pursuant to this Agreement. The Fund shall be held by the Trustee, IN TRUST, as hereinafter provided. The Trustee shall not be responsible nor shall it undertake any responsibility for the amount or adequacy of, nor any duty to collect from the Grantor, any payments necessary to discharge any liabilities of the Grantor established by the NJDEP.

Section 4. Payment for The Civil Administrative Penalty in the Notice of Civil Administrative Penalty Assessment dated [date]

The Trustee shall make payment from the Fund as the NJDEP Commissioner, or his designee, shall direct, in writing, to provide for the payment for the civil administrative penalty in the Notice of Civil Administrative Penalty Assessment dated [date]. In addition, the Trustee shall refund to the Grantor such amounts the NJDEP specifies in writing. Upon refund such funds shall no longer constitute part of the Fund as defined herein.

Section 5. Payments Comprising the Fund

Payments made to the Trustee for the Fund shall consist of cash or securities acceptable to the Trustee.

Section 6. Trustee Management

At such time as the corpus of the Fund is funded, the Trustee shall invest and reinvest principal and income of the Fund and keep the Fund invested as a single fund, without distinction between principal and income, in accordance with general investment policies and guidelines which the Grantor may communicate in writing to the Trustee from time to time, subject, however, to the provisions of this Section. In investing, reinvesting, exchanging, selling and managing the Fund, the Trustee shall discharge his duties with respect to the Fund solely in the interest of the NJDEP as the beneficiary and with the care, skill, prudence and diligence under the circumstances then prevailing which persons of prudence, acting in a like capacity and familiar with such matters, would use in the conduct of an enterprise of a like character and with like aims; except that:

(i) Securities or other obligations of the Grantor, or any other owner or operator of the site or facility at which the violation(s) occurred or any of their affiliates, as defined in the Investment Company Act of 1940, as amended, 15 U.S.C. 80a-2(a), shall not be acquired or held, unless they are securities or other obligations of the Federal or a state government;

(ii) The Trustee is authorized to invest the Fund in time or demand deposits of the Trustee, to the extent insured by an agency of the Federal or State government; and

(iii) The Trustee is authorized to hold cash awaiting investment of distribution uninvested for a reasonable time and without liability for the payment of interest thereon.

Section 7. Commingling and Investment

The Trustee is expressly authorized in its discretion:

(a) To transfer from time to time any or all of the assets of the Fund to any common, commingled or collective trust fund created by the Trustee in which the Fund is eligible to participate, subject to all of the provisions thereof, to be commingled with the assets of other trusts participating therein; and

(b) To purchase shares in any investment company registered under the Investment Company Act of 1940, 15 U.S.C. 80a-1 et seq., including one which may be created, managed, underwritten, or to which investment advice is rendered or the shares of which are sold by the Trustee. The Trustee may vote such shares in its discretion.

Section 8. Express Powers of Trustee

Without in any way limiting the powers and discretions conferred upon the Trustee by the other provisions of this Agreement or by law, the Trustee is expressly authorized and empowered:

(a) To sell, exchange, convey, transfer or otherwise dispose of any property held by it, by public or private sale. No person dealing with the Trustee shall be bound to see to the application of the purchase money or to inquire into the validity or expedience of any such sale or other disposition;

(b) To make, execute, acknowledge and deliver any and all documents of transfer and conveyance and any and all other instruments that may be necessary or appropriate to carry out the powers herein granted;

(c) To register any securities held in the Fund in its own name or in the name of a nominee and to hold any security in bearer form or in book entry, or to combine certificates representing such securities with certificates of the same issue held by the Trustee in other fiduciary capacities, or to deposit or arrange for the deposit of such securities in a qualified central depository even though, when so deposited, such securities may be merged and held in bulk in the name of the nominee of such depository with other securities deposited therein by another person, or to deposit or arrange for the deposit of any securities issued by the Federal Government of the United States or any agency or instrumentality thereof, with a Federal Reserve bank, but the books and records of the Trustee shall at all times show that all securities are part of the Fund;

(d) To deposit any cash in the Fund in interest-bearing accounts maintained or savings certificates issued by the Trustee, in its separate corporate capacity, or in any other banking institution affiliated with the Trustee, to the extent insured by an agency of the Federal or State government; and

(e) To compromise or otherwise adjust all claims in favor of or against the Fund.

Section 9. Taxes and Expenses

All taxes of any kind that may be assessed or levied against or in respect of the fund and all brokerage commissions incurred by the Fund shall be paid from the Fund. All other expenses incurred by the Trustee in connection with the administration of this Trust, including fees for legal services rendered to the Trustee, the compensation of the Trustee to the extent not paid directly by the Grantor and all other proper charges and disbursements of the Trustee, shall be paid from the Fund.

Section 10. Annual Valuation

The Trustee shall, annually, at least 30 days prior to the anniversary date of establishment of the Fund, furnish to the Grantor and to the NJDEP a statement confirming the value of the Trust. Any securities in the Fund shall be valued at market value as of no more than 60 days prior to the anniversary date of establishment of the Fund. The failure of the Grantor to object in writing to the Trustee within 90 days after the statement has been furnished to the Grantor and the NJDEP shall constitute a conclusively binding assent by the Grantor, barring the Grantor from asserting any claim or liability against the Trustee with respect to matters disclosed in the statement.

Section 11. Advice of Counsel

The Trustee may, from time to time, consult with counsel, who may be counsel to the Grantor, with respect to any question arising

as to the construction of this Agreement or any action to be taken hereunder. The Trustee shall be fully protected, to the extent permitted by law, in acting upon the advice of counsel.

Section 12. Trustee Compensation

The Trustee shall be entitled to reasonable compensation, from time to time, for its services, as agreed upon in writing with the Grantor.

Section 13. Successor Trustee

The Trustee may resign or the Grantor may replace the Trustee, but such resignation or replacement shall not be effective until the Grantor has appointed a successor trustee and this successor accepts the appointment. The successor trustee shall have the same powers and duties as those conferred upon the Trustee hereunder. Upon the successor trustee's acceptance of the appointment, the Trustee shall assign, transfer and pay over to the successor Trustee the funds and properties constituting the Fund. If for any reason, the Grantor cannot or does not act in the event of the resignation of the Trustee, the Trustee may apply to a court of competent jurisdiction for the appointment of a successor Trustee or for instructions. The successor trustee shall specify the date on which it assumes admnistration of the trust in writing sent to the Grantor, the NJDEP and the present Trustee by certified mail 10 days before such change becomes effective. Any expenses incurred by the Trustee as a result of any of the acts contemplated by this Section shall be paid as provided in Section 9.

Section 14. Successor Grantor

Sixty days prior to the Grantor ceasing to exist, if dissolution is contemplated, the Grantor must notify and provide NJDEP with the names and addresses of any and all successors and assigns along with a notarized acknowledgment from same stating that the successors and assigns assume responsibilities concerning financial assurance.

Section 15. Instructions to the Trustee

All orders, requests and instructions by the Grantor to the Trustee shall be in writing, signed by such persons as are designated in Attachment B or such other designees as the Grantor may designate by amendment to Attachment B. The Trustee shall be fully protected in acting without inquiry in accordance with the Grantor's orders, requests and instructions. All orders, requests and instructions by the NJDEP to the Trustee shall be in writing, signed by the NJDEP Commissioner or his/her disignee and the Trustee shall act and shall be fully protected in acting in accordance with such orders, requests and instructions. The Trustee shall have the right to assume, in the absence of written notice to the contrary, that no event constituting a change or a termination of the authority of any person to act on behalf of the Grantor or NJDEP hereunder has occurred.

The Trustee shall have no duty to act in the absence of such orders, requests and instructions from the Grantor and/or NJDEP, except as provided for herein.

Section 16. Amendment of Agreement

This agreement may be amended by an instrument in writing executed jointly by the Grantor or the Grantor's principals, successors, and assigns if Grantor has dissolved, the Trustee and the NJDEP or by the Trustee and the NJDEP if the Grantor ceases to exist and no successors or assigns are named.

Section 17. Irrevocability and Termination

Subject to the right of the parties to amend this Agreement, as provided in Section 16, this Trust shall be irrevocable and shall continue until terminated at the written agreement of the Grantor, the Trustee and the NJDEP or of the Trustee and the NJDEP, if the Grantor ceases to exist. Upon termination of the Trust, all remaining trust property, less final trust administration expenses, shall be delivered to the Grantor.

Section 18. Immunity and Indemnification

The Trustee shall not incur personal liability of any nature in connection with any act or omission, made in good faith, in the administration of this Trust or in carrying out any directions by the Grantor or the NJDEP issued in accordance with the Agreement. The Trustee shall be indemnified and saved harmless by the Grantor or from the Trust Fund, or both, from and against any personal liability to which the Trustee may be subjected by reason of any act or conduct in its official capacity, including all expenses reasonable incurred in its defense in the event that the Grantor fails to provide such defense.

Section 19. Choice of Law

This Agreement shall be administered, construed and enforced according to the laws of the State of New Jersey.

Section 20. Interpretation

As used in this Agreement, words in the singular include the plural and words in the plural include the singular.

The descriptive headings for each Section of this Agreement shall not affect the interpretation or the legal efficacy of this Agreement.

In Witness Whereof, the parties have caused this Agreement to be executed by their respective officer or management officials, duly authorized, and their corporate seals to be hereunto affixed and attested, as of the date set forth below:

[NAME OF GRANTOR]

DATE: _____ BY: _____

TITLE: _____

[NAME OF TRUSTEE]

DATE: _____ BY: _____

TITLE: _____

[Grantor shall attach Attachments A and B.]

CERTIFICATION OF ACKNOWLEDGMENT

A certification of acknowledgment required by N.J.A.C. 7:14-8.4(a) shall be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted.

CERTIFICATION OF ACKNOWLEDGMENT
(Grantor & Trustee)

ADJUDICATORY HEARING REQUEST
NOTICE OF CIVIL ADMINISTRATIVE ASSESSMENT DATED
[date]_____

NAME OF VIOLATOR _____

ADDRESS OF VIOLATOR _____

ADDRESS OF SITE OR FACILITY AT WHICH VIOLATION OCCURRED _____

Amount of Financial Guarantee $ _____

Type of Financial Assurance Posted _____

State of _____

County of _____

On this [date], before me personally came [name of the violator] to me known, who, being by me duly sworn, did depose and say that she/he resides at [address], that she/he is [title] of [corporation], the corporation described in and which executed the above instrument; that she/he knows the seal of the corporation; that the seal affixed to such instruments is such corporate seal; that is so affixed by order of the Board of Directors of the corporation, and that she/he signed her/his name thereto by like other.

[Signature of Notary Public]

7:14A-1.9 Definitions

As used in this chapter, the following words and terms shall have the following meanings.

...

"Bypass" means the anticipated or unanticipated intentional diversion of waste streams from any portion of a treatment works.

...

"Delegated local agency" means a local agency with an industrial pretreatment program approved by the Department.

...

"Discharge" means an intentional or unintentional action or omission resulting in the releasing, spilling, leaking, pumping, pouring, emitting, emptying, or dumping of a pollutant into the waters of the State, onto land or into wells from which the pollutant might flow or drain into such waters, or into waters or onto lands outside the jurisdiction of the State which pollutant enters the waters of the State, and shall include the release of any pollutant into a municipal treatment works.

...

"Discharge Monitoring Report" or "DMR" means the *[EPA]* ***Environmental Protection Agencies current*** uniform national form, including any subsequent additions, revisions, modifications and replacements, for the reporting of self-monitoring results by permittees, and includes Baseline Monitoring Reports and BMRs.

...

"Effluent limitation" means any restriction on quantities, quality, discharge rates and concentration of chemical, physical, thermal, biological, and other constituents of pollutants established by permit, or imposed as an interim enforcement limit pursuant to an administrative order, including an administrative consent order.

["Federal Act" means the "Clean Water Act of 1977" P.L. 95-217.33 U.S.C. 1251 et seq. and any amendments thereto.]

"Federal Act" means the "Federal Water Pollution Control Act Amendments of 1972" (Public Law 92-500; 33 U.S.C. 1251 et seq.), including any subsequent amendments.

...

"Hazardous pollutant" means:

1. Any toxic pollutant*[s identified pursuant to Section 307 of the Federal Act or Section 4 of the State Act and those pollutants, or combinations 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 food chains, may 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]*;

2. Any hazardous substance *[designated under 40 CFR Part 116 pursuant to Section 311 of the Federal Act, the "Spill Compensation and Control Act," N.J.S.A. 58:10-23.11 et seq., or Section 4 of the State Act]* ***as defined pursuant to section 3 of P.L. 1976, c. 141 (N.J.S.A. 58:10-23.11b)****;

3. Any substance regulated as a pesticide under the Federal Insecticide, Fungicide and Rodenticide Act, 7 U.S.C. §*[135]* ***136**** et seq.;

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

5. Any substance *[listed]* ***identified**** as a known carcinogen by the International Agency for Research on Cancer; *[and]* ***or****

6. *[Any solid waste that is defined or identified as a hazardous waste pursuant to the "Solid Waste Management Act," N.J.S.A. 13:1E-1 et seq., in N.J.A.C. 7:26-8 or pursuant to 40 CFR Part 261.]* ***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. 194-580 (42 U.S.C. §6901 et seq.).****

...

"Hazardous waste" means any solid waste that is defined or identified as a hazardous waste pursuant to the Solid Waste Management Act, N.J.S.A. 13:1E-1 et seq. in N.J.A.C. 7:26-8 or pursuant to 40 CFR Part 261.

...

"LC50" means the median lethal concentration of a toxic substance, including an effluent, expressed as a statistical estimate of the concentration that is lethal to 50 percent of the test organisms under specified test conditions, based on the results of an acute toxicity test. For purposes of this subchapter, it includes an EC50, the median effective concentration, based on daphnid immobilization.

...

"Local agency" means a political subdivision of the State, or an agency or instrumentality thereof, that owns or operates a municipal treatment works.

"Major facility" means any facility or activity classified as such by the Administrator of the United States Environmental Protection Agency, or his or her representative, in conjunction with the Department, and includes industrial facilities and municipal treatment works.

...

"Monitoring report form" means the standard Department form, including any subsequent additions, revisions or modifications, for the reporting of self-monitoring results by permittees pursuant to certain DGW permits.

...

"NOEC" or "no observable effect concentration" means the highest concentration of a toxic substance, including an effluent, that has no adverse effect on survival, growth or reproduction of test organisms based upon the results of chronic toxicity testing.

...

"Permit" means an authorization, license, or equivalent control document issued by the Department to implement the requirements of this chapter even where any or all of the conditions of the permit have been stayed. ***A permittee is not subject to enforcement for an exceedance of any permit conditions which have been stayed.**** Permit does not include any permit which requires EPA review pursuant to 40 CFR Part 123.75, such as a "draft permit" or a "proposed permit." Permit includes a letter of agreement entered into between a delegated local agency and a user of its municipal treatment works, setting effluent limitations and other conditions on the user of the agency's municipal treatment works.

...

"Schedule of compliance" or "compliance schedule" means a schedule of remedial measures including an enforceable sequence of actions or operations leading to compliance with water quality standards, an effluent limitation or other limitation, prohibition or standard.

...

"Serious violation" means an exceedance, at *[any]* ***a**** discharge point source, of an effluent limitation, except color, *[unless the department uses, on a case-by-case basis, a more stringent factor of exceedance to determine a serious violation and states the specific reasons therefor, which may include the potential for harm to human health or the environment,]* ***set forth in a permit, administrative order, or administrative consent agreement, including interim enforcement limits,**** as follows:

1. For effluent limitations for pollutants that are measured by concentration or mass, except for whole effluent toxicity;

i. Violations of an effluent limitation that is expressed as a monthly average;

(1) By 20 percent or more for a hazardous pollutant; and

(2) By 40 percent or more for a nonhazardous pollutant;

ii. Violations of an effluent limitation that is expressed as a daily maximum or daily minimum without a monthly average;

(1) By 20 percent or more of the average of all of the daily maximum or minimum values for hazardous pollutant; and

(2) By 40 percent or more of the average of all of the daily maximum or minimum values for a nonhazardous pollutant;

2. For effluent limitations for whole effluent toxicity *[and pollutants that are not measured by concentration or mass]* as follows:

[i. Any violation of an effluent limitation for pH of at least two but less than three standard units outside the range of the pH effluent limitation; and]

*[ii.]***i.*** For any violation of an LC50 or a NOEC limit when, upon subtracting the toxicity test result from the whole effluent toxicity limit, the difference is as follows:

Whole Effluent Toxicity Limit (% Effluent)	Difference (% Effluent)
greater than or equal to 80 and less than or equal to 100	greater than or equal to 20
greater than or equal to 50 and less than 80	greater than or equal to 15
greater than 10 and less than 50	greater than or equal to 10
less than or equal to 10	greater than or equal to 9

*[iii.]***ii.*** For any violation of whole effluent toxicity limitations expressed as No Measurable Acute Toxicity (NMAT) with greater than or equal to 50 percent mortality in any test concentration, including 100 percent effluent; and

3. Notwithstanding the above, the Department may utilize, on a case-by-case basis, a more stringent factor of exceedance to determine a serious violation if the Department states the specific reasons therefor, which may include the potential for harm to human health or the environment.

...

"Significant noncomplier" or "SNC" means any person, except a local agency for an exceedance of an effluent limitation for flow, who commits any of the violations described below, unless the Department uses, on a case-by-case basis, a more stringent frequency or factor of exceedance to determine a significant noncomplier and the Department states the specific reasons therefor, which may include the potential for harm to human health or the environment. Violations which cause a person to become or remain an SNC include:

1. A serious violation for the same pollutant, at the same discharge point source, in any two months of any consecutive six month period;

2. Exceedance of an effluent limitation expressed as a monthly average, for the same pollutant, at the same discharge point source, by any amount in any four months of any consecutive six month period;

3. If there is not an effluent limitation for a particular pollutant expressed as a monthly average, exceedance of the monthly average of the daily maximums for the effluent limitation, for the same pollutant, at the same discharge point source, by any amount in any four months of any consecutive six month period; or

4. Failure to submit a completed discharge monitoring report in any two months of any consecutive six month period.

...

"Toxic pollutant" means *[those pollutants,]* ***any pollutant identified pursuant to the Federal Act or any pollutant*** or *[combinations]* ***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 food chains, *[may]* ***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. *[Toxic pollutants shall include but not be limited to those pollutants identified pursuant to Section 307 of the Federal Act or Section 4 of the State Act.]*

"Upset" means an exceptional incident in which there is unintentional and temporary noncompliance with an effluent limitation because of an event beyond the reasonable control of the permittee, including fire, riot, sabotage, or a flood, storm event, natural cause, or other act of God, or other similar circumstance, which is the cause of the violation. "Upset" also includes noncompliance consequent to the performance of maintenance operations for which a prior exception has been granted by the Department or a delegated local agency. An upset does not include noncompliance to the extent caused by operational error, improperly designed facilities, inadequate treatment facilities, lack of preventative maintenance, or careless or improper operation.

7:14A-2.5 Conditions applicable to all permits

(a) Permittees shall comply with all of the following:

1. through 11. (No change.)

12. The permittee shall provide for monitoring, reporting and records as follows:

i. through viii. (No change.)

ix. All permittees with effluent limits expressed as daily maximums or minimums without a monthly average for that particular parameter shall also report, in addition to all other applicable reporting requirements, the average of all daily maximum or minimum values obtained during the reporting month. The Department will use this average of all daily maximum or minimum values to determine whether or not a violation of a daily maximum or minimum is a serious violation. The violation of a daily maximum or minimum shall be a serious violation if the average of all daily maximum or minimum values reported varies from the effluent limit as follows:

(1) By 20 percent or more for a hazardous pollutant; and

(2) By 40 percent or more for a nonhazardous pollutant.

x. All permittees with a point source discharge required to submit discharge monitoring reports to the Department shall submit the required reporting forms to the Department on a monthly basis for all those paramerers that are required to be monitored during that particular month.

xi. Any permittee who either reports effluent values that would make the permittee a serious violator or otherwise becomes a serious violator for one or more specific parameters for which the permittee is required to monitor and report less frequently than monthly, ***or fails to submit a completed discharge monitoring report,*** shall automatically adjust its monitoring and reporting frequency for that parameter at that discharge point to monthly, beginning the first month after the month in which the permittee was required to submit ***the completed discharge monitoring report or*** the discharge monitoring report to the Department which results in the permittee becoming a serious violator, whether or not the permittee has raised or intends to raise any affirmative defense to, or otherwise contest, ***the failure to submit the completed discharge monitoring report or*** any of the violations that would otherwise make the permittee a serious violator. The permittee shall continue this monthly schedule until the permittee has submitted six consecutive monthly discharge monitoring reports which show compliance with the particular parameter at the particular discharge point, at which time the permittee may resume the original schedule in its permit.

13.-15. (No change.)

7:14A-3.10 Additional conditions concerning reporting requirements applicable to all DSW permits

(a) All permittees, including all owners and operators which are required to obtain a treatment works approval, shall comply with the reporting requirements in this section.

(b) All permittees shall comply with the reporting requirements of (c) below for any of the following:

1. Any discharge that causes injury to persons, or damage to the environment;

2. Any discharge which could constitute a threat to human health or the environment;

3. Any discharge in violation of an effluent limitation for a toxic pollutant;

4. Any discharge in violation of the effluent limitation upstream of a potable water intake or well field; and

5. *[Any unpermitted discharge not otherwise identified in 1 through 4 above.]* ***Any discharge of a hazardous pollutant without a permit.***

(c) Any permittee discharging polluants as identified in (b) above shall comply with the reporting requirements in this subsection.

1. The permittee shall, within two hours after the commencement of the discharge or of the permittee becoming aware of the discharge, verbally communicate the following information to the Department via the DEP Hotline at (609) 292-7172:

i. A description of the discharge, including the time of the discharge, the location of discharge, the volume of the discharge, the concentration of pollutants discharged, and the receiving water of the discharge;

ii. Steps the permittee will take to determine the cause of the permit noncompliance; and

iii. Steps the permittee will take to reduce and eliminate the noncomplying discharge;

2. The permittee shall, within 24 hours after the *[cessation]* ***commencement of the discharge or of the permittee becoming aware*** of the discharge, verbally communicate the following information to the Department via the DEP Hotline at (609) 292-7172:

i. The duration of the discharge, including the exact dates and times, and if the noncompliance has not been corrected, the anticipated time when the permittee will return the discharge to compliance;

ii. The cause of the noncompliance;

iii. Steps the permittee is taking to reduce, eliminate, and prevent reoccurrence of the noncomplying discharge;

iv. An estimate of the threat to human health or the environment posed by the discharge;

v. The measures the permittee has taken or is taking to remediate the problem and any damage or injury to human health or the environment, and to avoid a repetition of the problem; and

vi. Any revisions to the information required by (c)1 above.

3. The permittee shall, within five days after the *[cessation]* ***commencement of the discharge or of the permittee becoming aware*** of the discharge, submit in writing to the person identified in (c)4 below all of the information required in (c)1 and 2 above if the permittee had not previously submitted the information in writing to the Department. The Department must receive the information required by the preceding paragraph within the five-day period in order for the violator to meet this requirement. If the permittee becomes aware that it has failed to submit any relevant facts required in (c)1 or (2) above, or submitted incorrect information required in (c)1 or (2) above, the permittee shall immediately submit such facts or information to the Department.

4. The permittee shall submit the written notice required pursuant to (c)3 above to:

Assistant Director of Enforcement
Division of Water Resources
New Jersey Department of Environmental Protection
401 East State Street
CN 029
Trenton, New Jersey 08625

(d) Any permittee who discharges any pollutant in violation of its maximum daily discharge limitation not otherwise covered in (b) above shall, within 24 hours after *[the commencement of the discharge]* ***the permittee knew or should have known of the violation***, verbally communicate the violation to the Department via the DEP Hotline at (609) 292-7172.

(e) A permittee shall not allow an anticipated bypass to occur unless the permittee demonstrates, to the satisfaction of the Department, that:

1. The anticipated bypass is unavoidable to prevent loss of life, personal injury, or severe property damage;

2. There were no feasible alternatives to the anticipated bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of equipment downtime;

3. The anticipated bypass will not occur during normal periods of equipment downtime or preventive maintenance when back-up equipment can be installed to avoid the anticipated bypass;

4. The permittee compiled with the reporting requirements in (f) below; and

5. The permittee received the Department's written prior approval for the anticipated bypass.

(f) All permittees shall comply with the reporting requirements for anticipated bypasses in this subsection.

1. The permittee shall, *[within 30 days if possible, but in no case less than]* ***if possible, at least*** 10 days prior to the date of the anticipated bypass, provide prior written notice of the anticipated bypass to the Department, including:

i. The exact dates and times of the anticipated commencement and end of the anticipated bypass;

ii. The permittee's rationale as to why the anticipated bypass has to occur;

iii. That the permittee will be properly operating the facility at the time of the anticipated bypass;

iv. That the anticipated bypass is unavoidable to prevent loss of life, personal injury, or severe property damage, including the name, title, address and telephone number of the individual that made the determination for the permittee, the data and information upon which that individual made the determination and any other information the Department requests;

v. That there is no feasible alternative to the anticipated bypass, including but not limited to the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of downtime; and

vi. That the anticipated bypass will not occur during normal periods of equipment downtime or preventive maintenance when back-up equipment can be installed to avoid the anticipated bypass.

(g) Any permittee who has an unanticipated bypass not otherwise covered in (b) above shall comply with the reporting requirements for unanticipated bypasses in this subsection.

1. The permittee shall, within *[two]* ***24*** hours after the commencement of the *[discharge]* ***unanticipated bypass*** or of the permittee becoming aware of the *[discharge]* ***unanticipated bypass***, verbally communicate the following information to the Department via the DEP Hotline at (609) 292-7172.

i. A description of the discharge, including the time of the discharge, the location of discharge, the volume of the discharge, the concentration of pollutants discharged, and the receiving water of the discharge;

ii. The duration of the unanticipated bypass, including the dates and times of the commencement and end, or anticipated end of the unanticipated bypass, and if the reason for the unanticipated bypass has not been corrected, the anticipated time when the permittee will correct the situation to remove the need for the unanticipated bypass;

iii. The cause of the unanticipated bypass;*

*[ii.]*** ***iv.**** Steps the permittee will take to determine the cause of the *[permit noncompliance]* ***unanticipated bypass***; *[and]*

*[iii.]*** ***v.**** Steps the permittee will take to reduce and eliminate the noncomplying discharge*[.]***; ***and****

vi. Steps the permittee is taking to reduce, eliminate, and prevent reoccurrence of the unanticipated bypass.*

*[2. The permittee shall, within 24 hours after the cessation of an unanticipated bypass, verbally communicate the following information to the Department via the DEP Hotline at (609) 292-7172:

i. The duration of the unanticipated bypass, including the exact dates and times of the commencement and end, or anticipated end of the unanticipated bypass, and if the reason for the unanticipated bypass has not been corrected, the anticipated time when the permittee will correct the situation to remove the need for the unanticipated bypass;

ii. A description of the discharge, including the location of discharge, the volume of the discharge, the concentration of pollutants discharged, and the receiving water of the discharge;

iii. The cause of the unanticipated bypass; and

iv. Steps the permittee is taking to reduce, eliminate, and prevent reoccurence of the unanticipated bypass.]*

*[3.]*** ***2.**** The permittee shall, within five days after the *[cessation]* ***commencement of the unanticipated bypass or of the permittee becoming aware*** of the unanticipated bypass, submit written documentation, to the person identified in (g)*[4]*** ***3*** below, including all of the information listed below. The Department must receive the information required by (g)*[3]*** ***2***; through ix below within the five-day period in order for the violator to meet this requirement. If the permittee becomes aware that it has failed to submit any relevant facts required in (g)1*[or 2]* above, or submitted incorrect information required in (g)1*[or 2]* above, the permittee shall immediately submit such facts or information to the Department.

i. All of the information required by (g)1 above;

ii. All properly signed, contemporaneous operating logs, or other relevant evidence, on the circumstances of the violation;

iii. The reasons that the unanticipated bypass occurred, including the circumstances leading to the unanticipated bypass;

iv. Evidence that the permittee was properly operating the facility at the time of the bypass;

v. Evidence that the permittee submitted notice of the unanticipated bypass as required pursuant to (g)1 above, including the name, title, address and telephone number of the individual who satisfied this requirement, the date and specific time the individual notified the Department for the permittee, the specific method that the individual used to notify the Department, and the name and title of the individual within the Department to which the permittee gave such notice;

vi. Evidence that the permittee complied with all remedial measures the Department required;

vii. The violator's rationale for and all supporting documentation that the bypass was unavoidable to prevent loss of life, personal injury, or severe property damage, including the name, title, address and telephone number of the individual that made the determination for the permittee, the data and information upon which that individual made the determination and any other information the Department requests;

viii. Evidence that there was no feasible alternative to the unanticipated bypass, including but not limited to the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of downtime; and

ix. Evidence that the unanticipated bypass did not occur during normal periods of equipment downtime or preventive maintenance when back-up equipment should have been installed to avoid the unanticipated bypass.

*[4.]**3.* The permittee shall submit the written notice required pursuant to (g)*[3]**2* above to:

Assistant Director of Enforcement
Division of Water Resources
New Jersey Department of Environmental Protection
401 East State Street
CN 029
Trenton, New Jersey 08625

(h) Any permittee who has an upset not otherwise covered in (b) above shall comply with the reporting requirements for upsets in this subsection.

1. The permittee shall, within *[two]* **24* hours after the commencement of the *[discharge]* **upset* or of the permittee becoming aware of the *[discharge]* **upset*, verbally communicate the following information to the Department via the DEP Hotline at (609) 292-7172:

i. A description of the discharge, including the time of the discharge, the location of discharge, the volume of the discharge, the concentration of pollutants discharged, and the receiving water of the discharge;

ii. The duration of the discharge, including the dates and times, and if the reason for the upset has not been corrected, the anticipated time when the permittee will return the discharge to compliance;

iii. The cause of the update;*

*[ii.]**iv.* Steps the permittee will take to determine the cause of the *[permit noncompliance]* **upset*; *[and]*

*[iii.]**v.* Steps the permittee will take to reduce and eliminate the noncomplying discharge*[.]* *; **and***

vi. Steps the permittee is taking to reduce, eliminate, and prevent reoccurrence of the upset.

*[2. The permittee shall, within 24 hours after the cessation of an upset, verbally communicate the following information to the Department via the DEP Hotline at (609) 292-7172:

i. The duration of the discharge, including the exact dates and times, and if the reason for the upset has not been corrected, the anticipated time when the permittee will return the discharge to compliance;

ii. A description of the discharge, including the location of discharge, the volume of the discharge, the concentration of pollutants discharged, and the receiving water of the discharge;

iii. The cause of the upset; and

iv. Steps the permittee is taking to reduce, eliminate, and prevent reoccurrence of the upset.]*

*[3.]**2.* The permittee shall, within five days after the *[cessation]* ***commencement of an upset or of the permittee becoming aware**** of an upset, submit written documentation, to the person identified in (h)*[4]**3* below, including properly signed, contemporaneous operating logs, or other relevant evidence, on the circumstances of the violation, and including all of the information listed below. The Department must receive the information required by (h)*[3]**2* through vi below within the five-day period in order for the violator to meet this requirement. If the permittee becomes aware that it has failed to submit any relevant facts required in (h)1 *[or 2]* above, or submitted incorrect information required in (h)1 *[and 2]* above, the permittee shall immediately submit such facts or information to the Department.

i. All of the information required by (h)1 above;

ii. All properly signed, contemporaneous operating logs, or other relevant evidence, on the circumstances of the *[violation]* ***upset***;

iii. Reasons that the upset occurred, including the cause of the upset and the identity of the person causing the upset; except that, in the case of a treatment works, the local agency may certify that despite a good faith effort it was unable to identify the cause of the upset, or the person causing the upset;

iv. Evidence that the permittee was properly operating the facility at the time of the upset;

v. Evidence that the permittee submitted notice of the upset as required pursuant to (h)1 above, or, in the case of an upset resulting from the performance by the permittee of maintenance operations, the permittee provided prior notice and received prior written approval therefor from the Department, including the name, title, address and telephone number of the individual who satisfied this requirement, the date and specific time the individual notified the Department for the permittee, the specific method that the individual used to notify the Department, and the name and title of the individual within the Department to which the permittee gave such notice; and

vi. Evidence that the permittee complied with all remedial measures the Department required.

3. The permittee shall submit the written notice required pursuant to (h)2 above to:

Assistant Director of Enforcement
Division of Water Resources
New Jersey Department of Environmental Protection
401 East State Street
CN 029
Trenton, New Jersey 08625

7:14A-8.13 (Reserved)

7:18-6.6 Methodology

(a) through (u) (No change.)

(v) During short term tests, deaths in the controls should be virtually absent. Mortality of the control test organisms greater than 10 percent shall invalidate the test.

(w) through (ab) (No change.)

PUBLIC NOTICES

THE LEGISLATURE

(a)

OFFICE OF LEGISLATIVE SERVICES

Notice of New Law Changing State Reporting Requirements

Take notice that a new law, P.L.1991, c.164, was enacted this June 19, 1991, directing that all official reports and other documents of State officers and agencies required by law to be sent to the Legislature, be sent only to the Senate President, General Assembly Speaker and the Director of the Office of Public Information (OPI), in the Office of Legislative Services.

Under the law, one copy shall be sent to the President, one copy to the Speaker, and five copies to the Director of Public Information. The Director of OPI will prepare a notice containing the publication's title, authoring agency and a brief synopsis. This information will then be disseminated to the members of the Legislature. Interested members can request copies of the complete publication from OPI.

This law does not apply to reporting requirements specified in the State Constitution or information required by law to be submitted to the Legislative Counsel, State Auditor, Legislative Budget and Finance Officer, the Joint Oversight Committee, or the Joint Legislative Committee on Ethical Standards. It also does not affect N.J.S.A. 52:14-25.1, which requires that 75 copies of all official State documents be submitted to the state library.

For further information, contact Arthur S. Applebaum, Director of Public Information, Office of Legislative Services, at (609) 292-4661. Copies of the law are available by calling (609) 292-6395.

ENVIRONMENTAL PROTECTION

(b)

DIVISION OF SOLID WASTE MANAGEMENT BOARD OF PUBLIC UTILITIES

Notice of Action on Petition for Rulemaking

N.J.A.C. 7:26-2.13 and 7:26-6.3

Petitioner: New Jersey Auto and Metal Recyclers Association.

Take notice that on March 11, 1991, the Department of Environmental Protection (Department) and on March 13, 1991, the Board of Public Utilities received a petition for rulemaking concerning the amendment of the definition of Type 27 waste and the amendment of the rule which exempts certain classes of waste from interdistrict and intradistrict waste flow orders. Public notice of this petition was published in the July 15, 1991 New Jersey Register at 23 N.J.R. 2187(c).

In accordance with N.J.A.C. 1:30-3.6 and after thorough review of the petition, the Department has determined that the matter will require further deliberation and consideration in order to analyze fully the physical and chemical characteristics of Auto Shredder Residue through data supplied by the Petitioner's members using current State and Federal analytical test methods as instructed by the Department's Division of Solid Waste Management. Upon the conclusion of the Department's deliberations, on or about July 31, 1991, the decision will be mailed to the petitioners and published in a future New Jersey Register.

A copy of this notice had been mailed to the petitioner, as required by N.J.A.C. 1:30-3.6.

(c)

DIVISION OF WATER RESOURCES

Amendment to the Cape May County Water Quality Management Plan

Public Notice

Take notice that an amendment to the Cape May County Water Quality Management (WQM) Plan has been proposed to disconnect the nine U.S. Coast Guard housing units in Upper Township, Cape May County, from the New Jersey Marine Sciences Consortium's (NJMSC) sewage treatment plant (STP) and treat the wastewater on site via an on-site groundwater disposal system. The average population of the nine homes is 24 and the average daily flow is 2,400 gallons per day. If a groundwater discharge is found not to be feasible, the housing units will remain connected to the NJMSC STP.

This notice is being given to inform the public that a plan amendment has been developed for the Cape May County WQM Plan. All information dealing with the aforesaid WQM Plan and the proposed amendment is located at the Cape May County Planning Department, 14-34 Mechanic Street, Cape May Court House, New Jersey 08210, and the New Jersey Department of Environmental Protection (NJDEP), Division of Water Resources, Bureau of Water Quality Planning, 401 East State Street, 3rd Floor, CN-029, Trenton, New Jersey 08625. It is available for inspection between 8:30 A.M. and 4:00 P.M., Monday through Friday. An appointment to inspect the documents may be arranged by calling the Cape May County Planning Department at (609) 465-1083 or the Bureau of Water Quality Planning at (609) 633-7026.

Interested persons may submit written comments on the amendment to Mr. Grover Webber, Cape May County Planning Department at the address cited above. A copy of the comments should be sent to Mr. Edward Frankel of the Bureau of Water Quality Planning, at the NJDEP address cited above. All comments must be submitted wihin 30 days of the date of this public notice. All comments submitted by interested persons in response to this notice, within the time limit, shall also be considered by NJDEP with respect to the amendment request.

Any interested persons may request in writing that NJDEP hold a nonadversarial public hearing on the amendment or extend the public comment period in this notice up to 30 additional days. These requests must state the nature of the issues to be raised at the proposed hearing or state the reasons why the proposed extension is necessary. These requests must be submitted within 30 days of this public notice to Mr. Frankel at the NJDEP address cited above. If a public hearing for the amendment is held, the public comment period in this notice shall be extended 15 days after the close of the public hearing.

(d)

DIVISION OF WATER RESOURCES

Amendment to the Ocean County Water Quality Management Plan

Public Notice

Take notice that on July 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 Ocean County Water Quality Management Plan was adopted by the Department. This amendment approves a Wastewater Management Plan for Little Egg Harbor Township. The plan delineates the limits of the existing sewer service areas, proposed sewer service areas, individual subsurface sewage disposal areas, as well as parks, preserves, and other environmentally sensitive areas. The wastewater flows are treated at the Ocean County Southern Wastewater Pollution Control Facility.

(e)

DIVISION OF WATER RESOURCES

Amendment to the Monmouth County Water Quality Management Plan

Public Notice

Take notice that on June 17, 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 identifies an on-site treatment facility discharging 5,900 gallons per day to ground water. The project is located at Lot 26, Block 911 in Wall Township.

(a)

DIVISION OF WATER RESOURCES

Amendment to the Northeast Water Quality Management Plan

Public Notice

Take notice that on June 26, 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 Northeast Water Quality Management (WQM) Plan was adopted by the Department. This amendment adopts a Wastewater Management Plan (WMP) for the Pequannock River Basin Regional Sewerage Authority (PRBRSA) dated October 1990, Revised January 1991. The WMP delineates the existing and future sewer service areas within Butler, Bloomingdale, Kinnelon and Riverdale to be served by the Pequannock, Lincoln Park and Fairfield Sewerage Authority (PLPFSA) sewage treatment plant (STP). Four existing permitted wastewater treatment facilities (Camp Vacamas STP, Kinnelon High School STP, NJDOE Armory Facility: ORG Maintenance Shop #2, and RAIA Industrial Batch Plant) are proposed to be abandoned and/or tied into the PLPFSA STP. Also, notwithstanding N.J.A.C. 7:15-5.11(b), PRBRSA will retain WMP responsibility for the sewer service areas within the PRBRSA district interconnected with the PLPFSA STP. The Borough of Riverdale will be included in the PRBRSA WMP area through this WMP.

(b)

DIVISION OF WATER RESOURCES

Amendment to the Northeast Water Quality Management Plan

Public Notice

Take notice that on June 26, 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 Northeast Water Quality Management (WQM) Plan was adopted by the Department. This amendment adopts a Wastewater Management Plan (WMP) for the Joint Meeting of Essex and Union Counties (Joint Meeting). The WMP provides for a 20-year projected wastewater flow of 78.17 million gallons per day to be treated by the Joint Meeting's sewage treatment plant and delineates a sewer service area for that facility. WMP responsibility for the portions of East Orange, Newark, and Orange which are in the Passaic Valley Sewerage Commissioners (PVSC) district, but served by the Joint Meeting is transferred from the PVSC to the Joint Meeting. WMP responsibility for the portions of Roselle Park which are in the Rahway Valley Sewerage Authority (RVSA) district, but served by the Joint Meeting, is transferred from the RVSA to the Joint Meeting. WMP responsibility for the portions of Livingston Township served by the Joint Meeting, is transferred from Livingston Township to the Joint Meeting. Notwithstanding N.J.A.C. 7:15-5.11(b), upon adoption of this WMP, the Joint Meeting will not assume WMP responsibility for any part of New Providence identified as within the Joint Meeting sewer service area. New Providence will remain as the WMP agency for New Providence.

(c)

DIVISION OF WATER RESOURCES

Amendment to the Upper Raritan Water Quality Management Plan

Public Notice

Take notice that an amendment to the Upper Raritan Water Quality Management (WQM) Plan has been submitted for approval. This amendment would adopt a Wastewater Management Plan (WMP) for the Raritan Township Municipal Utilities Authority (RTMUA). The WMP proposes: expansion of the RTMUA treatment plant to accommodate wastewater flows of 4.4 million gallons per day from Raritan Township, Readington Township and Flemington Borough; changes and clarifications of the RTMUA sewer service area; expansion of the RTMUA sewer service area to include the Hedgerow Estates/Park Lane Estates developments in Readington Township; identification of a non-surface discharge service area for facilities less than 20,000 gallons per day, and; identification of individual subsurface sewage disposal system service areas.

This notice is being given to inform the public that a plan amendment has been developed for the Upper Raritan WQM Plan. All information dealing with the aforesaid WQM Plan and the proposed amendment is located at the office of NJDEP, Division of Water Resources, Bureau of Water Quality Planning, 401 East State Street, 3rd Floor, CN-029, Trenton, New Jersey 08625. It is available for inspection between 8:30 A.M. and 4:00 P.M., Monday through Friday. An appointment to inspect the documents may be arranged by calling the Bureau of Water Quality Planning at (609) 633-7026.

A public meeting on the Readington Township portion of the amendment will be held by the Readington Township Committee on Tuesday, September 3, 1991. The meeting will be at 8:00 P.M. in the Readington Township Municipal Building, 105 Route 523, Whitehouse Station, New Jersey 08889, in the main courtroom.

Interested persons should submit written comments on the amendment to Mr. Ed Frankel, Bureau of Water Quality Planning, at the NJDEP address above. A copy of the comments should be sent to Dr. Jiunn-Min Huang, General Environmental Consultants, Inc., 2 North Dean Street, Englewood, New Jersey 07631. All comments must be submitted within 15 days following the public meeting. All comments submitted by interested persons in response to this notice, within the time limit, shall be considered by NJDEP with respect to the amendment request.

Any interested person may request in writing that NJDEP hold a nonadversarial public hearing on the amendment (or extend the public comment period in this notice up to 30 additional days). These requests must state the nature of the issues to be raised at the proposed hearing and must be submitted within 30 days of the date of this public notice to Mr. Chalofsky at the NJDEP address cited above. If a public hearing is held, the public comment period in this notice shall be extended 15 days after the close of the public hearing.

(d)

DIVISION OF WATER RESOURCES

Amendment to the Upper Delaware Water Quality Management Plan

Public Notice

Take notice that on June 17, 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 Upper Delaware Water Quality Management Plan was adopted by the Department. This amendment identifies a proposed on-site groundwater disposal facility to replace and expand the existing Frelinghuysen Elementary School wastewater treatment facility in Frelinghuysen Township, Warren County. The proposed facility will be sized to accommodate 401 persons.

(e)

DIVISION OF WATER RESOURCES

Amendment to the Lower Delaware Water Quality Management Plan

Public Notice

Take notice that on July 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 Lower Delaware Water Quality Management Plan was adopted by the Department. This amendment allows the Haleyville Elementary School located at Block 198, Lot 8, in Commercial Township, Cumberland County to expand its non-surface wastewater discharge to serve a proposed 6,830 square foot addition. The proposed school expansion will bring the total school population to 580 students and teachers.

(a)

DIVISION OF WATER RESOURCES

Amendment to the Tri-County Water Quality Management Plan

Public Notice

Take notice that on July 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 Tri-County Water Quality Management (WQM) Plan was adopted by the Department. This amendment expands the sewer service area of the Harrison Township sewage treatment plant approximately 9.5 acres to include various lots in Block 49, Harrison Township, Gloucester County. This sewer service area expansion will serve the proposed Cider Press Estates Phase II development. The proposed wastewater flow from these residential lots is 4,800 gallons per day.

(b)

DIVISION OF WATER RESOURCES

Amendment to the Tri-County Water Quality Management Plan

Public Notice

Take notice that an amendment to the Tri-County Water Quality Management (WQM) Plan has been submitted for approval. This amendment would adopt the Mount Holly Sewerage Authority (MHSA) Wastewater Management Plan (WMP) and update a small portion of the Willingboro Municipal Utilities Authority (WMUA) WMP. The MHSA WMP proposes to expand the sewer service area of the MHSA sewage treatment plant (STP) in Eastampton, Hainesport, Mount Holly, Lumberton and Westampton Townships. Two parcels in the WMUA sewer service area in Westampton Township will be transferred into the sewer service area of the MHSA STP. In addition, the WMP proposes a wastewater flow of 6.93 million gallons per day (MGD) for the MHSA STP to serve the expanded sewer service areas. A small parcel in Eastampton Township along Smithville-Jacksonville Road has been removed from the MHSA STP sewer service area. A large portion of Lumberton Township will remain designated as an area of individual subsurface sewage disposal systems less than 2,000 GPD. One industrial area in Lumberton Township has been designated as an area of subsurface sewage disposal systems less than 20,000 GPD.

This notice is being given to inform the public that a plan amendment has been developed for the Tri-County WQM Plan. All information dealing with the aforesaid WQM Plan and the proposed amendment is located at the office of the New Jersey Department of Environmental Protection (NJDEP), Division of Water Resources, Bureau of Water Quality Planning, 401 East State Street, 3rd Floor, CN-029, Trenton, N.J. 08625. It is available for inspection between 8:30 A.M. and 4:00 P.M., Monday through Friday. An appointment to inspect the documents may be arranged by calling the Bureau of Water Quality Planning at (609) 633-7026.

Interested persons may submit written comments on the amendment to Mr. Ed Frankel of the Bureau of Water Quality Planning, at the NJDEP address cited above. A copy of the comments should be sent to Mr. Stephen J. Mushinski, Esquire, MHSA Solicitor, Ferg, Barron, Mushinski & Gillespie, Post Office Box 866, Moorestown, New Jersey 08057. All comments must be submitted within 30 days of the date of this public notice. All comments submitted by interested persons in response to this notice, within the time limit, shall be considered by NJDEP with respect to the amendment request.

Any interested persons may request in writing that NJDEP hold a nonadversarial public hearing on the amendment or extend the public comment period in this notice up to 30 additional days. These requests must state the nature of the issues to be raised at the proposed hearing or state the reasons why the proposed extension is necessary. These requests must be submitted within 30 days of this public notice to Mr. Frankel at the NJDEP address cited above. If a public hearing is held, the public comment period in this notice shall be extended 15 days after the close of the public hearing.

(c)

DIVISION OF WATER RESOURCES

Amendment to the Tri-County Water Quality Management Plan

Public Notice

Take notice that an amendment to the Tri-County Water Quality Management (WQM) Plan has been submitted for approval. This amendment would update the Mansfield Township Wastewater Management Plan (WMP). The amendment would allow the existing Burlington County Solid Waste Facility Complex leachate treatment facility's surface water discharge to upgrade and expand from 28,000 gallons per day (GPD) to 130,000 GPD. In addition, prior to the completion of the expanded facility, 67,100 GPD of leachate from the proposed co-composting facility, materials recovery facility, and Florence Land Recontouring facility would be stored in a new 200,000 gallon aerated storage tank via the existing leachate transfer pump station and then hauled to an NJDEP approved treatment facility. After completion of the leachate treatment plant expansion, the proposed 200,000 gallon storage tank would be incorporated into the treatment process as a flow equalization tank.

This notice is being given to inform the public that a plan amendment has been developed for the Tri-County WQM Plan. All information dealing with the aforesaid WQM Plan and the proposed amendment is located at the office of the New Jersey Department of Environmental Protection (NJDEP), Division of Water Resources, Bureau of Water Quality Planning, 401 East State Street, 3rd Floor, CN-029, Trenton, N.J. 08625. It is available for inspection between 8:30 A.M. and 4:00 P.M., Monday through Friday. An appointment to inspect the documents may be arranged by calling the Bureau of Water Quality Planning at (609) 633-7026.

Interested persons may submit written comments on the amendment to Mr. Ed Frankel of the Bureau of Water Quality Planning, at the NJDEP address cited above. A copy of the comments should be sent to Ms. Mary Pat Robbie, Management Specialist, Burlington County Board of Chosen Freeholders, 49 Rancocas Road, Mount Holly, N.J. 08060. All comments must be submitted within 30 days of the date of this public notice. All comments submitted by interested persons in response to this notice, within the time limit, shall be considered by NJDEP with respect to the amendment request.

Any interested persons may request in writing that NJDEP hold a nonadversarial public hearing on the amendment or extend the public comment period in this notice up to 30 additional days. These requests must state the nature of the issues to be raised at the proposed hearing or state the reasons why the proposed extension is necessary. These requests must be submitted within 30 days of this public notice to Mr. Frankel at the NJDEP address cited above. If a public hearing is held, the public comment period in this notice shall be extended 15 days after the close of the public hearing.

(d)

DIVISION OF PARKS AND FORESTRY

Notice of Public Hearing

Proposed Lease of Land Comprising Part of Liberty State Park

Take notice that the State of New Jersey, Department of Environmental Protection by the Division of Parks and Forestry, will hold **a public hearing** to seek comment on the proposed lease of State-owned land.

Consistent with the Action Program for Liberty State Park and in cooperation with the Liberty State Park Development Corporation, and with the advise of the Liberty State Park Public Advisory Commission, financing through the sale of certificates of participation in the amount of $28 million is sought to construct and implement projects at Liberty State Park. These projects include heating, ventilation and air conditioning of the Terminal Building, continuation of flood levee and Liberty Walk plaza improvements and landscaping at the Terminal Building, construction and operation of an 18-hole public golf course and construction and improvements to the central and ferry parking lots.

In order to secure said financing, the Department of Environmental Protection proposes to lease for a period of 30 years to the State of

New Jersey Economic Development Authority and **simultaneously** lease back from the Authority the following property at Liberty State Park:

(1) All that certain land containing approximately 1.093 acres containing thereon the Central Railroad of New Jersey Terminal headhouse, designated as part of Block 2145, Lots 47, 49H and 49L on the current tax map of the City of Jersey City, County of Hudson, State of New Jersey. The purpose of the lease of this property will be to secure financing to facilitate the installation of a heating, ventilating and air conditioning system within the Terminal building.

(2) All that certain land containing approximately 1.11 acres designated as part of Block 2145, Lots 49J and 49L on the current tax map of the City of Jersey City, County of Hudson, State of New Jersey. The purpose of the lease of this property will be to secure financing to construct a protective levee for flood protection and to continue "Liberty Walk" a 35 foot wide pedestrian walkway to the CRRNJ Terminal.

(3) All that certain land containing approximately 12.72 acres designated as part of Block 2145, Lots 49G, 49H, 45D, 49F and 52 on the current tax map of the City of Jersey City, County of Hudson, State of New Jersey. The purpose of the lease of this property will be to secure financing to improve the northern area of the CRRNJ Terminal Complex including a plaza area, landscaping and walkways.

In order to secure financing, the Department of Environmental Protection proposes to lease for a period of 30 years to the Economic Development Authority and **simultaneously** lease back from that Authority and **simultaneously** sub-lease to the Liberty State Park Development Corporation, the following property.

(1) All that certain land containing approximately 225 acres designated as part of Block 2154, Lots 22D, 22G, 22J, 22K, 22M, 23, 24 and 29 and Block 2145, Lots 47, 48H, 48J, 48M, 49, 49H, 50H, and 51B on the current tax map of the City of Jersey City, County of Hudson, State of New Jersey currently vacant. The purpose of the lease and sub-lease of this property will be to secure financing to construct, operate and maintain an 18-hole public golf course and club house facilities.

(2) All that certain land containing approximately 10.732 acres designated as part of Block 2048, Lots S-1, S-2, 10A, and 10B on the current tax map of the City of Jersey City, County of Hudson, State of New Jersey currently vacant. The purpose of the lease and sub-lease of this property will be to secure financing to construct, operate and maintain the 1,100 space Central Parking Facility for Liberty State Park. The project will include the operation of a people mover system linking areas of Liberty State Park.

(3) All that certain land containing approximately 9.8 acres designated as part of Block 2145, Lots 49H, 49J and 47 on the current tax map of the City of Jersey City, County of Hudson, State of New Jersey currently used as a parking lot. The purpose of the lease and sub-lease of this property will be to secure financing to expand and construct, operate and maintain the area currently known as the "Ferry Service Parking Area" into an 867 space parking area with accompanying landscaping improvements.

This **public hearing** will be held on:

Thursday, September 5, 1991
7:30 P.M.
Interpretive Center
Liberty State Park
Jersey City, New Jersey

Persons wishing to make oral presentations are asked to limit their comments to a three to five minute time period. Presenters should bring a copy of their comments to the hearing for use by the Department. The hearing record will be kept open for the period of seven days following the date of the public hearing so that additional written comments can be received.

Interested persons may submit written comments until **September 12, 1991** to and request information from:

Gregory A. Marshall, Director
Division of Parks and Forestry
Department of Environmental Protection
CN 404
Trenton, New Jersey 08625

HUMAN SERVICES

(a)

CHILD LIFE PROTECTION COMMISSION

Notice of Grant Fund Availability
Children's Trust Fund

Take notice, that, in compliance with N.J.S.A. 52:14-34.4, 34.5 and 34.6, the Child Life Protection Commission hereby announces the availability of the following grant program funds:

Name of program: Children's Trust Fund.

Purpose: The Children's Trust Fund is a private/public partnership, established by legislation to provide funds for programs designed to prevent child abuse and neglect. The fund is supported by direct contributions, a State income tax checkoff and a Federal Challenge Grant. The fund is administered by the Child Life Protection Commission which is appointed by the Governor. Contracts with grantees are awarded by the New Jersey Department of Human Services.

Amount of money in the program: The amount of money available for 1992-1993 is dependent upon the total amount of monies derived from direct contribution, a State income tax checkoff and a Federal Challenge Grant. In 1991, the largest grant award was $39,000, the smallest was $6,000, and the average was $20,000.

Organizations which may apply for funding under this program: Only public or private non-profit agencies with 501(c)3 status may apply. Documentation of this status is required in the application.

Qualifications needed by an applicant to be considered for funding: A recipient of a grant from the Children's Trust Fund shall use the grant funds only to fund child abuse and neglect prevention programs. If the applicant is a recipient of other Federal funds, grants from the Children's Trust Fund may not be used to meet the non-Federal matching requirements of Federal law. Funding is limited to primary and secondary prevention services. Priority is given to target populations at high risk of child abuse and neglect. Applicants are encouraged to consider successful prevention strategies when designing a Children's Trust Fund grant application.

Note: Tertiary prevention programs are ineligible for funding.

Procedure for eligible organizations to apply: All eligible organizations interested in applying should obtain directives (RFP) and an application by calling the New Jersey Children's Trust Fund at (609) 633-3992, Monday through Friday from 9:00 AM to 5:00 PM, or by writing to the Children's Trust Fund, CN 711, Trenton, NJ 08625. Applications will be available for distribution commencing August 15, 1991.

Note: In 1992, the Children's Trust Fund fiscal year will begin on July 1 instead of May 1. Current first and second year grantees shall submit 14-month budgets on a one-time basis. New applicants shall submit 12-month budgets for operations commencing on July 1, 1992.

Technical Assistance Meetings have been scheduled to provide information and answer questions. The meetings are scheduled for the following dates:

September 4, 1991
Atlantic County Library
2 South Farragut Avenue
2nd Floor Meeting Room
Mays Landing, NJ
10:00 AM-12:00 PM
(609) 625-2776

September 6, 1991
DYFS Regional Office
153 Halsey Street
3rd Floor Conference Room
Newark, NJ
1:00 PM-3:00 PM
(201) 648-4160

September 11, 1991
State House Annex
125 West State Street
Room 341
Trenton, NJ
10:00 AM-12:00 PM
(609) 292-1338

Address to which applications must be submitted: Mail postmarked on or before October 15, 1991 to:

State of New Jersey
Children's Trust Fund
CN-711
Trenton, New Jersey 08625

or hand-delivered by October 15, 1991 before 5:00 PM to:

Children's Trust Fund Office
N.J. Department of Human Services
222 South Warren Street
5th Floor
Trenton, New Jersey 08625

No facsimile will be accepted.

Deadline by which applications must be submitted: Grant applications must be postmarked on or before October 15, 1991.

Date by which applicant shall be notified of approval or disapproval: March 1, 1992.

(a)

OFFICE OF LEGAL AND REGULATORY LIAISON

Notice of Action on Petition for Rulemaking Exceptions to Local Government Cap Law: Mandated Expenditures

Petitioner: Government Finance Officers' Association of New Jersey.

Authority: N.J.S.A. 40A4-45(cc).

Take notice that on January 28, 1991, the Department of Human Services received a petition for rulemaking from the Government Finance Officers' Association of New Jersey (see 23 N.J.R. 1034(b)). The petition seeks formal rulemaking to require the Department of Human Services to certify to the Local Finance Board, as mandated program expenditures, any new expense, program or function required of a county or municipal government, so as to exempt them from the annual budget cap base. The petition asserts that the implementation of regulations is critical to avoid excessive new expenses which, if placed within the cap, would prevent the provision of vital services to the people of this State.

Formal rules governing the Local Budget Law, N.J.S.A. 40A:4-1 et seq., fall within the jurisdiction of the Local Finance Board pursuant to N.J.S.A. 5:30-1.2. This law provides the Local Finance Board with the authority to study the entire field of local government and promulgate reasonable rules and regulations for the interpretation and administration of State laws included within the jurisdiction of the division.

The petitioner's request for rulemaking by the Department of Human Services is unnecessary at this time because the Legislature's intent and the process to implement its intent is clearly stated in the statute, and the initiation of regulatory action by the Department in this area is not indicated at this time. The petition for further formal rulemaking is accordingly denied.

INSURANCE

(b)

OFFICE OF THE COMMISSIONER

Public Notice Regarding Deferral of JUA Claim Payments

Take notice that pursuant to the Plan of Operation for the New Jersey Full Automobile Insurance Underwriting Association Trustee ("JUA Trustee"), the Commissioner of Insurance ("Commissioner") is authorized to approve the deferral of residual bodily injury loss payments and, upon certification of the Commissioner, the deferral of other JUA payments in accordance with N.J.S.A. 17:33B-3(b)(2). Pursuant to this authority, certain JUA claims were deferred payment between May 1 and July 2, 1991. Should a further deferral be necessary, comments regarding the appropriate elements for, or procedural aspects of, such a deferral would be useful. As such, interested parties are hereby requested to submit comments intended to provide input on any issue relating to the structure of such deferral and may address issues such as the priority and order of claim payments, total or partial claim deferral, exemptions to deferral, etc.

Interested persons may submit written comments to:

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

All comments must be submitted by August 26, 1991. All comments submitted, within the time allowed, will be retained by the Department of Insurance for consideration by the Commissioner if the further deferral of claims becomes necessary.

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 June 3, 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.1991 d.1 means the first rule adopted in 1991.

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 MAY 20, 1991

NEXT UPDATE: SUPPLEMENT JUNE 17, 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
22 N.J.R. 2203 and 2386	August 6, 1990	23 N.J.R. 333 and 636	February 19, 1991
22 N.J.R. 2387 and 2622	August 20, 1990	23 N.J.R. 637 and 798	March 4, 1991
22 N.J.R. 2623 and 2860	September 4, 1990	23 N.J.R. 799 and 924	March 18, 1991
22 N.J.R. 2861 and 3072	September 17, 1990	23 N.J.R. 925 and 1048	April 1, 1991
22 N.J.R. 3073 and 3182	October 1, 1990	23 N.J.R. 1049 and 1226	April 15, 1991
22 N.J.R. 3183 and 3274	October 15, 1990	23 N.J.R. 1227 and 1482	May 6, 1991
22 N.J.R. 3275 and 3420	November 5, 1990	23 N.J.R. 1483 and 1722	May 20, 1991
22 N.J.R. 3421 and 3606	November 19, 1990	23 N.J.R. 1723 and 1854	June 3, 1991
22 N.J.R. 3607 and 3666	December 3, 1990	23 N.J.R. 1855 and 1980	June 17, 1991
22 N.J.R. 3667 and 3896	December 17, 1990	23 N.J.R. 1981 and 2071	July 1, 1991
23 N.J.R. 1 and 144	January 7, 1991	23 N.J.R. 2079 and 2204	July 15, 1991
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		

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R.CITATION)
ADMINISTRATIVE LAW—TITLE 1				
1:1-3.3	Return of contested cases: failure of party to appear at hearing	23 N.J.R. 1728(a)		
1:1-3.3, 14.4, 14.14	Return of cases; failure to appear; sanctions	23 N.J.R. 639(a)	R.1991 d.279	23 N.J.R. 1786(a)
1:1-5.4	Representation by non-lawyers	23 N.J.R. 1053(a)	R.1991 d.296	23 N.J.R. 1919(a)
1:5	Council on Affordable Housing hearings	23 N.J.R. 2082(a)		
1:10-8.1	Transmission of Economic Assistance cases	23 N.J.R. 3(a)		
1:10-8.1	Transmission of Economic Assistance cases: withdrawal of proposal	23 N.J.R. 2083(a)		
1:10B	Medical Assistance and Health Services hearings	23 N.J.R. 2083(b)		
1:13-1.1, 4.1	Division of Motor Vehicle cases	23 N.J.R. 928(a)	R.1991 d.330	23 N.J.R. 2010(a)
1:13-14.4	Motor Vehicle cases: failure to appear	23 N.J.R. 639(a)	R.1991 d.279	23 N.J.R. 1786(a)
1:13A-14.1	Lemon Law hearings: failure to appear	23 N.J.R. 639(a)	R.1991 d.279	23 N.J.R. 1786(a)
1:14	Board of Public Utility hearings	23 N.J.R. 640(a)	R.1991 d.361	23 N.J.R. 2120(a)
1:14	Board of Public Utility hearings: extension of comment period	23 N.J.R. 1230(a)		
1:14-14.1, 14.4	Board of Public Utility hearings: prefiled testimony; interlocutory review	23 N.J.R. 2083(c)		
	Most recent update to Title 1: TRANSMITTAL 1991-2 (supplement February 19, 1991)			
AGRICULTURE—TITLE 2				
2:6-1	Distribution and use of veterinary biologics	22 N.J.R. 2068(a)	Expired	
2:9-1	Avian influenza: indemnification of poultry losses	23 N.J.R. 1485(a)		
2:17-7.1	Movement into State of pepper transplants	Emergency (expired 7-30-91)	R.1991 d.317	23 N.J.R. 1966(a)
2:18	Nursery inspection fees	23 N.J.R. 1230(b)	R.1991 d.407	23 N.J.R. 2328(a)
2:21-7	Fees for seed testing	23 N.J.R. 1231(a)	R.1991 d.400	23 N.J.R. 2330(a)
2:50-1.1, 2.1	Dairy farmers and milk dealers notice to discontinue sale or purchase of milk	23 N.J.R. 929(a)	R.1991 d.323	23 N.J.R. 2010(b)
2:51	Milk prices to dairy farmers	Emergency (expired 7-30-91)	R.1991 d.322	23 N.J.R. 1966(b)
2:69-1.11	Commercial values of primary plant nutrients	23 N.J.R. 1728(b)		
2:73-2	Seal of Quality for Eggs program	23 N.J.R. 1729(a)		
	Most recent update to Title 2: TRANSMITTAL 1991-3 (supplement May 20, 1991)			
BANKING—TITLE 3				
3:1-2.17	Closing of branch offices	23 N.J.R. 801(a)	R.1991 d.392	23 N.J.R. 2305(a)
3:1-2.25, 2.26	Conversions of savings and loan associations and savings banks	23 N.J.R. 929(b)	R.1991 d.294	23 N.J.R. 1919(b)
3:1-6.1, 6.2, 6.6	Assessments on trust assets	23 N.J.R. 1073(b)	R.1991 d.350	23 N.J.R. 2028(a)
3:1-18	Foreign banks and associations: registration of service facilities	23 N.J.R. 1233(a)	R.1991 d.347	23 N.J.R. 2029(a)
3:3-2	Nonpublic records	23 N.J.R. 253(a)	R.1991 d.287	23 N.J.R. 1921(a)
3:3-2.1	Department records designated nonpublic	23 N.J.R. 1858(a)		
3:6-8	Conversions of savings and loan associations and savings banks	23 N.J.R. 929(b)	R.1991 d.294	23 N.J.R. 1919(b)
3:16-2.1	Pawnbroker service charges	23 N.J.R. 1729(b)		
3:17	Consumer Loan Act rules	23 N.J.R. 1234(a)	R.1991 d.354	23 N.J.R. 2121(a)
3:17-1.1, 1.4	Consumer loan advertisements	22 N.J.R. 2626(a)		

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R.CITATION)
3:17-1.1, 1.4	Consumer loan licensees: check solicitations	23 N.J.R. 931(a)	R.1991 d.329	23 N.J.R. 2031(a)
3:17-3.4	Location of consumer loan records	23 N.J.R. 803(a)	R.1991 d.362	23 N.J.R. 2122(a)
3:18-2.1	Location of secondary mortgage loan records	23 N.J.R. 803(a)	R.1991 d.362	23 N.J.R. 2122(a)
3:23-2.1	License fees for motor vehicle installment sellers and home repair contractors	23 N.J.R. 1073(b)	R.1991 d.350	23 N.J.R. 2028(a)
3:24-2.7	Posting of general ledger by check cashers	23 N.J.R. 932(a)	R.1991 d.324	23 N.J.R. 2032(a)
3:29-1.1–1.4, 1.6, 1.7, 1.8	Savings and loan associations: audit requirements	23 N.J.R. 1485(b)	R.1991 d.418	23 N.J.R. 2306(a)
3:32-1.11, 2	Conversions of savings and loan associations and savings banks	23 N.J.R. 929(b)	R.1991 d.294	23 N.J.R. 1919(b)
3:38-1.2, 1.4, 1.9	Mortgage banker and broker net worth standards	23 N.J.R. 643(a)		
3:38-2.1	Location of mortgage loan records	23 N.J.R. 803(a)	R.1991 d.362	23 N.J.R. 2122(a)

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4A:4-2.11	Enforcement of residency requirements	23 N.J.R. 1984(a)		
4A:4-7.11	Retention of rights by transferred employees	23 N.J.R. 1984(b)		

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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)		
5:18-1.5	Fire official and fire inspector certification	23 N.J.R. 1235(a)	R.1991 d.359	23 N.J.R. 2122(b)
5:18-3.2	Uniform Fire Code: hotel-casinos	23 N.J.R. 1237(a)		
5:18A-1.4, 2.3, 3.3, 4.3–4.7, 4.9, 4.10	Fire official and fire inspector certification	23 N.J.R. 1235(a)	R.1991 d.359	23 N.J.R. 2122(b)
5:18C-4.2	Firefighter I certification	23 N.J.R. 2084(a)		
5:20-1	Meetings of governing board of a condominium association	23 N.J.R. 1901(a)		
5:23-1.1, 1.4, 2.14, 2.23, 2.25, 3.4, 3.11, 3.14, 4.3, 4.5, 4.12, 4.13, 4.18, 4.20, 4.24, 5.1, 5.3, 5.5, 5.7, 5.19, 5.20, 5.23, 12	Elevator Safety Subcode	23 N.J.R. 805(a)	R.1991 d.325	23 N.J.R. 2046(a)
5:23-2.38	Barrier Free Recreational Standards: appeals regarding facility noncompliance	23 N.J.R. 1730(a)		
5:23-3.11A, 4.2	Uniform Construction Code: plan review of proposed school facilities	23 N.J.R. 1084(a)	R.1991 d.309	23 N.J.R. 1922(a)
5:23-3.14, 3.18, 3.20, 10.3	Uniform Construction Code: 1991 subcode references; Energy and Radon Hazard subcodes	23 N.J.R. 1487(a)		
5:23-3.15, 3.18	Uniform Construction Code: plumbing and energy subcodes	23 N.J.R. 804(a)	R.1991 d.326	23 N.J.R. 2044(a)
5:23-4.14, 4A.17, 8.18	Uniform Construction Code: pre-proposal regarding private enforcing agencies	23 N.J.R. 1985(a)		
5:23-5.3, 5.15, 5.20, 5.23	Uniform Construction Code: fire inspector RCS license	23 N.J.R. 1085(a)	R.1991 d.308	23 N.J.R. 1923(a)
5:23-7.3, 7.11	Barrier Free Subcode: exemptions and Use Group R-2 and R-3	23 N.J.R. 1902(a)		
5:23-11	Uniform Construction Code: Indoor Air Quality Subcode	23 N.J.R. 1730(b)		
5:23-12.2	Elevator Safety Subcode: referenced standards	23 N.J.R. 2046(a)		
5:27-1.3	Rooming and boarding houses: proof of fire code compliance	23 N.J.R. 932(b)	R.1991 d.288	23 N.J.R. 1925(a)
5:33-3	Tenants' Property Tax Rebate Program	Emergency (expires 8-30-91)	R.1991 d.383	23 N.J.R. 2183(a)
5:33-4	Property tax and mortgage escrow account transactions	23 N.J.R. 1903(a)		
5:34-7.1–7.4, 7.7	Cooperative pricing and joint purchasing systems by local governmental units	23 N.J.R. 933(a)	R.1991 d.284	23 N.J.R. 1787(a)
5:70-6.3	Congregate Housing Services Program: service subsidies	23 N.J.R. 934(a)	R.1991 d.295	23 N.J.R. 1925(b)
5:80-2.2	Housing and Mortgage Finance Agency: consultation with housing sponsors	22 N.J.R. 3669(b)	R.1991 d.408	23 N.J.R. 2306(b)
5:80-9	Housing and Mortgage Finance Agency: housing project rents	22 N.J.R. 2389(b)	R.1991 d.334	23 N.J.R. 2055(a)
5:80-9.9	Housing and Mortgage Finance Agency: JUMPP project net increases	23 N.J.R. 646(a)	R.1991 d.335	23 N.J.R. 2058(a)
5:80-29	Housing and Mortgage Finance Agency: investment of surplus funds	22 N.J.R. 3670(a)		

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5:92	Council on Affordable Housing: preproposal regarding mandatory developers' fees	23 N.J.R. 646(b)		
5:92-1.3, 6.1, 6.2, 6.3, 14.4	Council on Affordable Housing: credits for rehabilitation and new construction; rental housing	23 N.J.R. 1488(a)	R.1991 d.412	23 N.J.R. 2307(a)
5:92-1.6	Council on Affordable Housing: extension of certification period/judgment of repose	23 N.J.R. 2084(b)		
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5A:3	Military service medals	23 N.J.R. 1490(a)		
5A:4	Brigadier General William C. Doyle Veterans' Memorial Cemetery	23 N.J.R. 1491(a)		
	Most recent update to Title 5A: TRANSMITTAL 1990-2 (supplement June 18, 1990)			
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6:11-11.9	Speech language specialist endorsement	23 N.J.R. 336(a)	R.1991 d.282	23 N.J.R. 1816(b)
6:20-2.12, 2.13, 2.14, 2A.10, 2A.11, 2A.12, 4.1, 5.3, 5.6, 8.3	Financial management in local districts	23 N.J.R. 1733(a)		
6:21-7, 19	Pupil transportation aid	23 N.J.R. 1737(a)		
6:22-1.2–1.7, 2, 3, 4, 5.4, 5.5, 6, 7, 8	School Facility Planning Service	23 N.J.R. 1238(a)		
6:28-1.1, 1.3, 3.2, 3.5, 3.7, 4.2, 4.4, 6.5, 7.1, 7.2, 10.1, 10.2, 11.4	Special education	23 N.J.R. 1053(b)	R.1991 d.337	23 N.J.R. 2032(b)
6:29-7.3, 7.4	School employee physical examinations	23 N.J.R. 336(b)	R.1991 d.283	23 N.J.R. 1817(a)
6:30-4.4, 4.5	Reporting of enrollments in adult high schools	23 N.J.R. 1243(a)	R.1991 d.401	23 N.J.R. 2330(a)
6:39-1.3, 1.4	Statewide assessment of pupil achievement: students with educational disabilities; State mandated tests	23 N.J.R. 1244(a)	R.1991 d.402	23 N.J.R. 2331(a)
6:41	Repeal Advisory Council	23 N.J.R. 1244(b)	R.1991 d.403	23 N.J.R. 2331(b)
6:43-1.1, 1.2, 3.3, 7.1, 8.1	Vocational and technical education: programs and standards	23 N.J.R. 1246(a)	R.1991 d.404	23 N.J.R. 2331(c)
6:46-1.1, 2	Local area vocational school districts	23 N.J.R. 1247(a)	R.1991 d.405	23 N.J.R. 2332(a)
6:47	Repeal Management Services	23 N.J.R. 1244(b)	R.1991 d.403	23 N.J.R. 2331(b)
6:48	Repeal Professional Services	23 N.J.R. 1244(b)	R.1991 d.403	23 N.J.R. 2331(b)
6:49	Repeal Occupational Research Development	23 N.J.R. 1244(b)	R.1991 d.403	23 N.J.R. 2331(b)
6:50	Repeal Urban Education and Manpower Training	23 N.J.R. 1244(b)	R.1991 d.403	23 N.J.R. 2331(b)
6:51	Vocational and technical education: administration and organization	23 N.J.R. 1250(a)	R.1991 d.406	23 N.J.R. 2333(a)
6:52	Repeal Residential Schools	23 N.J.R. 1244(b)	R.1991 d.403	23 N.J.R. 2331(b)
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7:1E	Discharges of petroleum and other hazardous substances	23 N.J.R. 1335(a)		
7:1I-3.3	Sanitary Landfill Facility Contingency Fund: suspension of claims	22 N.J.R. 3675(a)		
7:2	State Park Service rules	22 N.J.R. 2652(a)		
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)		
7:5C-1.4, 3.1, 5.1	Endangered Plant Species Program	23 N.J.R. 812(a)		
7:7A	Freshwater Wetlands Protection Act rules: water quality certification	23 N.J.R. 338(a)		
7:8-1.1, 1.2, 1.5, 2.2, 2.3, 3.1, 3.4, 3.5, 3.6	Stormwater management: Water Pollution Control Act compliance	23 N.J.R. 1926(a)		
7:9-5.7	Wastewater effluent standards: administrative correction	———	———	23 N.J.R. 2166(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)		
7:13	Flood hazard area control: opportunity to comment on draft revisions	23 N.J.R. 1989(a)		
7:13-7.1	Redelineation of Coles Brook in Hackensack and River Edge	23 N.J.R. 647(a)		

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7:13-7.1	Redelineation of South Branch Raritan River in Hunterdon County	23 N.J.R. 647(b)		
7:13-7.1	Redelineation of Passaic River in Florham Park	23 N.J.R. 648(a)		
7:13-7.1	Redelineation of Lawrence and Heathcote Brooks in South Brunswick	23 N.J.R. 649(a)		
7:14-8	Clean Water Enforcement Act: civil administrative penalties and reporting requirements; methodology	23 N.J.R. 1089(a)	R.1991 d.378	23 N.J.R. 2366(a)
7:14-8.1, 8.2, 8.5	Water Pollution Control Act compliance	22 N.J.R. 2870(a)	R.1991 d.307	23 N.J.R. 1926(a)
7:14A-1.8	NJPDES fee schedule: administrative correction	_____	_____	23 N.J.R. 2346(a)
7:14A-1.9, 2.5, 3.10, 8.13	Clean Water Enforcement Act: civil administrative penalties and reporting requirements; methodology	23 N.J.R. 1089(a)	R.1991 d.378	23 N.J.R. 2366(a)
7:14A-2.1	NJPDES and DTW co-permittee requirements: notice of rule invalidation	_____	_____	23 N.J.R. 2346(b)
7:14A-15	Industrial wastewater pretreatment: preproposed rules	23 N.J.R. 149(a)		
7:15-4.1	DTW and NJPDES co-permittee requirements: notice of rule invalidation	_____	_____	23 N.J.R. 2346(b)
7:18	Certification of laboratories analyzing drinking water and wastewater	23 N.J.R. 1109(a)	R.1991 d.385	23 N.J.R. 2346(c)
7:18-6.6	Clean Water Enforcement Act: civil administrative penalties and reporting requirements; methodology	23 N.J.R. 1089(a)	R.1991 d.378	23 N.J.R. 2366(a)
7:22A-1.1, 1.2, 1.3, 1.4, 1.7, 3.1, 4, App.	Sewage Infrastructure Improvement Act grants: Water Pollution Control Act compliance	22 N.J.R. 2870(a)	R.1991 d.307	23 N.J.R. 1926(a)
7:25-4.13, 4.17	Endangered and nongame wildlife species	22 N.J.R. 1308(a)	R.1991 d.277	23 N.J.R. 1788(a)
7:25-5	1991-92 Game Code	23 N.J.R. 1494(a)	R.1991 d.416	23 N.J.R. 2347(a)
7:25-6	1992-93 Fish Code	23 N.J.R. 2115(a)		
7:25-18.1	Winter flounder and red drum: size and possession limits	23 N.J.R. 43(a)	R.1991 d.348	23 N.J.R. 2011(a)
7:25-18.1	Taking of Atlantic sturgeon: preproposed amendment	23 N.J.R. 1111(a)		
7:25-18.1, 18.12, 18.13	Weakfish management program	23 N.J.R. 1989(b)		
7:25-18.5	Bait net and gill net regulation	22 N.J.R. 3685(a)	R.1991 d.328	23 N.J.R. 2011(b)
7:25-18.5–18.11	Gill netting in Delaware Bay	22 N.J.R. 1311(a)	R.1991 d.278	23 N.J.R. 1792(a)
7:25-22.3	Fishing for Atlantic menhaden	22 N.J.R. 3611(a)	R.1991 d.327	23 N.J.R. 2012(a)
7:25A-1.4, 1.5, 1.6, 1.9	Oyster management	23 N.J.R. 1112(a)	R.1991 d.349	23 N.J.R. 2012(b)
7:26-1.4, 4.3, 4.4, 4.6, 15.6	Fee schedule for solid waste facilities	22 N.J.R. 3079(a)	R.1991 d.368	23 N.J.R. 2166(b)
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)		
7:26-8.1	Mixtures of solid and listed hazardous wastes	23 N.J.R. 1113(b)	R.1991 d.420	23 N.J.R. 2360(a)
7:26-8.2, 8.8, 8.12	Hazardous waste management: Toxicity Characteristic	23 N.J.R. 151(a)	R.1991 d.421	23 N.J.R. 2360(b)
7:26-8.2, 8.8, 8.12	Hazardous waste management: reopening of comment period regarding Toxicity Characteristic of waste	23 N.J.R. 1401(a)		
7:26-8.14	Hazardous waste management: methyl bromide production wastes	23 N.J.R. 154(a)	R.1991 d.422	23 N.J.R. 2361(a)
7:26-8.14	Hazardous waste management: reopening of comment period regarding listing of methyl bromide production wastes	23 N.J.R. 1401(b)		
7:26-8.15, 8.16	Hazardous waste criteria, identification, and listing	23 N.J.R. 1114(a)		
7:26-9.2, 10.6, 10.8, 11.3, 11.4, 12.2, 12.4	Hazardous waste management	22 N.J.R. 3186(a)		
7:26-9.2, 10.6, 10.8, 11.3, 11.4, 12.2, 12.4	Hazardous waste management: extension of comment period	22 N.J.R. 3431(a)		
7:26A	Solid waste recycling	22 N.J.R. 3088(a)		
7:26B-1.3, 1.5	ECRA "cleanup plan" and applicability: validity of rules	_____	_____	23 N.J.R. 1797(a)
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)		
7:27-25.1, 25.2, 25.5, 25.7, 25.8	Air pollution by vehicular fuels	23 N.J.R. 45(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)		

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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)		
7:28-3.5, 3.13, 4.19	Fee schedules for possession and use of radioactive materials	22 N.J.R. 3300(a)	R.1991 d.417	23 N.J.R. 2362(a)
7:28-16.2	Dental radiographic installations: qualified individual	22 N.J.R. 3303(a)	R.1991 d.305	23 N.J.R. 1937(a)
7:31-2.16	Toxic Catastrophe Prevention Act Program: annual registration fees	23 N.J.R. 818(a)		
7:50-2.11, 4.66, 6.13	Pinelands Comprehensive Management Plan: preproposed amendments	22 N.J.R. 3432(a)		
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8:9-1.2, 1.4, 1.5	Handling and disposition of human remains	23 N.J.R. 1508(a)	R.1991 d.410	23 N.J.R. 2334(a)
8:20-1.2	Birth Defects Registry: reporting requirements	23 N.J.R. 820(a)	R.1991 d.414	23 N.J.R. 2335(a)
8:21A	Good drug manufacturing practices	22 N.J.R. 3189(a)		
8:21A	Good drug manufacturing practices: reopening of comment period	23 N.J.R. 1252(a)		
8:22-1	Campground sanitation	23 N.J.R. 1252(b)	R.1991 d.409	23 N.J.R. 2336(a)
8:24	Retail food establishments	23 N.J.R. 168(b)	R.1991 d.357	23 N.J.R. 2124(a)
8:24-2.1	Retail food establishments: administrative correction	———	———	23 N.J.R. 2337(a)
8:24-13.9, 13.11	Sanitation in community residences and bed and breakfast establishments	23 N.J.R. 2088(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)		
8:33P-2.1, 2.4	Designation of additional Level II trauma centers	23 N.J.R. 822(a)	R.1991 d.290	23 N.J.R. 1938(a)
8:41A	Emergency medical technician-defibrillation programs: certification and operation	23 N.J.R. 1254(a)		
8:43G-5.6	Hospital licensure: reportable events	22 N.J.R. 3469(a)		
8:43G-6	Hospital licensure: anesthesia	22 N.J.R. 3470(a)		
8:57-2.2, 2.4, 2.6, 2.7	Reporting of HIV infection with identifiers	23 N.J.R. 2089(a)		
8:59-1.3, 12	Worker and Community Right to Know: certification of consultants and consulting agencies	22 N.J.R. 1892(a)	R.1991 d.291	23 N.J.R. 1939(a)
8:65	Controlled dangerous substances	22 N.J.R. 3190(a)	R.1991 d.292	23 N.J.R. 1943(a)
8:65	Controlled dangerous substances: reopening of comment period	23 N.J.R. 823(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)		
8:65-10.3	Controlled dangerous substances: addition of anabolic steroids to Schedule III	———	———	23 N.J.R. 1943(b)
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 (see 22 N.J.R. 1597(b), 2163(a))	22 N.J.R. 596(a)	R.1990 d.570	22 N.J.R. 3581(c)
8:71	Interchangeable drug products (see 22 N.J.R. 2162(b), 3149(a), 3581(b))	22 N.J.R. 1214(b)	R.1991 d.161	23 N.J.R. 906(a)
8:71	Interchangeable drug products (see 22 N.J.R. 3582(a); 23 N.J.R. 206(a), 907(a), 1672(a))	22 N.J.R. 2501(a)		
8:71	Interchangeable drug products	22 N.J.R. 3191(a)	R.1991 d.30	23 N.J.R. 206(b)
8:71	Interchangeable drug products (see 23 N.J.R. 1670(a))	23 N.J.R. 178(a)	R.1991 d.365	23 N.J.R. 2136(a)
8:71	Interchangeable drug products: administrative correction	———	———	23 N.J.R. 2338(a)
8:71	Interchangeable drug products	23 N.J.R. 1509(a)		
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9:7-3.2	Tuition Aid Grant Program: determining award levels	23 N.J.R. 1057(a)	R.1991 d.336	23 N.J.R. 2013(a)
9:9-7	New Jersey College Loans to Assist State Students (NJCLASS) Program	23 N.J.R. 1257(a)	R.1991 d.396	23 N.J.R. 2338(b)
9:11-1.5	Educational Opportunity Fund: financial eligibility for undergraduate grants	23 N.J.R. 1739(a)		
9:11-3	C. Clyde Ferguson Law Scholarship	22 N.J.R. 3439(a)	R.1991 d.306	23 N.J.R. 1944(a)
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HUMAN SERVICES—TITLE 10				
10:3-3	Contract administration: Request for Proposal (RFP) process	23 N.J.R. 957(a)		
10:3-4	Cognizant division contracting by community provider agencies	23 N.J.R. 1647(a)		
10:36	Patient supervision at State psychiatric hospitals	23 N.J.R. 1652(a)		
10:42	Use of mechanical restraints and safeguarding equipment on developmentally disabled individuals	23 N.J.R. 1653(a)		
10:51 et al.	Bundled drug services reimbursement: public hearing	23 N.J.R. 1310(a)		
10:51-1.1, 1.14, 3.3, 3.12	Bundled drug services	23 N.J.R. 281(a)		
10:51-1.2, 1.13, 1.14, 1.20, App. B, C, D, E	Pharmaceutical services under Medicaid program	23 N.J.R. 1310(b)	R.1991 d.353	23 N.J.R. 2035(a)
10:52-1.1, 1.22	Bundled drug services	23 N.J.R. 281(a)		
10:52-1.6, 1.14	Reimbursement for Medicaid-covered outpatient hospital services	23 N.J.R. 1326(a)	R.1991 d.352	23 N.J.R. 2041(a)
10:53-1.1, 1.17	Bundled drug services	23 N.J.R. 281(a)		
10:53-1.5, 1.13	Reimbursement for Medicaid-covered outpatient hospital services	23 N.J.R. 1326(a)	R.1991 d.352	23 N.J.R. 2041(a)
10:54-1.1, 1.16	Bundled drug services	23 N.J.R. 281(a)		
10:56	Dental Services Manual	23 N.J.R. 1992(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)		
10:66-1.2, 1.10	Bundled drug services	23 N.J.R. 281(a)		
10:66-3	Medicaid program: personal care assistant services at independent clinics	23 N.J.R. 2091(a)		
10:68	Manual of Chiropractic Services	23 N.J.R. 1327(a)	R.1991 d.377	23 N.J.R. 2309(a)
10:69A-6.11	PAAD program: release of eligibility files to Division of Motor Vehicles	23 N.J.R. 7(a)		
10:70	Medically Needy Manual	23 N.J.R. 964(a)	R.1991 d.331	23 N.J.R. 2042(a)
10:72-1.1, 3.4, 4.1, 4.3, 4.5	Medicaid eligibility: pregnant women and children	23 N.J.R. 1200(a)	R.1991 d.302	23 N.J.R. 1945(a)
10:72-2.5, 3.4	Extended Medicaid eligibility for newborns	23 N.J.R. 1889(a)		
10:73	Medicaid program case management services	23 N.J.R. 1328(a)	R.1991 d.367	23 N.J.R. 2137(a)
10:81-8.22, 8.23	Extended Medicaid eligibility for newborns	23 N.J.R. 1657(a)		
10:81-15	Child Care Plus Demonstration	23 N.J.R. 8(a)		
10:82-1.1A	AFDC Standard of Need	23 N.J.R. 285(a)		
10:82-1.1A	AFDC Standard of Need: public hearings and extension of comment period	23 N.J.R. 967(a)		
10:82-5.10	AFDC Emergency Assistance	23 N.J.R. 967(b)		
10:84-1	Efficiency and effectiveness of program operations	23 N.J.R. 1740(a)		
10:85-1.1, 1.2, 1.3, 2.1, 2.2, 2.5, 2.6, 3.2, 3.3, 3.5, 3.6, 4.2, 4.3, 5.3, 6.1–6.9, 7.2, 9.4, 12.1, 12.2	General Assistance Program	23 N.J.R. 1741(a)		
10:85-4.1	General Assistance Program: Standard of Need	23 N.J.R. 286(a)		
10:85-4.1	General Assistance Standard of Need: public hearings and extension of comment period	23 N.J.R. 967(a)		
10:97-1.3, 1.4, 2.1–2.6, 3.1, 3.2, 3.4, 3.5, 4.1, 4.2, 4.6, 4.7, 4.8, 4.14, 4.15, 5.1, 5.3, 5.4, 6.1, 6.3, 6.4, 6.5, 7.1–7.4, 8.1, 8.2, 8.3, 9.1	Commission for Blind and Visually Impaired: Business Enterprise Program	23 N.J.R. 1749(a)		
10:120	Youth and Family Services administration	23 N.J.R. 1658(a)	R.1991 d.397	23 N.J.R. 2309(b)
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)		
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CORRECTIONS—TITLE 10A				
10A:2-2	Inmate accounts	23 N.J.R. 1992(b)		
10A:2-5	Reporting loss of funds	23 N.J.R. 1510(a)	R.1991 d.373	23 N.J.R. 2310(a)
10A:2-8	Inmate financial aid upon release from correctional facility	23 N.J.R. 1511(a)	R.1991 d.372	23 N.J.R. 2310(b)
10A:2-9	Gifts to correctional facilities	23 N.J.R. 1754(a)		
10A:3	Security and control	23 N.J.R. 1259(a)		
10A:4	Inmate discipline	23 N.J.R. 658(a)	R.1991 d.276	23 N.J.R. 1797(b)
10A:5	Close custody units	23 N.J.R. 1260(a)	R.1991 d.358	23 N.J.R. 2143(a)

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10A:9-5.5	Restoration of forfeited commutation time	23 N.J.R. 1261(a)	R.1991 d.346	23 N.J.R. 2043(a)
10A:16-12	Inmates at risk of suicide	23 N.J.R. 1756(a)		
10A:16-13	Inmate commitment for psychiatric treatment	23 N.J.R. 1890(a)		
10A:18-1.3, 2.7	Inspection of inmate outgoing mail	23 N.J.R. 1758(a)	R.1991 d.413	23 N.J.R. 2312(a)
10A:22-2.5	Inmate and parolee records: availability of information to correctional facility personnel	23 N.J.R. 1512(a)	R.1991 d.415	23 N.J.R. 2312(b)
10A:34-3	Processing and housing juveniles in municipal detention facilities	23 N.J.R. 935(c)	R.1991 d.293	23 N.J.R. 1945(b)
	Most recent update to Title 10A: TRANSMITTAL 1991-4 (supplement May 20, 1991)			
INSURANCE—TITLE 11				
11:1-6	New Jersey Property-Liability Insurance Guaranty Association: assessment premium surcharge	23 N.J.R. 823(b)		
11:1-32	Department fees	23 N.J.R. 825(a)	R.1991 d.303	23 N.J.R. 1948(a)
11:2-35	Relief from insurer obligations under FAIR Act	23 N.J.R. 660(a)		
11:3-10.5	Automobile damage repair confirmation and reporting	22 N.J.R. 3442(b)		
11:3-33	Appeals from denial of automobile insurance	22 N.J.R. 2457(a)		
11:3-33	Appeals from denial of automobile insurance: comment period correction	22 N.J.R. 2647(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)		
11:3-39	Automobile physical damage coverage: rate reductions for anti-theft devices and safety features	23 N.J.R. 384(a)	R.1991 d.363	23 N.J.R. 2144(a)
11:4-16.6, 16.8, 23	Medicare supplement coverage: minimum standards	23 N.J.R. 1264(a)	R.1991 d.345	23 N.J.R. 2014(a)
11:10-1.4	Dental plan organization: certificate of authority renewal fee	23 N.J.R. 825(a)	R.1991 d.303	23 N.J.R. 1948(a)
11:13-7	Commercial lines policy forms	23 N.J.R. 159(a)	R.1991 d.411	23 N.J.R. 2340(a)
11:16-3	Automobile damage repair confirmation and reporting	22 N.J.R. 3442(b)		
11:17A-1.2, 1.7	Appeals from denial of automobile insurance	22 N.J.R. 2457(a)		
11:17A-1.2, 1.7	Appeals from denial of automobile insurance: comment period correction	22 N.J.R. 2647(a)		
11:17A-1.3	Licensure of insurance producers and limited insurance representatives	23 N.J.R. 1912(a)		
11:18-1.4, 1.5, 1.7, App. A, B, C	Medical Malpractice Reinsurance Recovery Fund surcharge	23 N.J.R. 938(a)	R.1991 d.304	23 N.J.R. 1955(a)
	Most recent update to Title 11: TRANSMITTAL 1991-5 (supplement May 20, 1991)			
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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)		
12:55-1.4	Voluntary wage deductions for repayment of debts to State	23 N.J.R. 1660(a)		
12:235	Workers' Compensation	23 N.J.R. 834(a)	R.1991 d.275	23 N.J.R. 1819(a)
12:235	Workers' Compensation system	23 N.J.R. 1759(a)		
	Most recent update to Title 12: TRANSMITTAL 1991-3 (supplement April 15, 1991)			
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12A:10-2.9	Minority and female businesses: subcontracting targets	23 N.J.R. 395(b)		
12A:12-3	Tourism Matching Grant Program	23 N.J.R. 1513(a)	R.1991 d.370	23 N.J.R. 2149(a)
12A:31-1	Development Authority for Small Businesses, Minorities' and Women's Enterprises: micro-loan program	23 N.J.R. 828(a)	R.1991 d.393	23 N.J.R. 2313(a)
12A:31-1, 2, 3	Development Authority for Small Businesses, Minorities' and Women's Enterprises: extension of comment period on loan programs	23 N.J.R. 1769(a)		
12A:31-2	Development Authority: loan guarantee program	23 N.J.R. 830(a)	R.1991 d.394	23 N.J.R. 2314(a)
12A:31-3	Development Authority: direct loans	23 N.J.R. 832(a)	R.1991 d.395	23 N.J.R. 2315(a)
12A:100-1	Commission on Science and Technology: Innovation Partnership Grant Program	23 N.J.R. 1515(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)		
	Most recent update to Title 12A: TRANSMITTAL 1991-1 (supplement May 20, 1991)			
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13:14-1	Family Leave Act rules	23 N.J.R. 1993(a)		
13:18-6	Verification of automobile liability insurance coverage	23 N.J.R. 973(a)	R.1991 d.289	23 N.J.R. 1806(b)
13:23-1.1, 2.1–2.10, 2.12–2.28, 2.30–2.38, 3.1–3.10, 3.12, 4.1–4.4	Licensure of driving schools	23 N.J.R. 662(a)	R.1991 d.371	23 N.J.R. 2151(a)
13:27-5.8, 8.15	Licensure of architects and certification of landscape architects: fee schedules	23 N.J.R. 1059(a)	R.1991 d.318	23 N.J.R. 2021(a)

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13:27-6.2–6.5	Certified landscape architects: site planning services	23 N.J.R. 1516(a)		
13:29-1.7	Accountant licensure: conditional credit and reexamination	23 N.J.R. 1060(a)	R.1991 d.310	23 N.J.R. 1959(a)
13:29-1.8, 1.11, 1.12, 1.13, 2.3	Board of Accountancy: fee schedule	23 N.J.R. 1061(a)	R.1991 d.319	23 N.J.R. 2022(a)
13:30-8.4	Announcement of practice in special area of dentistry	22 N.J.R. 2257(a)		
13:30-8.4	Announcement of practice in special area of dentistry: extension of comment period	22 N.J.R. 3108(a)		
13:30-8.17	Physical modalities to unlicensed dental assistants	22 N.J.R. 2647(b)	R.1991 d.351	23 N.J.R. 2159(a)
13:31-1.4	Exempt electrical work and use of qualified journeyman electrician	23 N.J.R. 979(a)		
13:32-1.3	Master plumbers licensing examination	23 N.J.R. 288(a)		
13:32-1.8	Licensed master plumber: scope of practice	23 N.J.R. 1062(a)		
13:35-3.6	Bioanalytical laboratories: acceptance by director of requests for test of human material	23 N.J.R. 23(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)		
13:35-6.13	Board of Medical Examiners: change of address for receipt of comments regarding FLEX fees	22 N.J.R. 2135(a)		
13:35-6.13	Board of Medical Examiners: biennial registration fees	23 N.J.R. 833(a)	R.1991 d.286	23 N.J.R. 1815(a)
13:35-8.9, 8.17	Hearing Aid Dispensers Examining Committee: fee schedules; licensure reinstatement fee	23 N.J.R. 1895(a)		
13:36-1.6	Board of Mortuary Science: fee schedule	23 N.J.R. 1063(b)	R.1991 d.356	23 N.J.R. 2160(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)		
13:37-12.1	Board of Nursing fees	23 N.J.R. 672(a)	R.1991 d.311	23 N.J.R. 1959(b)
13:38-1.2, 1.3	Practice of optometry: permissible advertising	23 N.J.R. 2002(a)		
13:38-3.6, 5.1	Board of Optometrists: fee schedule	23 N.J.R. 1064(a)	R.1991 d.360	23 N.J.R. 2160(b)
13:38-3.6, 5.1	Board of Optometrists fee schedule: correction to comments submission address	23 N.J.R. 1279(a)		
13:39-5.6	Pharmacy recordkeeping: prescriptions for controlled substances	22 N.J.R. 1866(b)	R.1991 d.355	23 N.J.R. 2161(a)
13:39A	Board of Physical Therapy rules	23 N.J.R. 1065(a)	R.1991 d.366	23 N.J.R. 2162(a)
13:40-6.1	Engineering and land surveying services: certificate of authorization for general business corporations	22 N.J.R. 3315(a)	R.1991 d.285	23 N.J.R. 1816(a)
13:40-7.2–7.5	Certified landscape architects: site planning services	23 N.J.R. 1516(a)		
13:41-4.2–4.5	Certified landscape architects; site planning services	23 N.J.R. 1516(a)		
13:42-1.2	Board of Psychological Examiners: fee schedule	23 N.J.R. 980(a)	R.1991 d.312	23 N.J.R. 1960(a)
13:44-4.1	Board of Veterinary Medical Examiners: fee schedule	23 N.J.R. 1066(a)	R.1991 d.321	23 N.J.R. 2023(a)
13:44D-2.4	Advisory Board of Public Movers and Warehousemen: fee schedule	23 N.J.R. 1066(b)	R.1991 d.376	23 N.J.R. 2316(a)
13:44E-1.1	Scope of chiropractic practice	23 N.J.R. 2100(a)		
13:44E-2.1	Advertising of chiropractic services	23 N.J.R. 389(a)		
13:44E-2.2	Chiropractic patient records	23 N.J.R. 391(a)		
13:44E-2.3	Chiropractic practice: insurance claim forms	23 N.J.R. 1279(b)		
13:44E-2.4	Chiropractor of record: responsibility for patient care	23 N.J.R. 1280(a)		
13:44E-2.5	Board of Chiropractic Examiners: fee schedule	23 N.J.R. 1067(a)	R.1991 d.320	23 N.J.R. 2023(b)
13:44E-2.6	Chiropractic practice identification	23 N.J.R. 1896(a)		
13:47E, 47G	Weighmasters; standard containers for farm products: administrative correction	———	———	23 N.J.R. 2163(a)
13:63	Combat Auto Theft Program	23 N.J.R. 981(a)		
13:70-1.31	Thoroughbred racing: election of horsemen's organization	22 N.J.R. 3450(a)		
13:70-12.37	Thoroughbred racing: open claiming	23 N.J.R. 1068(a)	R.1991 d.313	23 N.J.R. 1960(b)
13:70-13A.1, 13A.2, 13A.3, 13A.5, 13A.7	Thoroughbred racing: hearings regarding license suspensions	23 N.J.R. 1281(a)	R.1991 d.379	23 N.J.R. 2318(a)
13:70-29.48	Thoroughbred racing: daily double	23 N.J.R. 2003(a)		
13:70-29.57	Thoroughbred racing: pick-seven wager on Breeders' Cup	23 N.J.R. 1769(b)		
13:71-3	Harness racing: hearings regarding license suspensions	23 N.J.R. 1282(a)	R.1991 d.380	23 N.J.R. 2319(a)
13:71-14.36	Harness racing: open claiming	23 N.J.R. 1068(b)	R.1991 d.314	23 N.J.R. 1960(c)
13:71-16.3	Harness racing: error in declaration of horse	23 N.J.R. 1069(a)	R.1991 d.315	23 N.J.R. 1961(a)
13:71-27.47	Harness racing: daily double	23 N.J.R. 2004(a)		
13:71-27.55	Harness racing: pick-eight wager on Breeders' Crown	23 N.J.R. 1770(a)		
13:75-1.27	Violent crimes compensation: counseling fees	23 N.J.R. 167(b)	R.1991 d.332	23 N.J.R. 2023(c)
13:75-1.28	Violent crimes compensation: secondary victim eligibility	23 N.J.R. 168(a)	R.1991 d.333	23 N.J.R. 2024(a)

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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)		
14:3-5.1	Closure or relocation of utility office	22 N.J.R. 2404(a)		
14:5	Electric service	23 N.J.R. 1519(a)		
14:5A	Nuclear generating plant decommissioning: preproposed new rules regarding periodic cost review	23 N.J.R. 942(a)		
14:6	Gas service	23 N.J.R. 944(a)		
14:10-5	InterLATA telecommunications carriers	22 N.J.R. 2887(a)		
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)		
14:10-8, 9	Purchased water and sewerage treatment adjustment clauses	23 N.J.R. 946(b)		
14:12	Demand side management	23 N.J.R. 1283(a)		
14:12-6.1	Release of customer lists and billing information for demand-side management projects	23 N.J.R. 1282(b)		
14:17-6.22	Cable television: petitions for approval to curtail service	22 N.J.R. 2889(a)		
14:18-3.5	Cable television: outage credit	22 N.J.R. 2890(b)		
14:18-3.5	Cable television outage credit: withdrawal of proposed amendment	23 N.J.R. 24(c)		
14:18-3.13	Cable television: prompt restoration standards	23 N.J.R. 682(a)	R.1991 d.298	23 N.J.R. 1961(b)
14:18-7.6, 7.7	Cable television: telephone system information and performance	22 N.J.R. 2895(a)	R.1991 d.375	23 N.J.R. 2342(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)		
	Most recent update to Title 14: TRANSMITTAL 1991-5 (supplement May 20, 1991)			
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	Most recent update to Title 14A: TRANSMITTAL 1991-4 (supplement April 15, 1991)			
STATE—TITLE 15				
15:3	Management of public records	23 N.J.R. 1912(b)		
	Most recent update to Title 15: TRANSMITTAL 1991-1 (supplement April 15, 1991)			
PUBLIC ADVOCATE—TITLE 15A				
	Most recent update to Title 15A: TRANSMITTAL 1990-3 (supplement August 20, 1990)			
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16:4-1	Construction subcontracting: disadvantaged and female-owned businesses	22 N.J.R. 2898(a)		
16:28-1.10, 1.81	Speed limit zones along U.S. 46, 1 and 9 in Dover and Route 49 in Bridgeton	23 N.J.R. 950(a)	R.1991 d.280	23 N.J.R. 1799(a)
16:28-1.38	Speed limit zones along Route 57 in Mansfield	23 N.J.R. 1291(a)	R.1991 d.340	23 N.J.R. 2024(b)
16:28-1.45, 1.60, 1.93, 1.107	Speed limit zones along Routes 324 and 44 in Gloucester County, Route 79 in Monmouth County, and Route 48 in Salem County	23 N.J.R. 1291(b)	R.1991 d.338	23 N.J.R. 2025(a)
16:28-1.46	Speed limit zone along Cuthbert Boulevard in Cherry Hill	23 N.J.R. 1771(a)		
16:28-1.67, 1.76, 1.129	Speed limit zones along U.S. 202 in Somerset and Morris counties, Route 15 in Morris County, and Route 12 in Hunterdon County	23 N.J.R. 1293(a)		
16:28-1.96	Speed limit zones along Route 45 in Salem and Gloucester counties	23 N.J.R. 1772(a)		
16:28-1.150, 1.151	Speed limit zones along U.S. 1 Business and U.S. 1 in Mercer and Middlesex Counties	23 N.J.R. 1072(a)	R.1991 d.297	23 N.J.R. 1962(a)
16:28-1.158	Speed limit zones along Route 179 in Hunterdon County	23 N.J.R. 1294(a)	R.1991 d.341	23 N.J.R. 2026(a)
16:28A-1.21	Handicapped parking space on U.S. 30 in Haddon Township	23 N.J.R. 1295(a)	R.1991 d.339	23 N.J.R. 2026(b)
16:28A-1.28	No stopping or standing zone along U.S. 40 in Hamilton Township, Atlantic County	23 N.J.R. 2101(a)		
16:28A-1.41	No stopping or standing zones along Route 77 in Bridgeton	23 N.J.R. 2101(b)		

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16:28A-1A.1	No stopping or standing zones on roads under reconstruction or repair	23 N.J.R. 1524(a)	R.1991 d.398	23 N.J.R. 2319(b)
16:31-1.6	Turn prohibitions along Route 88 in Ocean County	23 N.J.R. 1524(b)	R.1991 d.399	23 N.J.R. 2319(c)
16:31-1.17	Turn restrictions along Route 73 in Evesham	23 N.J.R. 1295(b)	R.1991 d.342	23 N.J.R. 2027(a)
16:31-1.30	U turn restriction along Route 49 in Millville	23 N.J.R. 1296(a)	R.1991 d.343	23 N.J.R. 2027(b)
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)		
16:47	State Highway Access Management Code	23 N.J.R. 1525(a)		
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