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MOST RECENT UPDATE TO NEW JERSEY ADMINISTRATIVE CODE: JANUARY 19, 1993
See the Register Index for Subsequent Rulemaking Activity.

NEXT UPDATE: SUPPLEMENT FEBRUARY 16, 1993

RULEMAKING IN THIS ISSUE

RULE PROPOSALS

Interested persons comment deadline **1032**

BANKING
Depository charter applications and branch applications . 1033(a)
Secondary Mortgage Loan Act rules; Revolving Credit Equity Loan Act rules ..... 1033(b)
Mortgage banker net worth ..... 1035(a)
PERSONNEL
Selection and appointment ..... 1085(b)
COMMUNITY AFFAIRS
Council on Affordable Housing: procedural and substantive rules ..... 1118(a)
EDUCATION
School districts; use of school buses; eye protection in schools; reporting of child abuse allegations; safe and drug free schools ..... 1095(a)
Professional licensure and standards: fees ..... 1111(a)
Adult education programs ..... 1112(a)
ENVIRONMENTAL PROTECTION AND ENERGY
New Jersey Water Supply Authority: policies and procedures ..... 1036(a)
Medical diagnostic x-ray installations; dental radiographic installations: extension of comment period ..... 1039(a)
Determination of noise from stationary sources ..... 1040(a)
HEALTH
Maternal and child health consortia: fiscal management and staffing ..... 1116(a)
Hospital licensing standards: funding for regionalized services; obstetric services structural organization ..... 1117(a)
HUMAN SERVICES
Public comments and petitions regarding Department rules ..... 1042(a)
New Jersey Care—Special Medicaid Manual: specified low-income Medicare beneficiaries ..... 1042(b)
CORRECTIONS
"Division of Operations", "indigent inmate" defined ..... 1043(a)
Use of chemical agents ..... 1044(a)
INSURANCE
New Jersey Property-Liability Insurance Guaranty Association: plan of operation ..... 1045(a)
Commercial lines: prospective loss costs filing procedures ..... 1047(a)
Commercial lines: exclusions from coverage; refiling policy forms ..... 1053(a)
LABOR
Workforce Development Partnership Program: application and review process for employment and training grants for services to disadvantaged workers ..... 1054(a)
COMMERCE AND ECONOMIC DEVELOPMENT
Certification of women-owned and minority-owned businesses ..... 1056(a)
LAW AND PUBLIC SAFETY
Board of Medical Examiners: fee schedule; athletic trainer registration fee ..... 1058(a)
Thoroughbred racing: claimed horse ..... 1059(a)
Thoroughbred racing: possession of drugs or drug instruments ..... 1060(a)
Harness racing: possession of drugs or drug instruments ..... 1061(a)
TRANSPORTATION
School zone along Route 82 in Union Township ..... 1061(b)
Restricted parking along Route 7 in Belleville, Route 17 in North Arlington, and Route 71 in Bradley Beach ..... 1062(a)

(Continued on Next Page)

INTERESTED PERSONS

Interested persons may submit comments, information or arguments concerning any of the rule proposals in this issue until **April 14, 1993.** Submissions and any inquiries about submissions should be addressed to the agency officer specified for a particular proposal.

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

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

RULEMAKING IN THIS ISSUE—Continued

No stopping or standing zones along Route 77 in Bridgeton ..... 1063(a)
Turning restrictions along U.S. 1 Business in Lawrence Township ..... 1064(a)
Transportation of hazardous materials ..... 1065(a)
TREASURY-TAXATION
Payment of taxes by electronic funds transfer ..... 1078(a)
CASINO CONTROL COMMISSION
Fee policy ..... 1080(a)
Hearings ..... 1082(a)
Professional practice: multiple party representation ..... 1082(b)
Storage of gaming chips and plaques ..... 1083(a)
Over/Under 13 wagers in blackjack ..... 1084(a)
Casino hotel alcoholic beverage control ..... 1085(a)

RULE ADOPTIONS

ENVIRONMENTAL PROTECTION AND ENERGY
Freshwater fishing line for Rahway River in Union County ..... 1231(a)
Control and prohibition of air pollution from new or altered sources: emission offsets ..... 1231(b)
Air contaminant emission statements from stationary sources ..... 1254(a)
HEALTH
Interchangeable drug products ..... 1221(a)
HIGHER EDUCATION
State college personnel system ..... 1221(b)
LAW AND PUBLIC SAFETY
Amber light permit for rural route letter carrier vehicles ..... 1222(a)
Board of Real Estate Appraisers: certified residential classification; general appraiser; temporary visiting license; fees and designations ..... 1222(b)
Violent Crimes Compensation Board: minimum compensable losses ..... 1224(a)
Violent Crimes Compensation Board: injury from crime of burglary ..... 1224(b)
TRANSPORTATION
Records management: appraisal review analyses ..... 1225(a)
Speed limit zone along Route 24 in Morris, Essex, and Union counties ..... 1225(b)
Speed limit zones along Route 27 in North Brunswick and Franklin townships, and Route 71 in Monmouth County ..... 1225(c)
Restricted parking and stopping along U.S. 9 in Cape May, Atlantic, Burlington, Ocean, Monmouth, and Middlesex counties ..... 1227(a)
Restricted parking and stopping along U.S. 22 in Clinton Township ..... 1227(b)
Handicapped parking along Route 57 in Washington Borough, Warren County ..... 1228(a)
TREASURY-GENERAL
PERS and TPAF pension systems: minimum adjustments ..... 1228(b)
TREASURY-TAXATION
Tax exemptions and abatements for rehabilitated properties ..... 1228(c)
Interest rate on late payments of estate taxes ..... 1229(a)
ELECTION LAW ENFORCEMENT COMMISSION
Definition of "expenditure": administrative correction ..... 1229(b)
CASINO CONTROL COMMISSION
Casino records of ownership ..... 1229(c)
Filling of slot machine hopper: administrative correction ..... 1230(a)
Craps—Eleven wager ..... 1230(b)
Rules of the games: administrative correction regarding casino notice of changes ..... 1230(c)

EMERGENCY ADOPTIONS

INSURANCE
Automobile insurance: provision of coverage to all applicants who qualify as eligible persons ..... 1290(a)
HEALTH
Hospital payments to maternal and child health consortia ..... 1295(a)

PUBLIC NOTICES

EDUCATION
Public testimony session regarding Special Education rules and new rules on School Ethics Commission ..... 1284(a)
ENVIRONMENTAL PROTECTION AND ENERGY
Cape May water quality management: Middle Township WMP ..... 1284(b)
Monmouth County water quality management: Colts Neck WMP ..... 1286(a)
Lower Raritan/Middlesex County water quality management: South Brunswick WMP ..... 1286(b)
Upper Raritan water quality management: Peapack and Gladstone WMP ..... 1286(c)
Sussex County water quality management: Sussex Borough and Hardyston Township WMPs ..... 1287(a)

(Continued on page 1307)

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RULE PROPOSALS

BANKING

(a)

DIVISION OF REGULATORY AFFAIRS

Applications

Proposed Amendments: N.J.A.C. 3:1-2.3, 2.5 and 2.21

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

Authority: N.J.S.A. 17:1-8.1, 17:9A-10 and 11 and 17:12B-17.

Proposal Number: PRN 1993-144.

Submit comments by April 14, 1993 to:

Rule Comments
Attn: William B. Waits
Regulatory Officer
Department of Banking
CN 040
Trenton, NJ 08625

The agency proposal follows:

Summary

The Department of Banking proposes to amend N.J.A.C. 3:1-2.21(a) regarding depository charter applications to require that at least $3,000,000 of the $6,000,000 in stated capital is comprised of capital stock. For an application for a limited purpose trust company or a charter incident to the purchase of a failed institution, at least $2,000,000 of the $4,000,000 in stated capital would need to be in the form of capital stock.

In addition, the proposed amendments to N.J.A.C. 3:1-2.3 and 2.5 make a technical change to the branch application rules to require that the depository provide proof of publication of its application notice within 10 days after publication, not with the application.

Social Impact

By requiring a minimum amount of capital stock, the capital of a depository will be maintained and the ongoing viability of the bank secured. No social impact is expected from the technical change of reporting publication after, not with application.

Economic Impact

The purpose of N.J.A.C. 3:1-2.21(a) is to prevent depositories from dividending out paid in capital. Most depositories do not declare such dividends, and it will have no economic impact on them. For newly chartered depositories which propose to declare dividends of paid in capital, the proposed amendment will have a positive economic impact on the depository to the extent that the capital is retained in the institution and not dividended out to stockholders. No economic impact is expected from the technical change of reporting publication after, not with application.

Regulatory Flexibility Analysis

Banks, savings banks and savings and loan associations are predominately small businesses, as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. These proposed amendments to N.J.A.C. 3:1-2.3 and 2.5 do require that depositories provide the Department with proof of publication of notice of branch applications. Current rules require this notice at time of application. To the extent that new requirements are imposed, no differentiation based on business size is made because this notice is necessary for the Department to confirm compliance with these rules. The proposed amendment to N.J.A.C. 3:1-2.21(a) imposes the compliance requirement that a specified portion of the stated capital stock must be in the form of capital stock. This requirement is necessary to ensure that a minimum of capital is maintained within the depository. It is as important for small businesses as for large businesses to maintain the capital of the depository. Accordingly, no differentiation based on business size is made.

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

3:1-2.3 Branch applications

(a) An application by a depository to establish a branch office or a minibranch office shall contain the following before it will be accepted by the Department:

1.-8. (No change.)

9. A copy of the depository's most recent Community Reinvestment Act Statement; **and**

[10. If a savings and loan association, proof of newspaper publication as required by N.J.S.A. 17:12B-24(B); and]

[11.]**10.** All other documentation required of a specific applicant by the Commissioner or which the applicant wishes the Department to consider.

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

3:1-2.5 Branch applications; notice and publication

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

(c) Within 15 days after receiving notification from the Department that the application was accepted, the applying depository shall publish notice [if] **of** the application in a newspaper published within the municipality in which it proposes to locate the branch office if there is one, and if there is no such newspaper, in a newspaper published in the county and having a substantial circulation in the municipality. The notice shall contain the name and address of the applying depository, the proposed location and the statement contained in (b) above. **The depository shall provide the Commissioner with proof of publication within 10 days after this publication.**

3:1-2.21 Minimum and maximum stock subscriptions

(a) Each charter application for a depository shall provide for stated capital of at least $6,000,000 **which shall include at least $3,000,000 in capital stock**, or such other amount as required by the Commissioner; except that an application for a charter for a trust company, which does not have authority to take deposits, may provide for stated capital of $4,000,000 or more **which shall include at least $2,000,000 in capital stock**; and except that an application for a charter incident to the purchase of a failed institution or a branch or branches of a failed institution, may provide for stated capital of $4,000,000 or more, or six percent of deposits acquired, whichever is greater, **with at least $2,000,000 in capital stock,** so long as the depository agrees to raise additional capital to reach $6,000,000 within one year following issuance of the Certificate of Authority while also satisfying the capital requirements set forth in N.J.A.C. 3:4.

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

(b)

DIVISION OF REGULATORY AFFAIRS

Secondary Mortgage Loan Act Rules
Revolving Credit Equity Loan Act Rules

Proposed Amendments: N.J.A.C. 3:1-14.5; N.J.A.C. 3:18-3.2, 5.1, 5.3 and 8.1

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

Authority: N.J.S.A. 17:9A-24, 25.2, 17:11A-54 and 17:12B-48(21), 155.

Proposal Number: PRN 1993-145.

Submit comments by April 14, 1993 to:

Rule Comments
Attn: William B. Waits
Regulatory Officer
Department of Banking
CN 040
Trenton, NJ 08625

The agency proposal follows:

Summary

The Department recently adopted substantial amendments to its rules regulating secondary mortgage loan licensees. In response to comments to that proposal, the Department indicated that several changes were still necessary to bring the rules into conformity with the Secondary Mortgage Loan Act, N.J.S.A. 17:11A-34 et seq. (the "Act"). See 24 N.J.R. 2760(a), 25 N.J.R. 285(a). This proposal makes these changes.

In particular, P.L. 1991, c.289, §2 permits lenders to collect at closing a service charge of up to $25.00 for cancelling a mortgage, in addition to the fee charged by the county recording officer. A recent amendment to the Act clarifies that licensees under the Act are also permitted to charge this service charge. P.L. 1992, c.20, §2. The Department proposes an amendment which will permit licensees to charge a service charge consistent with this legislation. However, if the licensee collects the service fee at the time of the mortgage transaction and transfers the servicing rights prior to cancellation, the licensee must refund the service fee to the borrower. In this way, licensees will not receive the service fee if they do not perform the service of cancelling the mortgage.

Public Law 1989, c.304 amended N.J.S.A. 17:11A-46(a) to provide that a secondary mortgage loan need not be closed at the office of a licensee provided that it is closed in New Jersey at the office of an attorney admitted to practice in this State. It is proposed that these rules be amended to clarify that a licensee does not need to license an attorney's office merely because loans are closed there or because fees are received there incident to the closing. An amendment is also proposed to allow licensees to charge for recording fees, consistent with N.J.S.A. 17:11A-44.9.

N.J.S.A. 46:10A-6 prior to its recent amendment provided that a lender could only be reimbursed for attorney review fees. Pursuant to P.L. 1993, c.33, §1, effective January 29, 1993, N.J.S.A. 46:10A-6 has been amended and loans made by licensees under the Act are specifically excluded from coverage by that section. Accordingly, current statutory law permits a secondary mortgage licensee to collect a reasonable legal fee at the time of the execution of the loan, provided the fee represents a charge actually incurred in connection with a secondary mortgage loan and that it is paid to an attorney authorized to practice law in this State. N.J.S.A. 17:11A-46(g). A proposed amendment has been added consistent with this provision.

Finally, P.L. 1992, c.20, §3 permits a licensee to collect no more than three discount points computed as a percentage of the loan. Since banks may make open-end loans upon the same terms as banks, savings banks and savings and loan associations, N.J.S.A. 17:11A-44.8, and since the rules of the Department regulating such loans do not permit interest in advance such as discount points, it was unclear whether licensees had the authority to charge discount points on open-ended loans.

As a remedy and to bring the laws of all open-ended lenders into parity, it is proposed that the rules governing revolving credit equity loans by banks, savings banks and savings and loan associations be amended to permit them to charge up to three discount points at closing. The Department will monitor this practice for abuse, and may find it necessary in the future to place further constraints on the ability of lenders to charge this fee.

Social Impact

Most of these proposed amendments amend the rules to bring them into conformity with existing statutory law. To that extent, there is no expected social impact ascribed to the rules themselves. However, it is unclear what if any social impact will result from the allowance of a charge of up to three discount points on open-ended loans; whether fewer or greater numbers of such loans will result.

Economic Impact

The proposed amendments permit lenders to charge up to three discount points on open-ended loans. By giving lenders the flexibility to charge this fee, they will be able to offer revolving loans at a reduced monthly interest rate. In addition, the amendments require licensees to refund service fees for cancellation when and if servicing rights are transferred. This may have a negative economic impact on licensees and a corresponding positive economic impact on borrowers. The $25.00 filing fee is a simple reiteration of statute not a new rule. However, the refunding requirement of this amendment is designed to have a positive impact on the borrower. The provisions concerning the charging of attorney's fees and the use of attorney's offices for closing on loans are directly from the statutes cited in the summary above. The rules therefore have no independent economic impact.

Regulatory Flexibility Analysis

Secondary mortgage loan licensees are predominantly small businesses, as defined under the Regulatory Flexibilty Act, N.J.S.A. 52:14B-16 et seq. The proposed amendments permit a licensee to charge an additional service fee not to exceed $25.00 for cancelling the mortgage. The amendment also imposes the compliance requirement that, if the fee is taken at the time of the mortgage transaction and the licensee transfers the servicing rights prior to cancellation, the licensee must refund the service fee to the borrower. To prevent a borrower from paying this service fee to a licensee without receiving the corresponding service, it is necessary that all licensees including small businesses refund this fee. Accordingly, no differentiation based on business size is made.

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

3:1-14.5 Interest

No interest shall be paid, deducted or received in advance, **except that a bank, savings bank or savings and loan association may charge at closing up to three discount points computed as a percentage of the credit extended.** Interest shall not be compounded and shall be computed only on unpaid principal balances, except that interest due but unpaid may be considered part of the unpaid principal balance. For purposes of computing interest all installment payments shall be applied no later than the next business day after the date of receipt at the designated office or offices of the bank, savings bank or savings and loan association as set forth in the agreement, and interest shall be charged for the actual number of days elapsed at a daily rate of 1/365th of the yearly rate.

3:18-3.2 Permitted charges

(a) A licensee may charge a borrower only the following fees incident to a secondary mortgage loan, in addition to interest:

1. Third party charges actually incurred by a licensee on behalf of a borrower incident to the processing of a secondary mortgage loan application or the closing of the loan. The licensee may collect third party charges only after they have been incurred by the licensee, and the licensee may not charge the borrower more than the amount the borrower is charged by the third party for the service. The licensee may not collect any third party charges except the following:

i. Fees for title examination, abstract of title, survey, **recording** or title insurance;

ii.-iii. (No change.)

iv. Reasonable attorney [review] fees paid to an attorney authorized to practice law in New Jersey[, if not otherwise prohibited].

2. (No change.)

3. Check collection charges in the amount charged to the licensee; [and]

4. No more than three discount points[.]; **and**

5. The fee charged by the county recording officer to cancel the mortgage, plus an additional service fee not to exceed $25.00, providing that the borrower has received prior notice of the fees required by the licensee, and providing further that if the licensee collects the service fee at the time of the mortgage transaction and transfers the servicing rights prior to cancellation, the licensee must refund the service fee to the borrower.

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

3:18-5.1 Affiliation between a licensee and its attorney prohibited

(a) A licensee shall not charge a borrower [an attorney review fee] **attorney fees** if the attorney to whom the fee is to be paid is an employee, partner, officer, director or stockholder of the licensee.

(b) (No change.)

3:18-5.3 Attorney's statement must be detailed

To obtain reimbursement from the borrower at closing for attorney [review] fees charged to the licensee in connection with a secondary mortgage loan, a licensee shall issue to the borrower at or before the closing of a secondary mortgage loan an itemized listing prepared by the attorney of the specific legal services performed by the attorney for and on behalf of the licensee and the charge to the licensee for each such service.

3:18-8.1 Branch offices

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

(g) A licensee does not need to obtain a branch office license for an attorney's office merely because loans are closed there and fees are received there incident to the loan closing.

(a)

DIVISION OF REGULATORY AFFAIRS

Mortgage Banker Net Worth

Proposed Amendments: N.J.A.C. 3:2-1.4; 3:38-1.1, 1.10 and 5.1

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

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

Proposal Number: PRN 1993-147.

Submit comments by April 14, 1993 to:

Rule Comments
Attn: William B. Waits
Regulatory Officer
Department of Banking
CN 040
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The Department of Banking proposes to further amend its net worth requirements for mortgage bankers. This is done by reducing the net worth requirement for mortgage bankers not engaged in the servicing of loans. These licensees will be called "mortgage bankers non-servicing." A mortgage banker non-servicing is a mortgage banker which (1) does not hold mortgage loans in its portfolio for more than 90 days in the regular course of business; and (2) has shown to the Department's satisfaction an ability to fund loans through warehouse agreements, table funding agreements or otherwise. Whereas a traditional mortgage banker must have a net worth of at least $250,000, a mortgage banker non-servicing will only need a net worth of at least $150,000. A mortgage banker complying with this reduced net worth standard must include in its advertisements: "Licensed mortgage banker non-servicing—N.J. Department of Banking."

This net worth requirement for a mortgage banker non-servicing will be phased in over several years. In particular, each licensed mortgage banker non-servicing shall maintain a tangible net worth equal to or greater than $50,000 on or after December 31, 1992, $75,000 on or after December 31, 1994, $100,000 on or after December 31, 1995, $125,000 on or after December 31, 1996, and $150,000 on or after December 31, 1997.

For licensees not able to attain this standard, the Department pursuant to N.J.A.C. 3:38-1.10(h) has the authority to take such action as it deems appropriate. For example, the Department under the rules may require the licensee to operate pursuant to a Memorandum of Understanding, direct the licensee to submit and comply with a capital plan, or may suspend the licensee from transacting new business. The Department has issued an enforcement advisory which provides that no license will be suspended in 1993 merely because of the failure of a licensee to attain the net worth requirements so long as the licensee is solvent.

For future years, it is proposed that the decision as to whether to suspend a license for failure to attain the net worth standards be based on the following factors:

1. Whether a mortgage banker (including a mortgage banker non-servicing) is less than $35,000 below the net worth requirement for that year, and whether a mortgage broker has $25,000 net worth;

2. The size of any warehouse line or table funding agreement, the institution(s) providing this credit, and any correspondent relationship that a licensee may have with another financial institution;

3. The number and amount of loans typically made by the licensee;

4. The history of consumer complaints received by the Department concerning the licensee;

5. Whether the licensee has committed to make loans which it has been unable to fund; and

6. Any other factors reflecting on the licensee's ability and fitness to transact business as a mortgage banker or broker.

The Mortgage Bankers and Brokers Act provides that the Commissioner is to consider the "financial responsibility" of an applicant before issuing a license. N.J.S.A. 17:11B-4. These are factors which the Department deems to be pertinent when deciding whether a licensee has sufficient net worth to meet this financial responsibility standard. A licensee which has a high volume of loans may need more net worth than a licensee which only makes an occasional loan. Further, when a licensee has a history of a large volume of consumer complaints which reflect that the licensee is not transacting business in accordance with the Act, this is a signal that its net worth may be insufficient for the amount of business it is conducting. Another signal is when a licensee commits to make loans which it is unable to close.

Using these factors, it is possible that even a licensee with a tangible net worth of $250,000 may have an insufficient net worth when considering the number of loans it commits to close. Accordingly, before suspending a license, the Department will consider all of the factors listed above.

Social Impact

The proposed amendments, which reduce the net worth requirements for specified licensed mortgage bankers, will permit some licensees to continue in the business of making residential mortgage loans so long as they do not service the loans in the regular course of business. This will permit more lenders to remain in this business thereby increasing the availability of credit to the benefit of the borrowing public.

Economic Impact

The proposed amendments will have no impact on those mortgage bankers who satisfy the net worth requirements. To the extent that these amendments permit licensed mortgage bankers to continue in business, it will have a positive economic impact on them.

Regulatory Flexibility Analysis

Licensed mortgage bankers and brokers are predominately small businesses, as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The proposed amendments require a mortgage banker non-servicing to attain a net worth, although less than the net worth required of other mortgage bankers. Further, the proposed amendments prohibits a mortgage banker non-servicing from holding loans in its portfolio for more than 90 days in the regular course of business. Taken together, these amendments minimize any adverse economic impact on small businesses by reducing the net worth that must be maintained by specified licensees, thereby allowing some small businesses to remain in the industry.

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

3:2-1.4 Violations of Act

(a) (No change.)

(b) Without limiting (a) above, the following conduct shall be deemed deceptive or misleading:

1.-5. (No change.)

6. The advertisement of a mortgage loan **or mortgage loan services** by a mortgage banker or mortgage broker without including in the advertisement or broadcast announcement the words "licensed mortgage banker—N.J. Department of Banking", **"licensed mortgage banker non-servicing—N.J. Department of Banking"** or "licensed mortgage broker—N.J. Department of Banking," whichever the case may be; and

7. (No change.)

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

3:38-1.1 Definitions

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

. . .

"Mortgage banker non-servicing" means a mortgage banker which:

1. Does not hold mortgage loans in its portfolio for more than 90 days in the regular course of business; and

2. Has shown to the Department's satisfaction an ability to fund loans through warehouse agreements, table funding agreements or otherwise.

. . .

"Table fund agreement" means an agreement between an investor and a licensee whereby the investor agrees to purchase specified

mortgage loans from a licensee immediately after the closing of the mortgage loans, and which permits the licensee to close loans with funds of the investor.

"Warehouse agreement" means an agreement to provide credit to a licensee to enable the licensee to have funds to close mortgage loans and hold those mortgage loans pending sale to permanent investors.

3:38-1.10 Net Worth/Insolvency

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

(d) Each applicant for a license as a mortgage banker must demonstrate that it has tangible net worth of $250,000, **except that an applicant for a mortgage banker non-servicing license must demonstrate that it has tangible net worth of at least $150,000.** Each applicant for a license as a mortgage broker must demonstrate that it has tangible net worth of at least $50,000.

(e) Each licensed mortgage banker shall maintain at all times tangible net worth of at least $250,000, **except that a mortgage banker non-servicing shall maintain at all times tangible net worth of at least $150,000.** [and each] **Each** licensed mortgage broker shall maintain at all times tangible net worth of at least $50,000.

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

(i) Mortgage bankers licensed on December 16, 1991 shall be exempt from the net worth requirements in (e) above until December 31, 1995. Prior to that date, each licensed mortgage banker shall maintain a tangible net worth equal to or greater than $50,000 on or after December 31, 1992, $100,000 on or after December 31, 1993, and $175,000 on or after December 31, 1994. **The following are exceptions:**

1. Mortgage bankers non-servicing licensed as mortgage bankers on December 16, 1991 shall be exempt from the net worth requirement in (e) above until December 31, 1997; and

2. Each such licensed mortgage banker non-servicing shall maintain a tangible net worth equal to or greater than $50,000 on or after December 31, 1992, $75,000 on or after December 31, 1994, $100,000 on or after December 31, 1995, $125,000 on or after December 31, 1996, and $150,000 on or after December 31, 1997.

(j) When considering whether to suspend the license of a licensee unable to attain the net worth standards set forth in this section, the Commissioner shall consider the following factors:

1. Whether a mortgage banker is less than $35,000 below the net worth requirement for that year, and whether a mortgage broker has $25,000 tangible net worth;

2. The size of any warehouse line or table funding agreement, the institution(s) providing this credit, and any correspondent relationship that a licensee may have with another financial institution;

3. The number and amount of loans typically made by the licensee;

4. The history of consumer complaints received by the Department concerning the licensee;

5. Whether the licensee has committed to make loans which it has been unable to fund; and

6. Any other factors reflecting on the licensee's ability and fitness to transact business as a mortgage banker or broker.

3:38-5.1 Necessity for license

(a) No person shall act as a mortgage banker or a mortgage broker without first obtaining a license therefor, but a person licensed as a mortgage banker may act as a mortgage broker. **A mortgage banker non-servicing shall not service mortgage loans for more than 90 days in the regular course of business.**

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

ENVIRONMENTAL PROTECTION AND ENERGY

(a)

NEW JERSEY WATER SUPPLY AUTHORITY

New Jersey Water Supply Authority Policies and Procedures

Proposed Readoption: N.J.A.C. 7:11

Authorized By: New Jersey Water Supply Authority, Scott A. Weiner, Chairman and Commissioner, Department of Environmental Protection and Energy.

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

DEPE Docket Number: 12-93-02.

Proposal Number: PRN 1993-148.

Submit written comments by April 14, 1993 to:

Janis E. Hoagland, Esq.
Administrative Practice Officer
Office of Legal Affairs
Department of Environmental Protection and Energy
CN 402
Trenton, N.J. 08625; and

Rocco D. Ricci, Executive Director
New Jersey Water Supply
P.O. Box 5196
Clinton, New Jersey 08809

The agency proposal follows:

Summary

Pursuant to Executive Order No. 66(1978), N.J.A.C. 7:11 expires on May 13, 1993. The New Jersey Water Supply Authority (hereafter "the Authority") has reviewed these rules and has determined them to be necessary, reasonable and proper for the purpose for which they were originally promulgated. The Authority, therefore, proposes to readopt these rules.

The New Jersey Water Supply Authority has proposed amendments to N.J.A.C. 7:11-2 which were published in the New Jersey Register on December 21, 1992 at 24 N.J.R. 4472(a). A public hearing concerning the proposed amendments was held on February 3, 1993. The comment period for this proposal ended on March 12, 1993.

Proposed amendments to N.J.A.C. 7:11-4 were also published in the New Jersey Register on December 21, 1992 at 24 N.J.R. 4474(a). A public hearing concerning the proposed amendments was held on February 10, 1993. The comment period for this proposal ends on March 19, 1993.

N.J.A.C. 7:11-1 pertains to the permissible uses of the property and waters under the jurisdiction of the Authority. The Authority lands and waters include the Delaware and Raritan Canal Transmission Complex, the Spruce Run-Round Valley Reservoir Complex, the Manasquan Water Supply System and any other water supply facilities owned or operated by the State which may be acquired pursuant to any past or future bond issues including the Water Supply Bond Act of 1981, P.L. 1981, c.261. No changes are being proposed to this subchapter at this time.

A summary of each section in subchapter 1 follows:

N.J.A.C. 7:11-1 provides the scope of the subchapter by identifying the Authority lands and waters to which the subchapter applies.

N.J.A.C. 7:11-1.2 specifies that the subchapter shall be liberally construed.

N.J.A.C. 7:11-1.3 sets forth that the Executive Director of the Authority shall exercise authority in any matters not governed by the subchapter.

N.J.A.C. 7:11-1.4 sets forth the relationship of the subchapter to other Federal and State Laws.

N.J.A.C. 7:11-1.5 provides that the purposes of the subchapter are to protect Authority resources and the health and welfare of persons using those resources, and provides the standard by which persons may be removed from Authority lands or waters.

N.J.A.C. 7:11-1.6 provides definitions of the words and terms used throughout this subchapter.

N.J.A.C. 7:11-1.7 reserves to the Authority the right to designate or direct that recreation or other public use of Authority lands or waters be carried out only in specific areas.

N.J.A.C. 7:11-1.8 requires that all persons use Authority lands or waters in conformance with posted instructions or issued permits.

N.J.A.C. 7:11-1.9 provides that the Authority may limit or close to the public use of specific lands or waters and further provides the means by which notice of such limitation or closure shall be communicated.

N.J.A.C. 7:11-1.10 prohibits posting of signs, soliciting and selling without written Authority permission.

N.J.A.C. 7:11-1.11 prohibits commercial activities on Authority lands and waters without a permit, contract or lease.

N.J.A.C. 7:11-1.12 prohibits the possession or consumption of alcoholic beverages except in designated areas.

N.J.A.C. 7:11-1.13 prohibits dumping, littering or burning of trash.

N.J.A.C. 7:11-1.14 sets forth the restrictions which apply to furred animals or pets on Authority property.

N.J.A.C. 7:11-1.15 provides an exemption from the previous section for seeing eye dogs, and exempts hunting dogs from the leashing requirements of N.J.A.C. 7:11-1.14.

N.J.A.C. 7:11-1.16 prohibits the damaging of Authority property without Authority permission and exempts certain trapping and hunting activities from this prohibition.

N.J.A.C. 7:11-1.17 prohibits disruptive conduct on Authority property.

N.J.A.C. 7:11-1.18 prohibits the start or maintenance of any open fire without written permission of the Authority.

N.J.A.C. 7:11-1.19 restricts picnicking to designated areas.

N.J.A.C. 7:11-1.20 prohibits target practice with firearms unless written permission is obtained.

N.J.A.C. 7:11-1.21 prohibits the use of metal detectors unless written permission is obtained.

N.J.A.C. 7:11-1.22 restricts horseback riding to designated areas.

N.J.A.C. 7:11-1.23 restricts hiking to designated areas.

N.J.A.C. 7:11-1.24 restricts camping to designated areas.

N.J.A.C. 7:11-1.25 restricts swimming to designated areas.

N.J.A.C. 7:11-1.26 prohibits spelunking unless written permission is obtained.

N.J.A.C. 7:11-1.27 requires that individual and group recreational activities shall also comply with State Park Service or Division of Fish, Game and Wildlife rules on Authority property under administrative control of those agencies, and requires the obtaining of permits for certain activities.

N.J.A.C. 7:11-1.28 sets forth restrictions on hunting, fishing and trapping on Authority lands and waters.

N.J.A.C. 7:11-1.29 sets forth requirements for operation of motor vehicles on Authority property.

N.J.A.C. 7:11-1.30 prohibits the operation on Authority lands of motor vehicles not requiring licensing by the Division of Motor Vehicles unless written permission is obtained for such operation; permits the designation of specific hours and locations for operation of such vehicles; and prohibits operation of motor vehicles on ice-covered waters without a permit.

N.J.A.C. 7:11-1.31 requires that motor vehicles operated on Authority lands conform to motor vehicle laws in addition to conformance with this subchapter.

N.J.A.C. 7:11-1.32 sets forth specific requirements for the operation of motor vehicles on Authority lands.

N.J.A.C. 7:11-1.33 prohibits the use of snowmobiles on Authority lands and waters.

N.J.A.C. 7:11-1.34 sets forth motor vehicle speed limits on Authority lands.

N.J.A.C. 7:11-1.35 restricts vehicle parking to designated areas.

N.J.A.C. 7:11-1.36 applies State Park Service rules to boating activities on Authority waters in addition to application of this subchapter.

N.J.A.C. 7:11-1.37 restricts the operation of boats on Authority waters.

N.J.A.C. 7:11-1.38 restricts sledding, skiing and tobogganing to designated areas.

N.J.A.C. 7:11-1.39 restricts ice fishing.

N.J.A.C. 7:11-1.40 restricts ice skating to designated areas.

N.J.A.C. 7:11-1.41 imposes restrictions on ice boating.

N.J.A.C. 7:11-1.42 prohibits trespassing in designated areas.

N.J.A.C. 7:11-1.43 extends restricted areas during periods of low water levels.

N.J.A.C. 7:11-1.44 applies swimming and dock building restrictions to the Delaware and Raritan Canal in addition to all other restrictions of this subchapter.

N.J.A.C. 7:11-1.45 prohibits the use or possession of explosives on Authority property without written permission.

N.J.A.C. 7:11-1.46 prohibits the damaging or disturbance of Authority-owned early warning systems.

N.J.A.C. 7:11-1.47 applies the principle of severability to the subchapter.

Proposed amendments to N.J.A.C. 7:11-2 were published in the New Jersey Register on December 21, 1992 at 24 N.J.R. 4472(a). A public hearing concerning the proposed amendments was held on February 3, 1993. The comment period for this proposal ended on March 12, 1993.

N.J.A.C. 7:11-2, Schedule of Rates, Charges and Debt Service Assessments for the Sale of Water from the Delaware and Raritan Canal and the Spruce Run/Round Valley Reservoir Systems, pertains to the setting of rates for the purchase of water by water users and the procedures to be followed when the rate is to be changed. As explained above, this subchapter is the subject of an outstanding proposal.

A summary of each section in subchapter 2 follows:

N.J.A.C. 7:11-2.1 requires that certain rates be paid for raw water diverted from the system, that the rates be incorporated in all water use agreements, and what the rate shall include.

N.J.A.C. 7:11-2.2 sets forth the general rate schedule for operations and maintenance expenses.

N.J.A.C. 7:11-2.3 provides a detailed description of and assessments for certain debt service items.

N.J.A.C. 7:11-2.4 sets forth the daily allotment charge for use of water.

N.J.A.C. 7:11-2.5 sets forth the basis for determining rates for diversions, withdrawals or allocations of water from the Raritan River Basin.

N.J.A.C. 7:11-2.6 explains the term Production Factor and its applicability.

N.J.A.C. 7:11-2.7 explains how the Annual Demand Charge for a given water allocation shall be computed and how it shall be paid.

N.J.A.C. 7:11-2.8 sets forth the terms by which standby water service may be authorized.

N.J.A.C. 7:11-2.9 sets forth the standby charge applied to water withdrawn by a user classified under standby service.

N.J.A.C. 7:11-2.10 reserves the Authority's right to review and revise the General Rate Schedule and debt service assessment rate.

N.J.A.C. 7:11-2.11 sets forth the procedures to be followed for rate adjustments.

N.J.A.C. 7:11-2.12 establishes and describes a special user rate for certain waters withdrawn and returned to the Raritan River Basin.

N.J.A.C. 7:11-2.13 describes the short term availability of uncommitted capacity and the applicable rate for purchase.

N.J.A.C. 7:11-2.14 provides for and describes the calculation of late payment interest charges.

N.J.A.C. 7:11-3, Rules for the Use of Water from the Delaware and Raritan Canal and Spruce Run/Round Valley Reservoir System, sets forth the water management requirements for these named facilities as administered by the Authority. No changes are being proposed to this subchapter at this time.

A summary of each section of subchapter 3 follows:

N.J.A.C. 7:11-3.1 informs potential water users where they may obtain and subsequently submit an application for water supply.

N.J.A.C. 7:11-3.2 details the procedure for the public hearings required to be held on each application, with certain exceptions.

N.J.A.C. 7:11-3.3 discusses the general terms for all formal water use agreements for any water withdrawn from the Delaware and Raritan Canal and Spruce Run/Round Valley Reservoir System.

N.J.A.C. 7:11-3.4 states that the most current rates, charges and debt service assessments as set forth in N.J.A.C. 7:11-2 will apply to water diverted from the Delaware and Raritan Canal and the Spruce Run/Round Valley Reservoir System.

N.J.A.C. 7:11-3.5 describes the payment procedures for water allocated from the system.

N.J.A.C. 7:11-3.6 establishes factors for consideration of each application for the diversion, withdrawal or allocation of water from the Raritan River downstream of the Spruce Run/Round Valley Reservoir System.

N.J.A.C. 7:11-3.7 explains that contract allocation will be in terms of million gallons per day and that the maximum permitted withdrawal rate shall be specified in the water use agreement by the Authority.

N.J.A.C. 7:11-3.8 details the calculation of the production factor for the purpose of determining the prevailing charge for an allocation.

N.J.A.C. 7:11-3.9 discusses the effective date and expiration date for water use agreements.

N.J.A.C. 7:11-3.10 details the procedure by which a user may apply for a renewal of its water use agreement.

N.J.A.C. 7:11-3.11 allows the Authority to unilaterally revoke a water use agreement and require submission of a new application for a user withdrawing less than 50 percent of its allotted diversion for a period of 12 consecutive months.

N.J.A.C. 7:11-3.12 establishes the Authority's right to temporarily curtail or suspend a user's withdrawal of water under certain circumstances.

N.J.A.C. 7:11-3.13 establishes that the Authority shall not be considered in default of any of its obligations for failure to perform due to strikes, natural disasters or acts of God and certain other reasons.

N.J.A.C. 7:11-3.14 requires that the agreement to withdraw water from the Delaware and Raritan Canal and Spruce Run/Round Valley Reservoir System may not be assigned or transferred without the Authority's prior written approval.

N.J.A.C. 7:11-3.15 details the procedures and reporting requirements for diversion scheduling purposes, and allows for recovery of certain damages by the Authority under certain circumstances.

N.J.A.C. 7:11-3.16 prohibits a user from withdrawing a quantity of water in excess of its advance notice of daily demand given to the Authority pursuant to N.J.A.C. 7:11-3.15.

N.J.A.C. 7:11-3.17 establishes a rate of $1,000 for each million gallons withdrawn over the five percent in excess of advance notice of daily demand from the Raritan Basin streams and the Delaware and Raritan Canal, and temporarily waives the penalty for overdraft from Raritan Basin streams.

N.J.A.C. 7:11-3.18 details the requirements for installing and constructing withdrawal apparatus, equipment, structures and facilities in the Delaware and Raritan Canal.

N.J.A.C. 7:11-3.19 establishes requirements for the installation and maintenance of meters by users.

N.J.A.C. 7:11-3.20 describes the procedures to be followed and the Authority's response in the case of meter failure.

N.J.A.C. 7:11-3.21 details the procedures involved in meter reading and appropriate recordkeeping requirements.

N.J.A.C. 7:11-3.22 establishes the general requirement that the user must furnish such assistance as required by the Authority to monitor the implementation of the water use agreement.

N.J.A.C. 7:11-3.23 requires that users shall at all times defend, save, hold harmless and indemnify the Authority.

N.J.A.C. 7:11-3.24 requires all users of water from the Delaware and Raritan Canal to maintain public liability and property damage insurance on property and facilities constituting the user's withdrawal system operated and maintained on canal property.

N.J.A.C. 7:11-3.25 stipulates that water withdrawn from the Delaware and Raritan Canal and Spruce Run/Round Valley Reservoir System is raw water, that the Authority does not guarantee the quality of the water supplied and that no claims regarding quality variation will be recognized by the Authority.

N.J.A.C. 7:11-3.26 stipulates that a user's discharge into the Delaware and Raritan Canal requires prior written approval and that water may only be returned to the Delaware and Raritan Canal if the quality of the Delaware and Raritan Canal water will not be impaired as determined by the Authority.

N.J.A.C. 7:11-3.27 describes the conditions and requirements for discharge structures in the Delaware and Raritan Canal.

N.J.A.C. 7:11-3.28 details the procedures for disposition of all facilities installed by the user on Delaware and Raritan Canal property after expiration of a water use agreement.

Proposed amendments to N.J.A.C. 7:11-4 were published in the New Jersey Register on December 21, 1992 at 24 N.J.R. 4474(a). A public hearing concerning these proposed amendments was held on February 10, 1993. The comment period for this proposal ends on March 19, 1993.

N.J.A.C. 7:11-4, Schedule of Rates, Charges and Debt Service Assessments for the Sale of Water from the Manasquan Reservoir Water Supply System, pertains to the setting of rates for the purchase of water by water users and the procedures to be followed when the rate is to be changed. As explained above, this subchapter is the subject of an outstanding proposal.

A summary of each section in subchapter 4 follows:

N.J.A.C. 7:11-4.1 requires that certain rates be paid for raw water diverted from the system, that the rates be incorporated in all water use agreements, and what the rate shall include.

N.J.A.C. 7:11-4.2 defines the terms utilized in this subchapter.

N.J.A.C. 7:11-4.3 sets forth the operations and maintenance expense component for the use of water.

N.J.A.C. 7:11-4.4 provides a detailed description of and sets forth the debt service component assessment for the use of water.

N.J.A.C. 7:11-4.5 describes the payment procedures for water allocated from the system.

N.J.A.C. 7:11-4.6 sets forth the criteria for the rate schedule for uninterruptible service.

N.J.A.C. 7:11-4.7 sets forth the terms by which short term service may be authorized.

N.J.A.C. 7:11-4.8 sets forth the terms by which standby water service may be authorized.

N.J.A.C. 7:11-4.9 sets forth the standby charge applied to water withdrawn by a user classified under standby service.

N.J.A.C. 7:11-4.10 sets forth the procedure to be followed for making payments of other charges due to excessive withdrawals or otherwise.

N.J.A.C. 7:11-4.11 provides for and describes the calculation of late payment interest charges.

N.J.A.C. 7:11-4.12 reserves the Authority's right to review and revise the Operations and Maintenance Expense Component and Debt Service Cost Component.

N.J.A.C. 7:11-4.13 sets forth the procedures to be followed for rate adjustments.

N.J.A.C. 7:11-5, Rules for the Use of Water from the Manasquan Reservoir Water Supply System, sets forth the water management requirements for these named facilities as administered by the Authority. No changes are being proposed to this subchapter at this time.

A summary of each section of subchapter 5 follows:

N.J.A.C. 7:11-5.1 informs potential water users where they may obtain and subsequently submit an application for water supply.

N.J.A.C. 7:11-5.2 defines the terms utilized in this subchapter.

N.J.A.C. 7:11-5.3 discusses the general conditions for all formal water use agreements for any water withdrawn from the Manasquan Reservoir System.

N.J.A.C. 7:11-5.4 states that the most current rates, charges and debt service assessments as set forth in N.J.A.C. 7:11-4 will apply to water diverted from the Manasquan Reservoir System, and allows the Authority to adjust these rates from time to time and to levy special assessments.

N.J.A.C. 7:11-5.5 describes the payment procedures for water allocated from the System.

N.J.A.C. 7:11-5.6 details the procedure by which a user may apply for surplus water.

N.J.A.C. 7:11-5.7 explains that contract allocation will be in terms of million gallons per day and that the maximum permitted withdrawal rate shall be specified in the water agreement by the Authority.

N.J.A.C. 7:11-5.8 discusses the effective date and expiration date of water use agreements.

N.J.A.C. 7:11-5.9 details the procedure by which a user may apply for a renewal of its water use agreement.

N.J.A.C. 7:11-5.10 establishes the Authority's right to temporarily curtail or suspend a user's withdrawal of water under certain circumstances.

N.J.A.C. 7:11-5.11 establishes that the Authority or the user shall not be considered in default of any of its obligations for failure to perform by reason of Force Majeure.

N.J.A.C. 7:11-5.12 requires that the agreement to withdraw water from the Manasquan Reservoir System may not be assigned or transferred without the Authority's prior written approval.

N.J.A.C. 7:11-5.13 details the procedures and reporting requirements for withdrawal scheduling purposes, and allows for recovery of certain damages by the Authority under certain circumstances.

N.J.A.C. 7:11-5.14 prohibits a user from withdrawing a quantity of water in excess of its advance notice of daily demand to the Authority pursuant to N.J.A.C. 7:11-5.13.

N.J.A.C. 7:11-5.15 details the requirements for installing and constructing withdrawal apparatus, equipment, structures and facilities in the Manasquan Reservoir System and the Authority's right to examine and repair same.

N.J.A.C. 7:11-5.16 establishes requirements for the installation and maintenance of meters by users.

N.J.A.C. 7:11-5.17 details the procedures involved in meter reading and appropriate recordkeeping requirements.

N.J.A.C. 7:11-5.18 details the procedures involved in the appropriate recordkeeping requirements in the event of a meter malfunction.

N.J.A.C. 7:11-5.19 establishes the general requirement that the user must furnish such assistance as required by the Authority to monitor the implementation of the water use agreements.

N.J.A.C. 7:11-5.20 stipulates that water withdrawn from the Manasquan Reservoir System is raw water, that the Authority does not guarantee the quality of the water supplied, and that no claims regarding quality variation will be recognized by the Authority.

N.J.A.C. 7:11-5.21 details the procedures for disposition of all facilities installed by the user on Manasquan Reservoir System property after expiration of a water use agreement.

Social Impact

Once readopted, the rules will continue to provide reasonable and necessary standards for the regulation of the use of Authority facilities as well as reasonable mechanisms for the setting of water use rates and the policies and procedures governing that use.

Subchapter 1 has and will continue to have a positive social impact by providing specific guidelines governing a wide variety of activities that may take place on Authority property. These specific provisions allow the Authority to accomplish a two-fold objective: to preserve the water systems which the Authority is charged with operating and to protect the public's health, welfare and safety while using the Authority's facilities.

Subchapters 2 and 4 will have a minimal social impact. These subchapters represent the Authority's efforts to ensure that rates for water withdrawn, diverted or allocated from the Delaware and Raritan Canal and Spruce Run/Round Valley Reservoir Complex and the Manasquan Reservoir Water Supply System are equitably assessed and sufficient to provide the revenues required by the Authority. In this way, Authority facilities may be properly maintained so that water users' needs can be met.

By providing specific guidance to water users as to contract procedures, payment terms and general requirements for water use agreements for water withdrawn, allocated or diverted from Authority facilities, the Authority pursuant to N.J.A.C. 7:11-3 and N.J.A.C. 7:11-5 is thereby able to properly manage the water facilities under its jurisdiction in a consistent manner.

Economic Impact

Subchapter 1 will have an indirect, positive economic impact. Since the Authority charges no fees to the public for use of Authority facilities, the public will experience no direct economic effect of the rules. The rules will, however, help to prevent and deter damage to Authority property by clearly establishing permissible uses and warning that criminal penalties will accompany any misuse. Decreased property abuse and damage mean decreased costs for maintenance, repair and replacement of Authority facilities, which in turn, help to avoid budget increases for maintenance and upkeep.

Proposed amendments to subchapters 2 and 4 remain outstanding (see 24 N.J.R. 4472(a) and 24 N.J.R. 4474(a)).

The proposed adjustments to subchapter 2 will result in a total charge for the uninterruptible untreated water supply from the Delaware and Raritan Canal—Spruce Run/Round Valley Reservoir System of $221.80 per million gallons ($116.99 for operation and maintenance plus $104.81 for debt service) starting July 1, 1993.

The proposed adjustments to subchapter 2 will result in a net increase in the total charge for the raw water supplied from the Raritan Basin System ranging from $6.94 in fiscal years 1994 and 1995 to $6.90 in fiscal years 1996 and 1997 per mg. It is estimated that the annual impact of the proposed wholesale water rate increase on the typical household will amount to $.69 in fiscal years 1994 through 1997.

The proposed adjustments to subchapter 4 will result in a total charge for the uninterruptible untreated water supply from the Manasquan Reservoir System of $1,066.60 per million gallons ($326.20 for operation and maintenance plus $740.40 for debt service) starting July 1, 1993 and $1,099.02 per million gallons effective February 1, 1994 ($326.20 for operation and maintenance plus $772.82 for debt service).

These proposed adjustments to the Manasquan System rate schedule will result in a net decrease of $20.07 per million gallons in the total charge for the raw water supplied from the System effective July 1, 1993. A planned increase in the debt service payment of $32.42 will occur on February 1, 1994 to provide for 120 percent debt service coverage as required by the project financing agreements. It is estimated that the annual impact of the proposed wholesale water rate adjustment on the typical household will amount to a $.66 decrease in Fiscal Year 1994.

Subchapters 3 and 5 will result in minimum economic impact since the rules continue established policies of the Authority which control the diversion of water from Authority facilities. It is estimated that the annual cost to each of the Authority's wholesale water customers to comply with the diversion monitoring and reporting rules in subchapters 3 and 5 amounts to less than $2,500.

Environmental Impact

The rules proposed for readoption have an overall positive environmental impact. By regulating the recreational and nonrecreational use of its facilities in accordance with N.J.A.C. 7:11-1, the Authority is able to minimize environmental damage to the lands and waters under its jurisdiction while still providing the public with attractive facilities to enjoy. Similarly, subchapters 2, 3, 4, and 5 provide the Authority with the revenue and management authority needed to maintain and preserve its facilities.

Regulatory Flexibility Statement

In accordance with the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., (herein "the Act"), the Authority has determined that the proposed readoption of N.J.A.C. 7:11 will not impose recordkeeping, reporting or other compliance requirements on small business because "small businesses" as defined in the Act are not impacted by the requirements of these rules.

The Authority is a wholesaler of raw water supplies to several municipal and privately owned water companies who in turn treat and deliver water to business, commercial and residential end users. As such, the Authority does not sell water directly to small businesses, which would require them to comply with subchapters 2 through 5. Subchapter 1 is concerned only with the public use of Authority property and does not place any compliance requirements on small businesses.

Full text of the proposed readoption may be found in the New Jersey Administrative Code at N.J.A.C. 7:11.

(a)

COMMISSION ON RADIATION PROTECTION

Notice of Extension of Comment Period
Medical Diagnostic X-Ray Installations
Dental Radiographic Installations
Proposed Repeals and New Rules: N.J.A..C 7:28-15 and 7:28-16.8
Proposed Amendment: N.J.A.C. 7:28-16.2

Take notice that the Commission on Radiation Protection is extending the comment period for the above-referenced proposed repeals, new rules and amendment, notice of which was published in the January 4, 1993 New Jersey Register at 25 N.J.R. 7(a). The extended deadline for the receipt of comment is April 14, 1993.

Submit written comments by April 14, 1993 to:

Richard J. McManus, Director
Office of Legal Affairs
Department of Environmental Protection and Energy
CN 402
Trenton, New Jersey 08625

(a)

OFFICE OF NOISE CONTROL

Determination of Noise from Stationary Sources

Proposed New Rules: N.J.A.C. 7:29-2

Proposed Amendments: N.J.A.C. 7:29-1.1 and 1.5

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

Authority: N.J.S.A. 13:1D-1 et seq., N.J.S.A. 13:1G-1 et seq., specifically N.J.S.A. 13:1G-4.

DEPE Docket Number: 11-93-02.

Proposal Number: PRN 1993-149.

Submit written comments by April 14, 1993 to:

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

The agency proposal follows:

Summary

Pursuant to the requirements and criteria of Executive Order No. 66(1978), the noise determination rules, N.J.A.C. 7:29B, expired on February 1, 1993. In accordance with N.J.A.C. 1:30-4.4, that expired subchapter is proposed herein as new rules, N.J.A.C. 7:29-2.

Proposed N.J.A.C. 7:29-2 sets forth the exact test methods and procedures that were used in the expired rules in N.J.A.C. 7:29B. The methods and procedures in N.J.A.C. 7:29B had been used by the Department of Environmental Protection and Energy (the "Department") and authorized county health officials, pursuant to the County Environmental Health Act, N.J.S.A. 26:3A2-21 et seq., to measure sound from stationary sources for over 10 years. The Department has reviewed these rules, and has determined that the provisions set forth therein were necessary, reasonable and adequate to enforce the noise control standards set forth in this chapter. Therefore, the Department is proposing new rules that are identical to those contained in N.J.A.C. 7:29B.

In 1971, the Legislature declared in the Noise Control Act, N.J.S.A. 13:1G-1 et seq., that the people of the State are entitled to and should be insured an environment free from noise which unnecessarily degrades the quality of life; that the levels of noise in the community have reached such a degree as to endanger the health, safety and welfare of the people of this State as well as the integrity of the environment; and that this threat can be abated by the adoption and enforcement of noise standards embodied in regulations. These regulations were promulgated by the Department on January 18, 1974, and were codified as N.J.A.C. 7:29-1.

On April 5, 1982, the Department promulgated the test methods and procedures for the determination of noise from stationary sources, N.J.A.C. 7:29B. These rules included definitions, test methods, measurement principles, operative conditions, equipment specifications, required data, calculations and personnel qualifications. The noise measurement procedures set forth in N.J.A.C. 7:29B enabled the Department to measure noise levels in a manner that was acceptable to the Department and known to the regulated community. The Department is now proposing to adopt these well-accepted test methods and procedures as N.J.A.C. 7:29-2.

The Department has chosen to promulgate its test methods and procedures in a rulemaking because it believes that the regulated community should have notice of the methods and procedures that will be used by the Department in noise enforcement actions. Moreover, by having such rules in effect, the Department will not have to prove the reliability and acceptability of its test methods and procedures in each enforcement action.

A brief description and explanation of the substantive sections of proposed N.J.A.C. 7:29-2 follow:

Proposed N.J.A.C. 7:29-2.1 (previously N.J.A.C. 7:29B-1.1), Definitions: This section sets forth the words and terms used in this subchapter, Procedures for the Determination of Noise from Stationary Sources.

Proposed N.J.A.C. 7:29-2.2 (previously N.J.A.C. 7:29B-1.2), Acceptable test methods: This section sets forth the requirement that testing shall be conducted in accordance with the test methods specified in this subchapter. This section also provides that alternative methods, procedures or instruments may be used if approved by the Department.

Proposed N.J.A.C. 7:29-2.3 (previously N.J.A.C. 7:29B-1.3), Measurement principle: This section sets forth the requirement that sound levels shall be determined by a qualified investigator using instruments and procedures prescribed by the Department.

Proposed N.J.A.C. 7:29-2.4 (previously N.J.A.C. 7:29B-1.4), Operating conditions during the test: This section states that sound from a source under investigation shall be measured when the source is operating at normal and routine conditions.

Proposed N.J.A.C. 7:29-2.5 (previously N.J.A.C. 7:29B-1.5), General requirements: This section sets forth in general where, how and under what conditions the noise determination tests shall be performed. This section also sets forth the calibration and certification requirements for the measuring devices.

Proposed N.J.A.C. 7:29-2.6 (previously N.J.A.C. 7:29B-1.6), Equipment: This section sets forth the requirements for the equipment that is to be used during testing and measurements.

Proposed N.J.A.C. 7:29-2.7 (previously N.J.A.C. 7:29B-1.7), Reporting requirements: This section specifies how the tests and measurements shall be reported. This section contains a detailed list of the information that shall be included in the reports.

Proposed N.J.A.C. 7:29-2.8 (previously N.J.A.C. 7:29B-1.8), Preparation for testing: This section explains the steps that must be taken prior to actual test measurements. It includes the requirements of a survey, observation of whether the sound is steady or transient, wind speed measurement and instrument selection.

Proposed N.J.A.C. 7:29-2.9 (previously N.J.A.C. 7:29B-1.9), Procedure: This section lays out step by step the actual procedures used to calibrate the equipment and to make measurements to determine conformance with the sound limits set forth in N.J.A.C. 7:29-1.

Proposed N.J.A.C. 7:29-2.10 (previously N.J.A.C. 7:29B-1.10), Calculations: This section directs how measured data is to be corrected to account for other sound sources that are not related to the facility being investigated and evaluated. This section provides a detailed procedure to be followed in making any such corrections.

Proposed N.J.A.C. 7:29-2.11 (previously N.J.A.C. 7:29B-1.11), Qualification of investigative personnel: This section defines the qualifications that are required of individuals performing the test methods and procedures set forth in this subchapter.

Proposed N.J.A.C. 7:29-2.12 (previously N.J.A.C. 7:29B-1.12), Incorporation by reference: This section provides for the incorporation by reference of other testing criteria for equipment, including sound level meters. These additional testing criteria are found in ANSI:SI.11-1966, ANSI:SI.4-1971 and IEC Publication 651.

In proposing new rules N.J.A.C. 7:29-2, certain technical amendments to N.J.A.C. 7:29-1.1 and 1.5 became necessary in order to ensure proper codification of the entire Noise Control Code. The proposed amendments to N.J.A.C. 7:29-1.1 and 1.5 reflect only these technical changes in cross-referencing.

Social Impact

The test methods and procedures of proposed N.J.A.C. 7:29-2 will enable the Department to measure effectively and consistently noise levels from stationary sources. According to the "Noise Effects Handbook," which was published by the National Association of Noise Control Officials, uncontrolled noise is a source of adverse health effects, such as insomnia and a variety of stress-related disorders. Children and elderly persons are especially sensitive to exposure to loud noises. The Department believes that loud noises unreasonably interfere with the enjoyment of life and property, and unnecessarily degrade the quality of life. Therefore, it is necessary to have an effective noise control program in the State.

During the 18 years of enforcing N.J.A.C. 7:29-1, industry has spent approximately $10 to 12 million on abatement practices. The enforcement of the noise determination rules since 1982 has also contributed to the reduction of noise in the State. As a result of the Department's enforcement of N.J.A.C. 7:29-1 using the test methods and procedures of proposed N.J.A.C. 7:29-2, hundreds of communities surrounding noise sources have been made quieter by two to 15 dBA.

The adoption of the test methods and procedures on proposed N.J.A.C. 7:29-2 will ensure that additional communities surrounding existing or new noise sources will be made quieter, which is the goal of the Noise Control Act. This result will have a positive social impact.

Economic Impact

The Department anticipates no economic impact to the regulated community from the proposed noise determination rules. This is because

the test methods and procedures set forth therein will be used by either the Department or those authorized by the Department (for example, county health officials pursuant to the County Environmental Health Act, N.J.S.A. 26:3A2-21 et seq.) to measure noise levels in enforcing the noise control standards in N.J.A.C. 7:29-1. There is no provision in the proposed rules that requires the regulated community to make its own noise measurements or to provide any records of measurements to the Department. Thus, proposed N.J.A.C. 7:29-2 will not impose any financial costs on the regulated community.

The Department is aware that excessively loud noise may be a by-product of industrial or commercial operations. A variety of noise abatement equipment is widely available at a minimal cost, which would enable noise generators to meet the noise control standards in N.J.A.C. 7:29-1. While proposed N.J.A.C. 7:29-2 creates no direct economic impact, the Department recognizes that the regulated community may incur some insignificant economic impact in meeting the noise levels set forth in N.J.A.C. 7:29-1. However, N.J.A.C. 7:29-1 is not part of these proposed new rules; therefore, it is not subject to comment at this time.

Environmental Impact

A positive environmental impact is anticipated from proposed N.J.A.C. 7:29-2, due to reduced environmental stress. The test procedures set forth in proposed N.J.A.C. 7:29-2 will be used in conjunction with the standards for noise control, which are codified in N.J.A.C. 7:29-1.

N.J.A.C. 7:29-1 provides the standards that control noise from industrial, commercial, public service or community service facilities. The enforcement of these noise control standards, which utilizes the test procedures described in proposed N.J.A.C. 7:29-2, has resulted in the abatement of noise from several hundred noise sources. This has had a positive impact on the neighboring communities of these noise sources, and has made the environment in those communities more livable.

Regulatory Flexibility Statement

Proposed N.J.A.C. 7:29-2 will not place any 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., because the proposed new rules simply set forth the test methods and procedures to be used by the Department or those authorized by the Department pursuant to the County Environmental Health Act, N.J.S.A. 26:3A2-21, to measure noise levels. As discussed in the Economic Impact statement above, no business will be required to make its own noise measurements or to submit any reports or records to the Department. Therefore, pursuant to N.J.S.A. 52:14B-19, a regulatory flexibility analysis is not required.

Full text of the expired rules proposed herein as new, to be recodified as N.J.A.C. 7:29-2, and the proposed amendments to N.J.A.C. 7:29-1.1 and 1.5, follows (additions indicated in boldface **thus;** deletions indicated in brackets [thus]):

7:29-1.1 Definitions

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

...

"Continuous airborne sound" means sound that is measured by the slow response setting of a sound level meter in accordance with the provisions of N.J.A.C. [7:29B-1] **7:29-2.**

...

"Sound level meter" means an instrument used in accordance with the provisions of N.J.A.C. [7:29B-1] **7:29-2** to measure sound pressure level, sound level, octave band sound pressure level, or peak sound pressure level, separately or in any combinations thereof.

...

7:29-1.5 Performance test principle

For the purposes of measuring sound in accordance with the applicable provisions of these regulations, test equipment methods and procedures shall conform to the provisions of N.J.A.C. [7:29B-1] **7:29-2.**

[CHAPTER 29B
NOISE DETERMINATION]

SUBCHAPTER [1.] **2.** PROCEDURES FOR THE DETERMINATION OF NOISE FROM STATIONARY SOURCES

[7:29B-1.1]**7:29-2.1** Definitions

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise. Terms not defined in this section are intended to be used as defined in the New Jersey Noise Control Act, N.J.S.A. 13:1G, and in [the Noise Control Regulations N.J.A.C. 7:29] **this chapter,** or as used in their common engineering or scientific use.

...

"Department" means the Department of Environmental Protection **and Energy.**

...

"Noise" means, for purposes of this procedure, any sound which is not in conformance with the provisions of [N.J.A.C. 7:29] **this chapter.**

...

"Octave band" means a spectrum of sound frequencies between band edge frequencies an octave apart. For purposes of this procedure, octave band frequencies are as specified in Table 1, page 11, of ANSI S1.11-1966 (R-1976) "specifications for octave, half-octave and third-octave band filter sets" (see N.J.A.C. [7:29B-1.12(a)1]**7:29-2.12(a)1).**

Recodify 7:29B-1.2 through 1.5 as **7:29-2.2 through 2.5** (No change in text.)

[7:29B-1.6]**7:29-2.6** Equipment

(a) Requirements for equipment are as follows:

1. Sound level meters:

i. Measurements of continuous sound shall be made either with a Type 1 (Precision) or a Type 2 (General Purpose) sound level meter manufactured to the requirements of ANSI S1.4-1971 "specification for sound level meters" (see N.J.A.C. [7:29B-1.12(a)2] **7:29-2.12(a)2)** or its successor. These meters shall have a range which includes 30-130 decibels.

ii. Measurements of impulse sound shall be made with a Type 1 (Precision) or with a Type 2 (General Purpose) sound level meter equipped for measuring peak values and manufactured to the requirements of IEC Publication 651 (1979) "Sound Level Meters" (See N.J.A.C. [7:29B-1.12(a)3] **7:29-2.12(a)3)** or its successor.

iii. Measurements of sound by octave bands shall be made with a sound level meter with octave band frequency filter set that conforms to the requirements of Class II as specified in ANSI S1.11-1966 (R-1976) "specifications for octave, half-octave, and third-octave band filter sets" (see N.J.A.C. [7:29B-1.12(a)1] **7:29-2.12(a)1.)**

2.-3. (No change.)

Recodify 7:29B-1.7 as **7:29-2.7** (No change in text.)

[7:29B-1.8]**7:29-2.8** Preparation for testing

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

(d) Instrument selection: After determining the character of the sound to be measured, the investigator shall select the appropriate measuring equipment pursuant to the requirements of N.J.A.C. [7:29B-1.6] **7:29-2.6.** If the sound is concentrated within a narrow band of frequencies, an instrument capable of octave band analysis shall be selected. If impulse sound is predominant, an instrument capable of impulse peak measurement shall be selected.

Recodify 7:29B-1.9 through 1.11 as **7:29-2.9 through 2.11** (No change in text.)

[7:29B-1.12] **7:29-2.12** Incorporation by reference

(a) Wherever referenced in [N.J.A.C. 7:29B-1] **this subchapter,** the following sources are incorporated by reference as part of this subchapter:

1.-3. (No change.)

HUMAN SERVICES

(a)

OFFICE OF LEGAL AND REGULATORY LIAISON

Public Comments and Petitions regarding Department Rules

Proposed Readoption with Recodification: N.J.A.C. 10:1-2 Recodified as N.J.A.C. 10:1A

Authorized By: William Waldman, Acting Commissioner, Department of Human Services.
Authority: N.J.S.A. 30:1-12 and 52:14B-4(f).
Proposal Number: PRN 1993-150.

Submit comments by April 14, 1993 to:
E. John Walzer, Esq.
Regulatory Officer
Office of Legal and Regulatory Liaison
Department of Human Services
CN 700
Trenton, New Jersey 08625

The agency proposal follows:

Summary

Pursuant to Executive Order No. 66(1978), the Department's rules on Public Comments and Petitions Regarding Department Rules (N.J.A.C. 10:1-2) is due to expire on November 7, 1993. The New Jersey Administrative Procedure Act (at N.J.S.A. 52:14B-4(f)) permits interested persons to petition an agency to promulgate, amend or repeal any rule. The Act also requires that State agencies prescribe the form for the petition and the procedure for the submission, consideration and disposition of the petition. The Department of Human Services (Department) has reviewed the existing text of N.J.A.C. 10:1-2 and has determined that the rules are necessary, adequate, reasonable, proper and responsive for the purpose for which they were originally promulgated.

The Department has decided to readopt the rules without change, but with recodification as N.J.A.C. 10:1A in order to leave Title 10, Chapter 1 (N.J.A.C. 10:1) available for promulgation of the Department's Organizational Rule.

Social Impact

The rules proposed for readoption outline procedures for interested parties to follow in submitting comments on Department of Human Services rules and also outline procedures for interested parties to submit petitions for rulemaking. Thus continuity of the rules will insure availability of this information to the public, since it merely continues in effect existing procedural rules.

Economic Impact

The rules proposed for readoption will have no economic impact on the Department or the public.

Regulatory Flexibility Statement

The rules proposed for readoption impose no recordkeeping, reporting or compliance requirements on small businesses, as that term is defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. Therefore, a regulatory flexibility analysis is not required. While small businesses may submit petitions for rulemaking, the rules on petitions impose no requirements beyond those set forth in the Administrative Procedure Act.

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

CHAPTER 1A
PUBLIC COMMENTS AND PETITIONS REGARDING DEPARTMENT RULES

SUBCHAPTER [2.]1. PUBLIC COMMENTS AND PETITIONS REGARDING DEPARTMENT RULES

Recodify existing 10:1-2.1 to 2.4 as **10:1A-1.1 to 1.4** (No change in text.)

(b)

DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES

New Jersey Care . . . Special Medicaid Programs Manual

Medicaid Eligibility, Financial Eligibility Specified Low-Income Medicare Beneficiaries

Proposed Amendments: N.J.A.C. 10:72-1.1, 4.1 and 4.5

Authority: N.J.S.A. 30:4D-3, 30:4D-7, 7a and c and 1902(a)(10)(E)(iii), 42 U.S.C. 1396a of the Social Security Act; P.L. 1992, c.208.
Proposal Number: PRN 1993-77.

Submit comments by April 14, 1993 to:
Henry W. Hardy, Esq.
Administrative Practice Officer
Division of Medical Assistance and Health Services
CN 712
Trenton, New Jersey 08625

The agency proposal follows:

Summary

These proposed amendments pertain to Specified Low-Income Medicare Beneficiaries (SLMB). In accordance with a Federal mandate, contained in Section 1902(a)(10)(E)(iii), 42 U.S.C. 1396a of the Social Security Act, the Division of Medical Assistance and Health Services (the Medicaid Agency) will provide a limited benefit (Medicare Part B premiums) to a new class of eligibles Specified low-income Medicare beneficiaries (SLMBs), who had previously not qualified. For individuals who qualify, beginning with their month of application, and three prior months, but not earlier than January 1, 1993, the Division will pay their monthly Medicare Part B premiums; however, they are not entitled to any regular Medicaid benefits, unless they also qualify for the Medically Needy component of New Jersey Care . . . Special Medicaid Programs.

A SLMB is an individual who meets the Medicare entitlement requirements of a Qualified Medicare Beneficiary (QMB), that is, entitled to Medicare Parts A and B, but who cannot qualify as a QMB because his or her income exceeds the QMB income limit established by the Federal government at 100 percent of the Federal Poverty Level (FPL). Prior to the effective date of this provision, January 1, 1993, an individual whose income exceeded the QMB limit was not eligible for any benefit. With the implementation of the SLMB program, a limited benefit, that is, payment of Medicare Part B premiums, is now available.

Income limits for SLMB are between 100 percent and 110 percent of the FPL effective January 1, 1993 through December 31, 1994. The maximum income limit will increase to 120 percent of the FPL on January 1, 1995. In addition to the prospective payment of Medicare Part B premiums, the SLMB eligible person may be entitled to three months of retroactive payment of premiums; however, no payment can be made before January 1, 1993. The Division of Medical Assistance and Health Services (DMAHS) will assume responsibility of the eligibility processing for the SLMB population.

Individuals who apply for the SLMB benefit must also meet a resource test which is specified in the text of N.J.A.C. 10:72-4.5(b), and is $4,000 for an individual and $6,000 for a couple. It is the same resource standard that is employed in the determination of QMB eligibility.

In order for a person to obtain this limited benefit, he or she must file an application with the Division of Medical Assistance and Health Services through the Office of Pharmaceutical Assistance to the Aged and Disabled (PAAD). Upon receipt of the application, DMAHS staff will review the application in accordance with established criteria and advise the applicant in writing of the disposition. If the individual is found eligible, there will be an effective date on the notice. This could include up to three months of prior coverage, if the individual qualifies, but not earlier than January 1, 1993. If the individual is not eligible, a denial notice with appropriate fair hearing instructions will be produced. Such hearings will be conducted by the Office of Administrative Law.

The proposed amendments do not affect those persons who are Medicaid eligible. Such persons already have their Medicare Part B premiums paid by the Division, in addition to receiving Medicaid benefits. This proposal does not affect their status. However, persons who

only qualify for the SLMB benefit (payment of Medicare Part B premiums), do not receive any Medicaid benefit. Applicants who appear to meet the standards for other Medicaid programs, with additional benefits, will be advised to apply through the county welfare agency/ board of social services.

Social Impact

Aged, blind, or disabled individuals, who qualify as a SLMB, will be entitled to have the Division pay their Medicare Part B premiums, currently $36.60 per month. This program will thus increase the amount of money that this low-income population has for discretionary spending creating a positive effect on their financial well-being. It is expected that nearly 8,000 New Jersey residents will be served under this program.

The Office of Administrative Law, which is responsible for processing fair hearing requests, may be impacted by this initiative, since individuals who are denied the payment of the Medicare Part B premium have a right to a fair hearing.

Economic Impact

For State fiscal year 1993, this premium payment for SLMBs is estimated to cost approximately $1.7 million, half the cost of which is attributed to the State and half of which is attributed to the Federal government. For State fiscal year 1994, the cost is estimated at $3.7 million, half of which will be Federal funds.

The payment of these Medicare premiums will have a positive economic impact upon SLMB recipients. However, since the Division is not responsible for the payment of any Medicare deductibles or co-insurance, the benefit will have no direct impact upon the individual's utilization or costs associated with Medicare services.

Regulatory Flexibility Statement

The proposed amendments impose no additional recordkeeping, paperwork or other requirements on Medicaid providers or other small businesses as that term is defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. These proposed amendments do not impact the county welfare agencies but do have an impact on the Division which has the responsibility of determining eligibility for this new population.

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

10:72-1.1 Program scope

(a) This chapter contains the criteria for Medicaid eligibility for certain pregnant women and children not eligible under the provisions of N.J.A.C. 10:81 and 82, as well as, certain aged, blind, and disabled persons not eligible under the provisions of N.J.A.C. 10:71.

1. (No change.)

2. Persons financially ineligible for Medicaid under the provisions of N.J.A.C. 10:71, 81 and 82 and who are income ineligible for Medicaid under the provisions of this chapter shall be evaluated for eligibility as Medically Needy under the provisions of N.J.A.C. 10:70.

i. Persons determined eligible for the Medically Needy Program may be also determined eligible as specified low-income Medicare beneficiaries.

(b) Medicaid eligibility under the provisions of this chapter is limited to:

1.-3. (No change.)

4. Aged, blind, and disabled individuals (as defined in (b)3 above) who qualify as specified low-income Medicare beneficiaries.

i. Specified low-income Medicare beneficiaries must be residents of the State, must be receiving Medicare benefits, Parts A and B, and must meet the income and resource requirements specified in N.J.A.C. 10:72-4.1(b) and 4.5(b).

ii. The eligibility determination process for specified low-income Medicare beneficiaries is the responsibility of the Division of Medical Assistance and Health Services, through the Office of Pharmaceutical Assistance to the Aged (PAAD), using the standard PAAD application form.

iii. Persons determined eligible as specified low-income Medicare beneficiaries are entitled to payment of Medicare Part B Premiums only, beginning in the month of application and up to three prior months, but no earlier than January 1, 1993.

iv. The Division of Medical Assistance and Health Service shall promptly notify any applicant for, or recipient of the specified low-income Medicare beneficiary benefit, in writing, of any agency decision affecting the application disposition or the receipt of the benefit. When a decision relates to any adverse action which may entitle an individual to a fair hearing, the action may not be implemented until at least 10 days after the mailing of the notice. Such notices shall conform with provisions at N.J.A.C. 10:72-5.1(b).

(c) (No change.)

10:72-4.1 Income eligibility limits

(a) Income limits for Medicaid for aged, blind, and disabled persons **(except for specified low-income Medicare beneficiaries)**, as well as children six years **of age** or older covered under the provisions of this chapter will be based on 100 percent of the poverty income guidelines as defined by the U.S. Department of Health and Human Services in accordance with Sections 652 and 673(2) of the Omnibus Budget Reconciliation Act of 1981 (Pub.L. 97-35). The monthly income standard will be 1/12 of the annual poverty income guideline rounded down to the next whole dollar amount for household unit sizes of one and two for aged, blind, and disabled individuals and for the appropriate family size for children aged six years or over. The annual revision to the Federal poverty income guideline will be effective for purposes of this section with the first day of the year for which the poverty income guideline is promulgated.

(b) Effective with the first month of coverage, January 1, 1993, income limits for specified low-income Medicare beneficiaries shall be based on 110 percent of the poverty income guidelines as defined by the U.S. Department of Health and Human Services in accordance with Sections 1902(a)(10)(E)iii of the Social Security Act, 42 U.S.C. 1396a. Effective January 1, 1995, the income limits will be set at 120 percent of the Federal poverty level.

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

[(d)](e) In order to be eligible for Medicaid benefits under the provisions of this chapter, monthly household income (as determined by this chapter) must be equal to or less than the income limit established in (a), [or] (b), **(c), or (d)** above as applicable.

1. (No change.)

2. With the exception in [(d)](e)1 above, income eligibility exists for each month in which the household unit's income is equal to or less than the income limits.

10:72-4.5 Resource eligibility

(a) (No change.)

(b) Aged, blind or disabled persons **(including specified low-income Medicare beneficiaries)** must meet resource eligibility criteria as specified below in order to be eligible for benefits under this chapter. Eligibility for benefits does not exist in any month in which the countable resources of an aged, blind, or disabled person exceeds the limits of $4,000 for an individual and $6,000 for a couple.

1.-3. (No change.)

CORRECTIONS

(a)

THE COMMISSIONER

Administration, Organization and Management Definitions: Division of Operations; Indigent Inmate

Proposed Amendment: N.J.A.C. 10A:1-2.2

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

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

Proposal Number: PRN 1993-129.

Submit comments by April 14, 1993 to:
William H. Fauver, Commissioner
Department of Corrections
CN 863
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The proposed amendments will delete the terms and definitions for "Division of Adult Institutions" and "Division of Juvenile Services" and

replace them with the term and definition for "Division of Operations." These amendments are being proposed in response to the Department of Corrections' organizational restructuring plan effective November 19, 1992. Also, the definition for "indigent inmate" has been added. References to indigent inmates have existed throughout N.J.A.C. 10A since 1987; however, the definition was omitted from N.J.A.C. 10A:1-2. The definition of "indigent inmate" is an inmate who has no funds in his or her account and is not able to earn inmate wages due to prolonged illness or any other uncontrollable circumstances, and who has been verified as having no outside source from which to obtain funds.

Social Impact

The proposed amendments that will delete the terms and definitions for "Division of Adult Institutions" and "Division of Juvenile Services" and add the term and definition for "Division of Operations" are not expected to have an adverse social impact because these rules are technical in nature and do not regulate the conduct of inmates and staff.

With the addition of the term and definition for "indigent inmate," interested individuals can readily find the definition and understand what the qualifications are for indigent inmate status.

Economic Impact

The proposed amendment to delete the terms and definitions for "Division of Adult Institutions" and "Division of Juvenile Services" and replace them with the term and definition for "Division of Operations" will have no economic impact. Financial resources will not be necessary to implement or maintain this amendment.

Any decrease or increase in the cost of providing the services or supplies to indigent inmates is directly related to the population of incarcerated inmates and represents a constant drain on the budgets of correctional facilities. The financial resources to provide these services and/or supplies to inmates are obtained by the Department of Corrections through established State budgetary processes. By defining "indigent inmate," interested individuals will have immediate access to the term and definition providing a better understanding of those inmates who are actually eligible for deferred expenses. Use of the term and definition "indigent inmate" may result in fewer eligible inmates, thus decreasing the financial drain on the budgets of correctional facilities.

Regulatory Flexibility Statement

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

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

10A:1-2.2 Definitions

The following words and terms, when used in N.J.A.C. 10A:1 through N.J.A.C. 10A:30, shall have the following meanings.

...

[“Division of Adult Institutions” means an administrative unit of the Department that is responsible for the administration of adult correctional facilities.

“Division of Juvenile Services” means an administrative unit of the Department that is responsible for the administration of juvenile correctional facilities.]

“Division of Operations” means the administrative unit that is responsible for the administration of all correctional facilities within the New Jersey Department of Corrections.

...

“Indigent inmate” means an inmate who has no funds in his or her account and is not able to earn inmate wages due to prolonged illness or any other uncontrollable circumstances, and who has been verified as having no outside source from which to obtain funds.

...

(b)

THE COMMISSIONER
SECURITY AND CONTROL
Use of Chemical Agents; Storage
Proposed Amendment: N.J.A.C. 10A:3-3.7

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

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

Proposal Number: PRN 1993-130.

Submit comments by April 14, 1993 to:
William H. Fauver, Commissioner
Department of Corrections
CN 863
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The Department of Corrections is proposing that the text in N.J.A.C. 10A:3-3.7(a) be amended and new language adopted which cross references the use of chemical agents to N.J.A.C. 10A:3-3.2. This amendment is deemed necessary since N.J.A.C. 10A:3-3.7(a) is contradictory as to when chemical agents shall be used. The existing language in the example of this section refers to “use of force” which conflicts with the subsequent statement “in order to avoid the necessity of physical force.” It is the intention of this rule that chemical agents be used in an effort to avoid deadly force.

Social Impact

The proposed amendment clarifies those circumstances under which chemical agents are authorized for use thus helping to protect life, limb, property and correctional facility security by hopefully avoiding the necessity of using deadly force.

Economic Impact

The proposed amendment will have no economic impact because additional financial resources will not be required to implement or maintain the amendment. The financial resources to provide chemical agents are obtained by the Department of Corrections through the established State budgetary process.

Regulatory Flexibility Statement

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

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

10A:3-3.7 Use of chemical agents; storage

(a) Tear gas, mace and related chemical agents shall be used [only where all other means of control (that is, talking, use of protective equipment, use of force, etc.) are not effective or feasible. Chemical agents may be used only for the protection of life, limb or property, in order to avoid the necessity of physical force, or to maintain correctional facility security] **in accordance with N.J.A.C. 10A:3-3.2.**

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

INSURANCE

(a)

DIVISION OF FINANCIAL SOLVENCY

New Jersey Property-Liability Insurance Guaranty Association

Plan of Operation

Proposed New Rules: N.J.A.C. 11:1-7

Authorized By: Samuel F. Fortunato, Commissioner, Department of Insurance.
Authority: N.J.S.A. 17:1C-6(e), 17:1-8.1, and 17:30A-1 et seq.
Proposal Number: PRN 1993-132.

Submit comments by April 14, 1993 to:
Verice M. Mason
Assistant Commissioner
Legislative and Regulatory Affairs
New Jersey Department of Insurance
CN 325
Trenton, NJ 08625-0325

The agency proposal follows:

Summary

N.J.S.A. 17:30A-1 et seq. provides a mechanism for the payment of covered claims under certain insurance policies of insolvent insurers through the creation of the New Jersey Property-Liability Insurance Guaranty Association, a private, non-profit, unincorporated legal entity. Insurers licensed to transact certain property and casualty lines of business in this State are members of the Association. The Association performs its functions under a plan of operation approved by the Commissioner of Insurance (Commissioner). The Association is currently operating under a plan of operation approved by the then Commissioner in 1985. Upon further review and evaluation of the current plan, the Commissioner has determined that it is reasonable and appropriate to amend the existing plan pursuant to N.J.S.A. 17:30A-9 to assure the fair, reasonable and equitable administration of the Association. The Department of Insurance (Department) therefore proposes these rules which revise various sections of the current Association plan of operation. A summary of these revisions follows.

Proposed N.J.A.C. 11:1-7.1 sets forth the purpose and scope of these proposed new rules.

Proposed N.J.A.C. 11:1-7.2 sets forth the definitions of terms used throughout the subchapter.

Proposed N.J.A.C. 11:1-7.3 provides that the provisions of the plan of operation are revised as set forth in the subchapter; provisions of the plan not revised and not inconsistent with provisions of the subchapter shall remain in full force and effect; and that the subchapter does not limit the power of the Association to submit amendments to the plan as it deems necessary for approval by the Commissioner pursuant to N.J.S.A. 17:30A-9.

Proposed N.J.A.C. 11:1-7.4 revises the plan to provide that the Commissioner or his or her designee shall be an ex-officio, non-voting member of the Association board of directors.

Proposed N.J.A.C. 11:1-7.5 revises the plan to refer to selection of voting members of the board and eliminates current provisions in the plan regarding the selection of the initial board of directors as no longer applicable.

Proposed N.J.A.C. 11:1-7.6 revises the plan to provide that the appointment and reappointment of key officers of the Association shall be subject to the approval by the Commissioner.

Proposed N.J.A.C. 11:1-7.7 revises the plan to provide that appointment of counsel to the Association shall be subject to the approval of the Commissioner and places a term limitation on the appointment of such counsel.

Proposed N.J.A.C. 11:1-7.8 and 11:1-7.10 revise the plan to eliminate special notice requirements to the Commissioner of meetings and provisions to permit the Commissioner to attend meetings of the board as no longer applicable.

Proposed N.J.A.C. 11:1-7.9 revises the plan to provide that compensation for expenses is to be made only to voting members of the board of directors.

Proposed N.J.A.C. 11:1-7.11 revises the plan to provide that the Commissioner or his or her designee shall be an ex-officio, non-voting member of the executive committee and the legal committee of the Association; and to limit the board's authority to remove the Commissioner or his or her designee from any committee of the board on which he or she serves as an ex-officio, non-voting member.

Social Impact

The Department believes that these proposed rules appropriately revise the existing Association plan of operation to ensure the fair, reasonable and equitable administration of the Association, and to further enable the Commissioner to perform his or her statutory oversight duties.

Economic Impact

The Department believes that no additional economic burden should be imposed through implementation of these proposed rules. The proposed changes to the existing plan of operation impose no additional duties on member insurers.

Regulatory Flexibility Statement

A regulatory flexibility analysis is not required because the proposed new rules do not impose reporting, recordkeeping or other compliance requirements on "small businesses" as that term is defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The rules revise certain sections of the current Association plan of operation as described in the proposal Summary above, and thus impose requirements on the Association. The Association is a statutorily created entity and therefore does not meet the definition of "small business" as defined in N.J.S.A. 52:14B-16 et seq. While some member insurers of the Association may be small businesses, the changes to the plan of operation effectuated by these proposed rules impose no new reporting or compliance requirements on member insurers. Accordingly, insurers should experience no additional economic burden through implementation of these rules.

Full text of the proposed new rules follows:

SUBCHAPTER 7. NEW JERSEY PROPERTY-LIABILITY INSURANCE GUARANTY ASSOCIATION PLAN OF OPERATION

11:1-7.1 Purpose and scope

(a) The purpose of this subchapter is to amend certain provisions of the New Jersey Property-Liability Insurance Guaranty Association plan of operation as deemed reasonable and necessary by the Commissioner to assure the fair, reasonable, and equitable administration of the Association pursuant to N.J.S.A. 17:30A-9.

(b) The subchapter shall apply to the Association and all other persons who are required to comply with the Association plan of operation approved by the Commissioner pursuant to N.J.S.A. 17:30A-9.

11:1-7.2 Definitions

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

"Advisory body" means the advisory body to the board of directors to the Association appointed by the Commissioner pursuant to N.J.S.A. 17:22-6.73.

"Association" means the New Jersey Property-Liability Insurance Guaranty Association established pursuant to N.J.S.A. 17:30A-1 et seq.

"Board" means the board of directors of the Association appointed pursuant to N.J.S.A. 17:30A-7.

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

"Fund" means the New Jersey Surplus Lines Insurance Guaranty Fund established pursuant to N.J.S.A. 17:22-6.70 et seq.

"Guaranty Association Act" means the New Jersey Property-Liability Insurance Guaranty Association Act, N.J.S.A. 17:30A-1 et seq.

"Guaranty Fund Act" means the New Jersey Surplus Lines Insurance Guaranty Fund Act, N.J.S.A. 17:22-6.70 et seq.

"Member insurer" is as defined in N.J.S.A. 17:30A-5f.

"Plan of operation" or "plan" means the plan of operation of the Association and any amendments thereto approved by the Commissioner pursuant to N.J.S.A. 17:30A-9.

11:1-7.3 Revisions to plan of operation

(a) Provisions of the plan of operation of the New Jersey Property-Liability Insurance Guaranty Association are revised as set forth in this subchapter. Provisions of the plan of operation which are not revised pursuant to this subchapter and which are not inconsistent with the provisions herein shall remain in full force and effect.

(b) This subchapter shall not be construed to limit the power of the Association to submit to the Commissioner amendments to the plan as deemed necessary or suitable to assure the fair, reasonable, and equitable administration of the Association, subject to approval by the Commissioner pursuant to N.J.S.A. 17:30A-9.

11:1-7.4 Composition of board of directors

Article 2.A.1. of the Plan is revised to read as follows: "The Board shall have nine voting members, each of whom shall represent a member insurer of the Association. The Commissioner or his designee shall be an ex-officio, non-voting member of the Board."

11:1-7.5 Selection of the board of directors

Article 2.A.3. of the Plan is revised to read as follows: "The remaining seven voting members of the Board shall be selected by member insurers of the Association, in the manner hereinafter provided. The members so selected shall be fairly representative of the member insurers of the Association and shall be subject to the approval of the Commissioner.

"a. Subsequent to the Organizational meeting, selection of voting members shall be by mail vote on a weighted basis with votes weighted in such proportion as the net direct written premiums of the member insurer of the Association for the calendar year preceding the election on the kinds of insurance covered by the Guaranty Association Act bears to the net direct written premiums of all member insurers of the Association for the calendar year preceding the election on the kinds of insurance covered by the Guaranty Association Act. By ballots mailed to member insurers at least 30 days prior to each annual meeting of the board, the member insurers of the Association shall select directors to serve for a three-year term to succeed the directors whose terms are to expire at such annual meeting. In case of vacancy on the Board the remaining Association member companies represented on the Board shall select the member company to serve out the unexpired term subject to approval by the Commissioner."

11:1-7.6 Appointment of officers

Article 2.A.5. of the Plan is revised to read as follows: "The Board shall elect a chairman, a vice chairman and a treasurer from the members of the Board and shall appoint or elect such other officers or representatives, including, without limitation, a Secretary and Executive Director, as it may deem appropriate, each to serve for one year terms. The appointment and reappointment of all key officers of the Association, including the Executive Director, shall be subject to the approval of the Commissioner. The powers, duties and obligations of any officer or representative elected or appointed hereunder shall be as set forth in this Plan and any resolution of or approval by the Board not inconsistent with this Plan."

11:1-7.7 Duties of board at special meetings; appointment of persons to perform services

Article 2.D.4. of the Plan is revised to read as follows: "Consider and decide what persons, if any, should be employed or engaged by the Association in the performance of its responsibilities under the Guaranty Association Act or its responsibilities under the Guaranty Fund Act. Such persons may include, but need not be limited to, the Executive Director, claims manager and/or one or more claims supervisors knowledgeable in insurance matters, conversant with the law applicable to covered claims, and capable of implementing the Board's directives; attorneys at law; actuaries; accountants; claims adjusters; and other persons whose services may be deemed by the Board to be appropriate to the discharge of its duties. The appointment of counsel to the Association shall be subject to the approval of the Commissioner. Counsel to the Association shall be engaged for a term not to exceed one year."

11:1-7.8 Notice of meetings

(a) Article 2.E. of the Plan is revised to read as follows: "The Board shall establish a schedule of regular meetings which, at a minimum, shall provide for one meeting each calendar quarter; provided, however, any such regular meeting may be cancelled upon a determination that there is insufficient business to bring before the Board to justify such meeting. Notice of all regular meetings shall be provided ten (10) days in advance thereof to each board member and (if the Fund matters are to be discussed) each member of the advisory body."

(b) Article 2.F. of the Plan is revised to read as follows: "Other special meetings of the Board may be called by the Chairman or the Commissioner and shall be called at the request of any two Board members. Not less than five days written notice shall be given to each Board member and each advisory body member (if Fund matters are scheduled to be discussed) of the time, place and purpose of any special meetings, provided, that a special emergency meeting may be called upon not less than twenty-four hours oral or written notice designed to afford each member of the Board and each member of the advisory body reasonable opportunity to attend such meeting. At any special meeting, the Board may consider and decide any matter it may deem appropriate."

11:1-7.9 Compensation

Article 2.H. of the Plan is revised to read as follows: "Members of the Board shall serve without compensation; but voting members may be reimbursed for all reasonable expenses incurred by them as members of the board of directors."

11:1-7.10 Meetings with the Commissioner

Article 2.J. of the Plan is revised to read as follows: "Members and/or representatives of the Board shall be available for meetings with the Commissioner and/or such Insurance Department staff or other representatives as the Commissioner may designate on an informal basis at such time and places as shall be mutually agreed to."

11:1-7.11 Committees

(a) Article 3.A. of the Plan is revised to read as follows: "The Board may by resolution passed by a majority of the entire Board, appoint from its voting members an executive committee and one or more other committees, including without limitation, a claims committee, an audit committee and legal committee. Any such committee, to the extent provided by resolution of the Board creating the same (which resolution shall not be inconsistent with this Plan), shall have and may exercise all of the rights, duties, obligations and authority of the Board; provided, however, no action taken or decision made by the executive committee or any other committee of the Board shall constitute or be construed as the setting or changing of general policy or the amending of this Plan, all of which is hereby expressly reserved to the Board, subject to the Commissioner's statutory oversight role. The Board, by resolution adopted by majority of the entire Board, may:

"(1) appoint members of and/or fill any vacancy in any such committee;

"(2) appoint one or more persons to serve as alternate members of any such committee, to act in the absence or disability of members of any such committee with all the powers of such absent or disabled members;

"(3) abolish any such committee at its pleasure; and

"(4) remove any person from membership on any such committee at any time with or without cause, except that neither the Commissioner nor his designee may be removed from any committee of the Board on which the Commissioner or his designee serves as an ex-officio, non-voting member.

"Actions taken at a meeting of any such committee shall be reported to the Board at its next meeting following such committee meeting, or if no Board meeting occurs within thirty (30) days following such committee meeting within a reasonable time (not to exceed 60 days) by providing the Board with a copy of the minutes or written report of such meeting."

(b) Article 3.B. of the Plan is revised to read as follows: "The Executive Committee shall consist of not less than four members

each of whom shall be a member of the Board of Directors and to the extent permitted by law and this Plan, shall carry out and exercise all the rights, duties and obligations of the Board between meetings of the full Board. The Commissioner or his designee shall be an ex-officio, non-voting member of the executive committee."

(c) Article 3.E. of the Plan is revised to read as follows: "The Legal Committee shall be comprised of such members as the Board deems appropriate, each of whom shall be an attorney at law, and shall carry out and exercise all of the duties and obligations as may be assigned or referred to it from time to time by the Board. The Commissioner or his designee shall be an ex-officio non-voting member of the legal committee."

(a)

DIVISION OF PROPERTY LIABILITY

Commercial Lines Insurance: Prospective Loss Costs Filing Procedures

Proposed New Rules: N.J.A.C. 11:13-8

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

Authority: N.J.S.A. 17:1C-6(e), 17:1C-8.1 and 17:29AA-1 et seq.

Proposal Number: PRN 1993-119.

Submit comments by April 14, 1993 to:

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

The agency proposal follows:

Summary

These proposed new rules provide the regulatory framework under which advisory/rating organizations and member/subscriber insurers in rating organizations will operate in a loss cost system. Most states already have procedures for addressing prospective loss costs filings. The Department of Insurance ("Department") rules do not require rating organizations to file prospective loss costs but these rules establish procedures for permitting perspective loss costs filings in this State. Under this system, rating organizations will develop and file, for all lines, coverages and classes of insurance that are required to be filed, a filing containing advisory prospective loss costs and supporting actuarial and statistical data.

Loss costs are the portion of the rate which will cover losses and loss adjustment expenses for the prospective interval during which a rate will be in effect. Under the Department's proposed new rules, a rating organization will file prospective loss costs, and individual members will then add their own underwriting expenses and profit provisions to determine a complete rate. The Department anticipates that rates will vary from insurer to insurer according to an insurer's expense and profit provisions. This variation should be good for competition.

Rating organizations will still be able to develop and file rules, relativities and supplementary rating information on behalf of their member/subscriber insurers.

Social Impact

The Department anticipates that these proposed rules will stimulate competition among insurers which will benefit the insurance market. The Department rules do not require advisory/rating organizations and member/subscriber insurers in rating organizations to participate in the prospective loss costs system. The Department's rules establish procedures for permitting prospective loss costs filing to be filed in this State. Under the Department's proposed rules, a rating organization will file prospective loss costs, and individual members will then add their own underwriting expenses and profit provisions to determine a complete rate. The individual insurer will then file its loss cost multiplier (which reflects expenses, profit loading, etc.) with the Department. The Department believes that rates will vary from insurer to insurer according to an insurer's expenses. This variation in rates should be good for competition. Additionally, these rules should provide a better indication of an insurer's actual experience than current advisory rates provide, as a result of the reflection of individual insurer's expenses and profit loading in final rates.

Economic Impact

The Department expects these new rules to increase the number of rate filings that it receives for the various lines of business written by insurers licensed in this State. The Department rules do not require advisory/rating organizations and member/subscriber insurers in rating organizations to participate in the prospective loss costs system. The Department's rules establish procedures for permitting prospective loss costs filing to be filed in this State.

As a result of these rules, insurers which rely totally on rating organizations for their rate filings may incur additional staffing expenses.

The Department also believes that the introduction of loss costs filings by rating organizations can encourage competition in commercial lines based on the cost of providing service.

Regulatory Flexibility Analysis

The Department's 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. To the extent these new rules apply to small businesses, these small businesses will be rating organizations that choose to file prospective loss costs instead of rates or insurers which are members/subscribers to these rating organizations. The Department rules do not require advisory/rating organizations and member/subscriber insurers in rating organizations to participate in the prospective loss costs system. The Department's rules establish procedures for permitting prospective loss costs filing to be filed in this State.

These proposed new rules do not provide additional reporting, recordkeeping or compliance requirements based on the size of the rating organization or insurer. Insurers used to file their expense information with rating organizations. These rules require insurers to file this information with the Department on the expense exhibits provided in these rules (see Appendices). Instead of insurers reporting the information in these rules to rating organizations, insurers will provide the Department with this information. Additionally, these rules do not require insurers to gather new information but instead requires insurers to report certain information to the Department instead of a rating organization.

The Department is unable to estimate the costs that will be incurred or the need for professional services that may be required by small business rating organizations and/or insurers to comply with these rules. The Department believes that insurers have all the professional personnel needed to provide the required information.

The Department recognizes that insurers may have to make data system changes so as to extract some of the information that was formerly reported to a rating organization and now will be reported to the Department instead. The Department does not know the cost involved because it will vary based on each insurer's present data processing system and ability to make changes in house.

These costs are primarily a one-time capital cost of changing systems to produce data to be filed with the Department; there are also minor costs to actually submit data. The information required to be sent is the minimum necessary for the Department to execute its statutory responsibility to review commercial lines insurance rates pursuant to N.J.S.A. 17:29AA-7. The Department recognizes that all insurers will eventually incur a $250.00 filing fee once the insurer files its loss costs multiplier.

Full text of the proposed new rules follows:

SUBCHAPTER 8. COMMERCIAL LINES INSURANCE: PROSPECTIVE LOSS COSTS FILING PROCEDURES

11:13-8.1 Purpose and scope

(a) This subchapter establishes data requirements and procedures for member/subscriber insurers in rating organizations to adopt or modify a rating organization's filed prospective loss costs.

(b) This subchapter applies to all rating organizations which file prospective loss costs and all insurer filings which adopt or modify a rating organization's prospective loss cost filing for commercial lines insurance made pursuant to N.J.S.A. 17:29AA-1 et seq.

(c) All filings made pursuant to this subchapter shall be made in accordance with N.J.A.C. 11:1-32.

11:13-8.2 Definitions

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

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

"Department" means the New Jersey Department of Insurance.

"Expenses" means that portion of a rate attributable to commissions and brokerage, other acquisition expenses, general expenses, taxes, licenses, and fees.

"Loss costs multiplier" means the factor reflecting expenses, profit loading and any deviations that the insurer uses on the loss cost to produce final rates.

"Minimum premium" means the smallest amount of premium for which an insurer will issue coverage under a given policy.

"Prospective loss costs" means that portion of a rate that does not include provisions for expenses (other than loss adjustment expenses) or profit, and are based on historical aggregate losses and loss adjustment expenses adjusted through development to their ultimate value and projected through trending to a future point in time.

"Rate" means the unit charge by which the measure of exposure or the amount of insurance specified in a policy of insurance or covered thereunder is multiplied to determine the premium.

"Rating organization" means every person or persons, corporation, association, partnership, company, society, or association engaged in the business of ratemaking for two or more insurers.

"Supplementary rate information" means any manual or plan of rates, statistical plan, classification, rating schedule, rating rule, policy fee, rate-related underwriting rule, experience rating plan and any other similar information needed to determine the applicable rate in effect or to be in effect.

11:13-8.3 Prospective loss cost filing requirements for rating organizations

(a) A rating organization that desires to file prospective loss costs with the Commissioner shall develop a filing containing advisory prospective loss costs and supporting actuarial and statistical data.

(b) Rating organizations that file advisory prospective loss cost filings with the Commissioner shall:

1. Submit a filing that contains the advisory prospective loss costs and the underlying loss data and other supporting actuarial information for any calculations or assumptions underlying those loss costs; and

2. No longer develop or file minimum premiums with the filing of prospective loss costs.

(c) A rating organization shall print and distribute manuals of prospective loss costs, as well as rules and other supplementary rating information pursuant to N.J.S.A. 17:29AA-1 et seq.

(d) Rating organizations shall continue to develop and file rules, relativities and supplementary rating information on behalf of their member/subscriber insurers.

11:13-8.4 Prospective loss costs filing requirements for insurers

(a) In order for an insurer to incorporate a rating organization's filed prospective loss costs to establish its own rates, an insurer shall:

1. Be a member/subscriber insurer in the rating organization; and

2. File its loss costs multiplier using the Reference Filing Adoption Form (as set forth in Appendix A to this subchapter and incorporated herein by reference). An insurer's final rates shall be a combination of the prospective loss costs and the loss costs multiplier set forth in its filed Reference Filing Adoption Form.

i. An insurer may file modifications to the rating organization's prospective loss costs filing based on their own anticipated experience by using the Reference Filing Adoption Form. Supporting documentation shall be filed for any modification (upwards or downwards) to the rating organization's prospective loss costs filings.

ii. An insurer's filed loss costs multiplier shall remain in effect until the insurer withdraws the multiplier or files a revised Reference Filing Adoption Form.

(b) Insurers may vary expense loads by individual lines, sublines or classifications of insurance. Insurers may use variable or fixed expense loads or a combination of these to establish their expense loadings.

1. An insurer's loss cost multiplier based on its expenses plus any profit provision shall not include the surtax or the Property-Liability Insurance Guaranty Association's assessments on private passenger automobiles pursuant to N.J.S.A. 17:30A-8a(9) and 17:33B-49.

2. Insurers shall provide documentation to support its profit loading.

(c) Any participating insurer of a rating organization shall continue to use all rates and deviations currently in effect for its use until disapproved pursuant to N.J.S.A. 29AA-13, or until the insurer makes a filing to change its rates, either by making an independent filing or by submitting a Reference Filing Adoption Form.

(d) An insurer which has filed a loss costs multiplier with the Department, which by its terms is applicable to subsequent rating organizations prospective loss costs filings, shall provide final printed manual pages which will specify the lost cost multiplier and the effective date of its use no later than 30 days after the effective date of the rate and shall adhere to the following requirements:

1. An insurer which intends to use the prospective loss cost and effective date as filed by the rating organization, shall not file anything;

2. An insurer which intends to use the prospective loss costs as filed but with a different effective date shall file with the Department its proposed effective date not more than 30 days after the effective date of the rating organization's prospective loss costs;

3. An insurer which intends to use the revision of the prospective loss costs and to change its loss costs multiplier or deviations shall file a revised Reference Filing Adoption Form not more than 30 days after the effective date of the rating organization's prospective loss costs reference filing; and

4. An insurer which does not intend to use the revision of the prospective loss costs shall notify the Department not more than 30 days after the effective date of the rating organization's prospective loss costs reference filing. The insurer shall file a Non-Adoption of Prospective Lost Cost Form (as set forth in Appendix B to this subchapter and incorporated herein by reference) with the Department.

11:13-8.5 Penalties

Rating organizations and insurers which fail to comply with the filing submission requirements of this subchapter shall be subject to penalties pursuant to N.J.S.A. 17:29AA-22 and 17:29AA-26.

APPENDIX A

Date of filling out Form: _____

Space Reserved for Insurance Department Use

INSURER RATE FILING
ADOPTION OF ADVISORY ORGANIZATION
PROSPECTIVE LOSS COSTS
REFERENCE FILING ADOPTION FORM

1. INSURER NAME _____
ADDRESS _____
_____
_____
_____
_____

PERSON RESPONSIBLE FOR FILING _____

TITLE _____ TELEPHONE # _____

2. INSURER GROUP NAIC # _____

2A. INSURER COMPANY NAIC# _____

3. LINE OF INSURANCE _____

4. ADVISORY ORGANIZATION _____

5. ADVISORY ORGANIZATION REFERENCE FILING # _____

6. The above insurer hereby declares that it is a member, subscriber or service purchaser of the named advisory organization for this line of insurance. The insurer hereby files to be deemed to have independently submitted as its own filing the prospective loss costs in the captioned Reference Filing.

The insurer's rates will be the combination of the prospective loss costs and the loss cost multipliers.

7. PROPOSED RATE LEVEL CHANGE ____% EFFECTIVE DATE _____

8. PRIOR RATE LEVEL CHANGE ____% EFFECTIVE DATE _____

9. ATTACH "SUMMARY OF SUPPORTING INFORMATION FORM"
(Use a separate Summary for each insurer–selected loss cost multiplier.)

Insurer Name: _____ Date of filling out Form: _____

NAIC #: Group:– Company:– _____

INSURER RATE FILING
ADOPTION OF ADVISORY ORGANIZATION PROSPECTIVE LOSS COSTS
SUMMARY OF SUPPORTING INFORMATION FORM

CALCULATION OF COMPANY LOSS COST MULTIPLIER

10. Line, Subline, Coverage, Territory, Class, etc. combination to which this page applies:

_____

11. Loss Cost Modification:

A. The insurer hereby files to adopt the prospective loss costs in the captioned reference filing: (CHECK ONE)

☐ Without modification. (factor = 1.000)

☐ With the following modification(s). (Cite the nature and percent modification, and attach supporting data and/or rationale for the modification.)

_____

_____

B. Loss Cost Modification Expressed as a Factor: _____
(See examples below.)

NOTE: IF EXPENSE CONSTANTS ARE UTILIZED, ATTACH "EXPENSE CONSTANT SUPPLEMENT" OR OTHER SUPPORTING INFORMATION, AND DO NOT COMPLETE ITEMS 12–16 BELOW.

12. Development of Expected Loss Ratio. (Attach exhibit detailing insurer expense data and/or other supporting information.)

	Selected Provisions
A. Total Production Expense	_____%
B. General Expense	_____%
C. Taxes, Licenses & Fees	_____%
D. Underwriting Profit & Contingencies	_____%
E. Other (explain)	_____%
F. TOTAL	_____%

13A. Expected Loss Ratio: ELR = 100% – 12F = _____%

13B. ELR in decimal form = _____

14. Company Loss Cost Multiplier: (11B / 13B) = _____

15. Company Current Loss Cost Multiplier (only on subsequent Loss Cost Filings): _____

16. Rate level change for the coverages to which this page applies: _____%
i.e. [(14/15) * Filed Loss Cost Level Change Factor] – 1.00 .
(Note that for the initial Loss Cost Filing, Item 15 = 1.000).

Example 1: Loss Cost modification factor: If your company's loss cost modification is –10%, a factor of 0.9 (1.000 – .100) should be used.

Example 2: Loss Cost modification factor: If your company's loss cost modification is +15%, a factor of 1.15 (1.000 + .150) should be used.

Insurer Name: _____ Date of filling out Form: _____
NAIC #: Group :– Company:– _____

EXPENSE CONSTANT SUPPLEMENT

CALCULATION OF COMPANY LOSS COST MULTIPLIER

17. Development of Expected Loss Ratio. (Attach exhibit detailing insurer expense data and/or other supporting information.)

	Selected Provisions		
	Overall	Variable	Fixed
A. Total Production Expense	_____%	_____%	_____%
B. General Expense	_____%	_____%	_____%
C. Taxes, Licenses & Fees	_____%	_____%	_____%
D. Underwriting Profit & Contingencies	_____%	_____%	_____%
E. Other (explain)	_____%	_____%	_____%
F. TOTAL	_____%	_____%	_____%

18 A. Expected Loss Ratio: ELR = 100%–Overall 17F = _____%
B. ELR expressed in decimal form = _____
C. Variable Expected Loss Ratio VELR = 100% – Variable 17F = _____%
D. VELR in decimal form = _____

19. Formula Expense Constant:
[(1.00 / 18B) – (1.00 / 18D)] * Average Proposed Loss Cost = _____

Formula Variable Loss Cost Multiplier: (11B / 18D) = _____

20. Selected Expense Constant = _____

Selected Variable Loss Cost Multiplier = _____

21. Rate level change for the coverages to which this page applies _____%

APPENDIX B

Form NA–1

Non–Adoption of Prospective Loss Cost

1. Insurer: _____ NAIC #: _____

2. Bureau Affiliation: _____

3. Line of Insurance: _____

4. Bureau Designation Number: _____

5. Effective Date of Non–Adoption: _____

6. Bureau Designation Number Currently Being Used: _____

7. Effective Date of Use: _____

(a)

DIVISION OF PROPERTY/LIABILITY

Commercial Lines Insurance: Policy Form Standards Exclusions from Coverage

Reproposed New Rule: N.J.A.C. 11:13-7.4
Proposed Recodification and Amendment: N.J.A.C. 11:13-7.4 as 7.5

Authorized By: Samual F. Fortunato, Commissioner, Department of Insurance.
Authority: N.J.S.A. 17:1-8.1, 17:1C-6(e) and 17:29AA-29.
Proposal Number: PRN 1993-120.

Submit comments by April 14, 1993 to:
Verice M. Mason, Assistant Commissioner
Legislative and Regulatory Affairs
Department of Insurance
CN 325
20 West State Street
Trenton, New Jersey 08625-0325

The agency proposal follows:

Summary

The rules in N.J.A.C. 11:13-7 interpret provisions of the Commercial Insurance Deregulation Act, N.J.S.A. 17:29AA-1 et seq. and set standards for the disapproval of policy forms submitted pursuant to N.J.S.A. 17:29AA-6. These rules are derived from an interpretation of the provisions of N.J.S.A. 17:29AA-11 which authorize the New Jersey Department of Insurance (Department) to disapprove policy forms that are unfair, inequitable, misleading or contrary to law, or which effectively produce rates that are excessive, inadequate or unfairly discriminatory. 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.

Rules which addressed an asbestos exclusion were previously proposed October 2, 1989 (see 21 N.J.R. 3057(a)). The rules then proposed set forth standards for aggregate policy limits; defense costs within policy limits, other provisions regarding policy limits of liability, claims made policy forms, exclusions from coverage and the right of an insured to a listing of claims upon requests. The Department received a significant amount of adverse comment to that proposal. After due consideration of those comments, the Department reproposed and adopted rules limited to standards for defense costs within policy limits (see 23 N.J.R. 159(a) and 23 N.J.R. 2340(a). The Department now reproposes a new rule limited to exclusions from coverage for liability from injuries related to asbestos, lead paint and lead contamination in commercial lines insurance policy forms filed for approval with the Department.

The reproposed new rule prohibits the use of provisions in commercial lines insurance policy forms which exclude from coverage any injury caused in whole or in part, either directly or indirectly, by asbestos, lead paint or lead contamination arising out of or incidental to the inhalation, use, ingestion, handling, or contact with asbestos, lead paint or lead contamination. The Department interprets N.J.S.A 17:29AA-11 as authorizing it to act in the best interest of the public and the insurance market in addressing policy forms. The Department believes that asbestos, lead paint or lead contamination exclusions in certain policy forms are contrary to N.J.S.A. 17:29AA-11. Additionally, the Department believes that such exclusions are contrary to public policy and the general purposes of commercial lines liability insurance to spread the risk of loss in that it is unfair, inequitable and inconsistent with the present application of statutes. The reproposed new rule formalizes the Department's current liability practices and standards with regards to the disapproving of policies filed with the Department that provide exclusions for asbestos, lead paint or lead contamination claims.

Proposed N.J.A.C. 11:13-7.4 prohibits the use of asbestos, lead paint or lead contamination exclusions in policy forms.

The existing N.J.A.C. 11:13-7.4 is recodified as N.J.A.C. 11:13-7.5 and amended to direct insurers with policy forms inconsistent with the standards and prohibitions to amend those forms and refile them within 180 days of the amendment's effective date and requires them to be in effect within 240 days of the amendment's effective date.

Social Impact

Since the reproposed new rule articulates prohibitions currently being applied for the acceptance of commercial insurance policy forms filings, the primary impact is to notify insurers filing the forms of policy language that is not acceptable. The standards and prohibitions themselves set forth policy form language consistent with the fair and reasonable expectation of coverage for insureds who purchase commercial liability insurance on forms filed with the Department. The reproposed new rule prohibits asbestos, lead paint or lead contamination exclusions in policy form provisions.

Economic Impact

The reproposed new rule and proposed amendment will affect the Department and insurers which file commercial insurance policy forms. Initially, some additional administrative and clerical costs will be incurred in order to comply with the new rules and amendment. Insurers with inconsistent policy forms must refile policy forms for acceptance by the Department which are consistent with the rules and in accordance with N.J.S.A. 17:29AA-6 and 17:29AA-11. Costs will be limited to those insurers whose policy forms are contrary to the asbestos, lead paint or lead contamination exclusion prohibition set forth in the reproposed new rule. It is expected that insurers and the Department will experience this cost on a one-time basis during the initial filing of policy forms. The Commercial Insurance Deregulation Act permits insurers to price policies based on expenses and expected losses, limited by N.J.S.A. 17:29AA-10 which prohibits rates that are excessive, inadequate or unfairly discriminatory.

Regulatory Flexibility Analysis

The "small businesses" affected by the reproposed new rule and proposed amendment consist of insurance companies authorized to write commercial insurance. However, few, if any, insurers regulated by the new rule and amendment are "small businesses" as defined in N.J.S.A. 52:14B-16 et seq. The purpose of these rules is to establish minimum standards for policy forms used by all insurers; therefore, it would be unfair and inconsistent to establish different standards based upon company size. The economic impact of the reproposed new rule and amendment is minimal. Coverage is provided for asbestos, lead paint or lead contamination claims in current accepted policy forms; therefore, these rules merely formalize the current liability standards and practices. All insurers, regardless of size, are required to file certain commercial lines policy forms with the Department pursuant to N.J.S.A. 17:29AA-6 and N.J.S.A. 17:29AA-11. Most insurers either have in-house staff to develop their own policy forms, or utilize standard policy forms developed by a rating organization of which they are a member or subscriber. Accordingly, there are no additional costs of professional services required to comply. Furthermore, it should be noted that by setting forth these standards in an administrative rule, insurers that qualify as small businesses will avoid the cost of submitting and having disapproved policy forms inconsistent with the standards.

The amended rule provides a six month (180 day) period after its effective date during which policy forms that are inconsistent with the standards must be amended and refiled. The rule further provides that the form shall be effective no later than 240 days from the actual date the amendment is effective. This provides an adequate time period for all insurers, regardless of size, to comply with the requirements of the reproposed rule and amendment.

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

11:13-7.4 Exclusions from coverage

(a) No commercial or property liability 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 provisions excluding coverage for any injury caused in whole or in part, either directly or indirectly, by:

1. Asbestos, or arising out of or incidental to the inhalation, use, handling, or contact with asbestos; or

2. Lead paint or lead contamination, or arising out of or incidental to the inhalation, ingestion, use, handling, or contact with lead paint or lead contamination.

(b) In the event that any policy form includes exclusions or restrictions of coverage as set forth in (a) above, the forms shall also contain provisions, which may be in the form of a mandatory endorsement, so as to incorporate these standards into the terms of each policy.

11:13-[7.4]**7.5** Refiling policy forms

(a) Insurers with policy forms containing provisions inconsistent with the standard set forth in this subchapter shall amend those forms and refile then in accordance with N.J.S.A. 17:29AA-6 [by February 1, 1992.] **as follows:**

1. For N.J.A.C. 11:13-7.3, by February 1, 1992; and

2. For N.J.A.C. 11:13-7.4, by (180 days from the effective date of this amendment) and the forms shall be effective no later than (240 days from the effective date of this amendment).

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

LABOR

(a)

DIVISION OF PROGRAMS

Application and Review Process for Employment and Training Grants for Services to Disadvantaged Workers

Proposed New Rules: N.J.A.C. 12:23-6

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

Authority: P.L. 1992, chapters 43 to 49.

Proposal Number: PRN 1993-155.

Submit written comments by April 14, 1993 to:

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

The agency proposal follows:

Summary

The New Jersey Workforce Development Partnership Program (WDP), signed into law on July 7, 1992, is a seven part legislative package which provides a cohesive plan to upgrade and improve the skills level of the State's workforce. A more detailed description of the substantive provisions of the Workforce Development Partnership Program was earlier published and is contained in the February 1, 1993 issue of the New Jersey Register at 25 N.J.R. 449(a). These proposed new rules constitute the sixth installment under the chapter governing the Workforce Development Partnership Program.

To accomplish one of the Program's goals, limited funding assistance is available for the purpose of providing qualified disadvantaged workers with the employment and training services most likely to provide the greatest opportunity for long-range career advancement with high levels of productivity and earning power.

These proposed new rules establish the allocation of funds reserved under P.L. 1992, c.43, Section 4e for the provision of employment and training services for qualified disadvantaged workers and the application and review process for awarding grants under this subchapter.

N.J.A.C. 12:23-6.1 sets forth the purpose of the proposed new rules.

N.J.A.C. 12:23-6.2 establishes the scope of the subchapter.

N.J.A.C. 12:23-6.3 establishes the Service Delivery Areas and the innovative demonstration projects as the mechanisms through which funds will be made available for employment and training services for qualified disadvantaged workers and prohibits the use of funds provided under this subchapter to displace currently employed workers by trainees.

N.J.A.C. 12:23-6.4 describes the employment and training services which may be provided by the Service Delivery Areas.

N.J.A.C. 12:23-6.5 sets forth the application and review process for awarding funds for innovative demonstration projects.

N.J.A.C. 12:23-6.6 allocates the reserve funds for the provision of employment and training services to qualified disadvantaged workers between the Service Delivery Areas and the Commissioner's discretionary innovative demonstration projects.

N.J.A.C. 12:23-6.7 sets forth the eligibility requirements for individuals to receive training or services under this subchapter.

N.J.A.C. 12:23-6.8 sets forth the requirement that service providers must be located in New Jersey and must be approved in accordance with procedures established by the State Employment and Training Commission in order to be eligible to provide services under this subchapter.

N.J.A.C. 12:23-6.9 sets a cap on the administrative costs which may be charged against funds awarded under this subchapter.

N.J.A.C. 12:23-6.10 sets forth monitoring and oversight requirements.

N.J.A.C. 12:23-6.11 sets forth the criteria for evaluating services provided under this subchapter.

N.J.A.C. 12:23-6.12 imposes upon grantees under this subchapter the duty to maintain appropriate records and to make available records and reports for monitoring and inspection purposes.

N.J.A.C. 12:23-6.13 sets forth the effective dates of the rules under this subchapter.

Social Impact

The proposed new rules are anticipated to have a positive social impact on disadvantaged workers. The opportunity for attaining a marketable skill and career advancement will increase the earning power of the individual worker. Moreover, an individual with a skill which is needed in the growth sectors of the economy is more likely to become permanently employed and less dependent on the services provided by social agencies and other social insurance programs. As a result, these workers will more fully integrate in and contribute to social and community development.

Economic Impact

It is important that skilled workers be available to employers in a technologically advanced, global marketplace. The Workforce Development Partnership Program, specifically these proposed regulations, will enable qualified disadvantaged workers to obtain marketable skills, thus improving their earning power. At the same time, the development of a skilled workforce is critical in keeping employers in the State and attracting new employers to the State.

The proposed new rules will lead to reduced unemployment among those served by the program and less dependency upon State and local financial support systems. The rules will provide for increased worker productivity and better assist business and industry by developing a highly skilled workforce which can meet the needs of employers in an intensely competitive world economy.

In addition, the Unemployment Compensation Trust Fund, a social insurance program for individuals who become unemployed through no fault of their own, is financed by a payroll tax on employees and employers. It is anticipated that the creation of a skilled and stable workforce will result in an eventual savings to the Fund because these individuals are more likely to become contributors to the Fund rather than recipients of unemployment insurance benefits.

Regulatory Flexibility Statement

The proposed new rules will have minimal impact in terms of imposing additional burdens upon businesses of any type, including small businesses, in New Jersey. Through a relatively simple application and review process administered by the Department of Labor, applicants, including small businesses, will be able to access reserved funds to provide training services to disadvantaged workers.

Small businesses may be required to assist in the application process and be required to provide periodic progress reports and maintain related records to facilitate grant monitoring and oversight of program services. Inasmuch as these are minimal requirements, no lesser reporting, recordkeeping or other compliance requirements can be established for small businesses without impairing the effectiveness of the program.

Full text of the proposed new rules follows:

SUBCHAPTER 6. EMPLOYMENT AND TRAINING GRANTS FOR SERVICES TO DISADVANTAGED WORKERS

12:23-6.1 Purpose

The purpose of this subchapter is to set forth the rules for the allotment of funds reserved under P.L. 1992, c.43, Section 4e to provide employment and training services for qualified disadvantaged workers under the Workforce Development Partnership Program.

12:23-6.2 Scope

This subchapter establishes the allocation of funds reserved under the Workforce Development Partnership Program for employment

and training services to qualified disadvantaged workers as defined at N.J.A.C. 12:23-1 and sets forth the application and review process for awarding grants under this subchapter to prospective recipients, such as community based organizations, corporations, consortia, agencies and units of government.

12:23-6.3 Employment and training grants to serve disadvantaged workers

(a) Funds reserved for employment and training services to qualified disadvantaged workers will be through:

1. Service Delivery Area funds awarded pursuant to the formula set forth under section 302(d) of the Job Training Partnership Act and in accordance with N.J.A.C. 12:23-6.4; and

2. Innovative demonstration projects funds awarded through a competitive application process in accordance with N.J.A.C. 12:23-6.5.

(b) Funds available for employment and training services to qualified disadvantaged workers under this subchapter shall not be used for activities which induce, encourage or assist any displacement of currently employed workers by trainees, including partial displacement by such means as reduced hours of currently employed workers; replacement of laid off workers by trainees; or relocation of operations resulting in a loss of employment at a previous workplace located in the State.

12:23-6.4 Service delivery area funds

Funds allocated to Service Delivery Areas pursuant to N.J.A.C. 12:23-6.6 must be used to provide training grants for vocational training, on-the-job training, basic skills training and remedial education including English as a Second Language. Funds may also be used to provide counseling and employability development plan services as required by Section 7 of the Act to meet the needs of qualified disadvantaged workers. Services provided must lead to enhanced marketable skills and earning power, and relate to training for a labor demand occupation as defined by NJOICC or a qualified job counselor, acting on behalf of NJOICC, based on documented local labor market conditions or projected labor market conditions.

12:23-6.5 Innovative demonstration project funds

(a) A service provider of employment and training services may seek funds for innovative demonstration projects and services. An innovative demonstration project is an alternative plan to develop skills for disadvantaged individuals that will result in employability in a labor demand occupation by using techniques that may include other than the traditional classroom and on the job training methods.

(b) In reviewing applications, the Commissioner will give priority to those innovative demonstration projects which are designed to serve the General Assistance/AFDC Welfare population, the disabled, and those who marginally exceed the eligibility for Federal programs such as JTPA, Youth Corps and the Welfare Reform Program.

(c) The factors that will be considered in reviewing and evaluating applications for funds for innovative demonstration projects are:

1. The number of eligible individuals to be served;

2. The population to be served;

3. Whether the services are likely to substantially enhance participants' marketable skills;

4. The degree to which the services are related to training for a labor demand occupation;

5. The organizational capability of the applicant to provide the proposed services;

6. The previous effectiveness of the efforts of the applicant in providing similar services;

7. The costs of the proposed services; and

8. The potential for the proposed program activities to be replicated throughout the State or to have a positive impact beyond the program ending date.

(d) Applications will be reviewed and evaluated by a panel consisting of representatives from the Department of Labor and the Departments of Higher Education, Education and Human Services. The review panel will:

1. Serve as an objective, independent source of comments and recommendations concerning the merit of applications for consideration by the Department; and

2. Ensure that proposals will be as effective as possible through coordination and use of the resources of participating departments.

(e) The Commissioner retains the authority to modify application review factors based on the changing needs of the New Jersey economy. Such modification shall be through the rulemaking process.

(f) Funds awarded under this section will be limited to prospective recipients as defined at N.J.A.C. 12:23-1.1.

(g) No application for innovative demonstration projects will be funded unless approved by the Commissioner of Labor.

(h) Instructions for the competitive application process for funds available under this section shall be obtained by writing to:

Director, Division of Programs
New Jersey Department of Labor
CN 058
Trenton, New Jersey 08625-0058

12:23-6.6 Allocation of funds

(a) Pursuant to section 4(e) of the Act, eight percent of the total resources dedicated to the program during any one fiscal year shall be reserved to provide employment and training services for qualified disadvantaged workers. The Commissioner is authorized to provide training grants to the extent that funding for these services is not available from Federal or other sources.

(b) Allocation of reserved funds shall be as follows:

1. From the amounts reserved for employment and training services for qualified disadvantaged workers under Section 4(e) of the Act, up to 50 percent shall be reserved for allocation to the Service Delivery Areas designated by the Governor under Section 101 of the Job Training Partnership Act, P.L. 97-300, as amended.

2. After allocating the Service Delivery Area funds, the balance of these funds shall be allocated for innovative demonstration projects pursuant to N.J.A.C. 12:23-6.5. Said funds shall be made available through a competitive application process.

(c) The Commissioner retains the authority to change the scope of this allotment based on the changing needs of the New Jersey economy.

12:23-6.7 Eligibility for services

Individuals receiving training or services under this subchapter must be qualified disadvantaged workers as defined at N.J.A.C. 12:23-1.1.

12:23-6.8 Eligibility of service providers

No employment and training services shall be obtained from a service provider unless the provider is located in New Jersey and is approved pursuant to the procedures established by the State Employment and Training Commission.

12:23-6.9 Limitation on administrative costs

Not more than 10 percent of the funds awarded under this subchapter may be used for reasonable administrative expenses.

12:23-6.10 Monitoring and oversight

The Department of Labor or its designee will monitor the overall effectiveness of the employment and training services provided under this subchapter to assess the programmatic, management and financial performance of the grantee. The Department will consider the past performance of a grantee in evaluating application(s) for funding in subsequent years.

12:23-6.11 Evaluation of employment and training services

(a) The results of employment and training services provided by Service Delivery Areas under this subchapter shall be evaluated based upon the following criteria:

1. The effectiveness of the training and services in terms of increasing employability, the affect on earnings after training and the career opportunities provided in relation to the individuals served;

2. The achievement of a minimum job placement rate of 70 percent; and

3. The degree to which the training or services are related to a labor demand occupation as defined by NJOICC or a qualified job counselor, acting on behalf of NJOICC, based on local labor market conditions or projected labor market conditions.

(b) The results of the innovative demonstration projects funded under this subchapter shall be evaluated based upon criteria negotiated at the time the funds are awarded.

12:23-6.12 Records and reports

(a) Each grantee shall maintain appropriate records and make any records available upon request for monitoring or inspection by the Commissioner including:

1. A record for each student enrolled, including the student's name, social security number and address upon enrollment;

2. A record of all direct, administrative and overhead expenses of the grantee related to the provision of employment and training services funded under this subchapter; and

3. Any other information deemed appropriate by the Commissioner for a specific grantee or service provider.

12:23-6.13 Expiration date

Upon adoption, this subchapter will remain in effect until December 31, 1997.

COMMERCE AND ECONOMIC DEVELOPMENT

(a)

DIVISION OF DEVELOPMENT FOR SMALL BUSINESSES AND WOMEN AND MINORITY BUSINESSES

Certification of Women-Owned and Minority-Owned Businesses

Proposed Readoption with Amendments: N.J.A.C. 12A:11

Authorized By: Barbara McConnell, Commissioner, Department of Commerce and Economic Development

Authority: N.J.S.A. 52:27H-21.24.

Proposal Number: PRN 1993-142.

Submit comments by April 14, 1993 to:

Hank Diaz, Administrator
Department of Commerce and Economic Development
Division of Small Businesses and Women and Minority Businesses
Office of Certification
20 West State Street
Trenton, New Jersey 08625

The agency proposal follows:

Summary

Pursuant to Executive Order No. 66(1978), and a gubernatorial waiver (see 24 N.J.R. 4333(a)), N.J.A.C. 12A:11 expires on April 30, 1993. The Department has reviewed these rules and, with the exception of the amendments discussed below, has found them to be reasonable, necessary and proper for the purposes for which they were originally promulgated.

These rules were originally adopted effective September 21, 1987 (see N.J.R. 1176(a) and 1739(a)), and have not been amended since. The objective of these rules was then and continues to be the implementation of the Uniform Certification Act, N.J.S.A. 52:27H-21.17 through 21.24. The purpose of the Act and these rules is to provide a centralized State certification program for vendors who wish to participate in various State programs which require the authentication of ownership and control of minority and women businesses.

The rules provide an explanation of their scope (N.J.A.C. 12A:11-1.1) and definitions of words and terms used throughout (N.J.A.C. 12A:11-1.2). The standards for certification as a women-owned or minority-owned business are set forth at N.J.A.C. 12A:11-1.3, specifically that the business be at least 51 percent independently owned, operated and controlled by a minority or women. The Department is proposing that franchises and brokers, as defined at N.J.A.C. 12A:11-1.2, be ineligible for certification as minority-owned or women-owned business. These changes are necessary to make New Jersey's certification program conform with the Federal certification program.

The proposed amendment to N.J.A.C. 12A:11-1.3(f) requires out-of-State businesses applying for certification to first be certified as a minority- or women-owned business in the state where their principal place of business is located. This requirement will expedite the certification process for the Department and promote a unified certification program with other states.

N.J.A.C. 12A:11-1.4 describes the certification procedures, including the preparation of a New Jersey Uniform Certification Application. Proposed amendments at N.J.A.C. 12A:11-1.4(b)14 and 15 require, respectively, that applicants for certification include as part of their application personal financial statements of all their principals, stockholders and directors, supported by copies of such individual's W2 forms during the past year, and that out-of-State businesses provide documentation from the government of the state in which their principal place of business is located confirming their certification there as a minority- or women-owned business. If the business is certified as minority or women-owned, it is listed in the Certified Business Register and is eligible for all appropriate State programs requiring such certification (N.J.A.C. 12A:11-1.5). The time for application is provided under N.J.A.C. 12A:11-1.6, and the process for appealing a denial of certification is set forth at N.J.A.C. 12A:11-1.7.

The proposed amendment to N.J.A.C. 12A:11-1.7(d) requires businesses who have been denied certification to wait for one year prior to filing for certification. The one year time frame to which applicants must adhere conforms with SBA and other Federal guidelines relative to denial of certification.

The certification of a business as minority- or women-owned may be challenged by State departments or agencies and certain businesses under the procedure set forth in N.J.A.C. 12A:11-1.8. N.J.A.C. 12A:11-1.9 sets out the obligation of applying businesses to accurately and honestly provide all required information, and prescribes the penalties for certified businesses' failure to do so. N.J.A.C. 12A:11-1.10 and 1.11 detail, respectively, the period and terms of certification and the fees for certification. Certification reciprocity is provided for under N.J.A.C. 12A:11-1.12, and N.J.A.C. 12A:11-1.13 establishes the confidentiality of all information and documents submitted to the Department as part of the certification application.

Social Impact

The Uniform Certification Act, at N.J.S.A. 52:27H-21.17c, acknowledges the role of government at the national, State and local levels in encouraging the development of businesses owned by minorities and women. The unified procedure for the certification of such businesses will facilitate their participation in various State programs, eliminate a duplication of effort on the part of all concerned, and improve the efficiency of the businesses. The certification procedure is centralized through these rules in the Department of Commerce and Economic Development. The integrity of the certification program is also protected by the various measures against fraud and misrepresentation set forth in the rules.

The proposed amendments will have minimal social impact. By disallowing franchises to be certified under the Act, it fulfills the intent of the certification program as a business development tool to assist small businesses which are owned and controlled by women and/or minorities. This enhances the competitiveness of a certified non-franchise operation and allows that entity access to contracting opportunities, markets and resources.

The certification program assists businesses who control and manage assets and products. The proposed amendment to exclude brokers from the Act clarifies that the program benefit only those companies who take title and have responsibility of goods and products.

The out-of-State certification requirement will allow conformity with certification programs in other states.

The proposed amendment to limit reapplication for certification within one year of certification denial provides businesses adequate time to comply with the program's requirements.

Economic Impact

The Unified Certification Act and these rules have impacted generally on the New Jersey economy by assisting in the development of minority- and women-owned businesses.

The Department bears the cost of administering the certification program through its annual budget. Where the Department considers a visit to an applicant's business site is necessary, it may be reimbursed by the business seeking certification for the costs of the visit, including, but not limited to, employee travel costs, if the business is outside a 150 mile radius from Trenton, and the employee's out of pocket per diem expenses.

Businesses affected under the Act and these rules will incur some cost in meeting the demands for specific information imposed under the certification and certification renewal processes. In addition, business site visit costs, when necessary, are to be reimbursed by the applicant, as detailed in the preceding paragraph. However, certified businesses will realize savings in that they will be certified by one agency, and as such will not be duplicating efforts and associated costs of being certified by numerous State agencies.

It is anticipated that such firms will also realize increased procurement opportunities by being eligible to participate in affirmative action goal programs which restrict involvement to certified businesses. Thus chances of being a successful low bidder are increased by limiting the competition to only certified bidders.

Brokers and businesses operating under a franchise have never been certified under this program. The proposed amendment to N.J.A.C. 12A:11-1.3(e) codifies existing policy which certifies companies who have managerial and operational control, as well as title to goods and products.

Before being certified in New Jersey, an out-of-State business would have to bear the expense of certification in its home state, if they have not already done so, and provide the Department with documentary evidence of such certification.

Limiting reapplication to an annual schedule positively impacts on the Department's resources to process such applications.

Regulatory Flexibility Analysis

The rules proposed for readoption with amendments impose compliance requirements on businesses seeking certification as minority- and women-owned businesses. While exact numbers are not available, the large majority of such businesses in New Jersey meet the definition of small business under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq.

Businesses applying for certification are required to provide the application information set forth in N.J.A.C. 12A:11-1.4, incurring the attendant administrative costs for doing so. No professional services need be employed to provide this information. In addition, the expenses of a site visit by a Department employee, if necessary, have to be borne by applicants beyond a 150-mile radius of Trenton. Should an application be denied, appeal requirements are established under N.J.A.C. 12A:11-1.7 and 1.8.

Once certified, a business is obligated to report any changed ownership circumstances immediately, and any material change within 20 days, to the Department, and to make an annual report to the Department to verify that the ownership and control of the business upon which certification was based has not changed.

Certain businesses, as specified in N.J.A.C. 12A:11-1.8(a), are entitled to challenge the qualifications of any certified business. The challenge must be in writing, and the challenger bears the burden of proof in the hearing on the challenge. Many of the businesses entitled to challenge qualify as small businesses under the Regulatory Flexibility Act. Such businesses would have to incur the administrative costs of the written challenge, and the cost of proving the challenge at hearing. Professional services are not required for either.

The proposed amendments to the expired rules impose on applicants the additional requirement of including personal financial statements of all the principals, stockholders and directors, and prohibit reapplication for certification for one year following the date of denial of an application. Administrative costs are involved in preparing and filing the statements, but no professional services are necessary.

The Department considers these rules to contain the minimum informational requirements necessary to permit a thorough and fair evaluation of an applicant's qualifications for certification, and to ensure entitlement to continued certification. Much of the application information required is mandated under the Uniform Certification Act. By unifying the certification process under one agency, the Act and these rules work to businesses' economic benefit by necessitating only one certification for the various State programs. Certified businesses benefit by their entitlement to participate in such programs. Given the need for these requirements, and the benefits occurring to successful applicants, no lesser requirements or exemptions are provided for small businesses.

Full text of the proposed rules for readoption may be found in the New Jersey Administrative Code at N.J.A.C. 12A:11.

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

12A:11-1.2 Definitions

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

...

"Franchise" means a contract granted by a national or regional chain allowing one the exclusive right to operate within a specific area based upon payment of initial fee or percentage of gross sales usually with the parent company furnishing equipment, supplies, merchandising and advertising.

...

12A:11-1.3 Standards of certification for minority businesses and women businesses

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

(e) Brokers and businesses operated under a franchise are ineligible for certification.

(f) In order for an out-of-State business to be eligible as a minority business or women owned business, the business must first be certified as minority- or women-owned businesses in the state where its principal place of business is located.

12A:11-1.4 Certification procedures for minority businesses and women businesses

(a) (No change.)

(b) As part of its application to the Department, a business shall provide all information and documents requested by the Uniform Certification Application and any additional information requested by the Certification Unit. The information to be submitted for review shall include:

1.-11. (No change.)

12. A complete listing of banking institutions with which the business is affiliated; [and]

13. A complete listing of previously attained certification and a listing of all legal entities which denied certification[.];

14. Personal financial statements of all principals, stockholders and directors of applicant firms, supported by copies of such persons' W2 form(s) from all employers during the past year; and

15. For out-of-State businesses, documentation from the government of the state in which the business has its principal place of business confirming its certification in that state as a minority- or women-owned business.

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

12A:11-1.7 Denial of certification as a minority or women business

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

(d) When a business has been denied certification based upon the information provided by that business in its submitted Uniform Certification Application, the business may not reapply for certification until one year has elapsed from the date of the certification denial.

LAW AND PUBLIC SAFETY

(a)

DIVISION OF CONSUMER AFFAIRS
BOARD OF MEDICAL EXAMINERS

Fees

Proposed Amendment: N.J.A.C. 13:35-6.13
Proposed New Rule: N.J.A.C. 13:35-10.9

Authorized By: Board of Medical Examiners, Charles Janousek, Executive Director.
Authority: N.J.S.A. 45:9-2 and 45:1-3.2.
Proposal Number: PRN 1993-146.

Submit written comments by April 14, 1993 to:
Charles A. Janousek, Executive Director
Board of Medical Examiners
28 West State Street, Room 602
Trenton, New Jersey 08608

The agency proposal follows:

Summary

In order to cover increased investigative, administrative and program costs, the Board of Medical Examiners is proposing to increase physician biennial renewal fees from $220.00 to $250.00 for active physicians and from $110.00 to $125.00 for physicians over 65 without health care facility or HMO affiliation. Biennial renewal fees for all other Board licensees remain unchanged.

The proposed amendment also establishes an application fee and a late renewal fee for all licensee classes and designates an initial registration fee, prorated on an annual basis for the benefit of individuals who apply during the second year of a biennial renewal period. These new fees reflect a determination of the Division of Consumer Affairs to amend the fee schedules of the professional boards which it regulates in order to accurately and specifically identify the actual elements for which a board incurs expenses and to create within the Division a uniform method of assessing and collecting fees from the professional boards.

Since proposed rules setting forth athletic trainer registration requirements were published as N.J.A.C. 13:35-10 in the January 19, 1993 New Jersey Register at 25 N.J.R. 265(a), this proposal recodifies the fee schedule for athletic trainer registration at N.J.A.C. 13:35-10.9.

Social Impact

The proposed amendment will affect applicants for biennial renewal of an M.D. or a D.O. license and initial applicants for all classes of licensure. The fee increases and new fees are necessary to generate revenues to cover all proper expenses incurred by the Board in fulfilling its statutory obligations to evaluate applicants for licensure, investigate complaints, initiate appropriate disciplinary and enforcement actions and regulate the practice of medicine. The new fee schedule will provide the Board with the minimum financial resources necessary to carry on its responsibilities to protect the public health, safety and welfare by establishing and maintaining high professional standards.

Economic Impact

Applicants for biennial renewal of an M.D. or a D.O. license will be required to pay an additional $30.00 for license renewal. Applicants over 65 without health care facility or HMO affiliation will pay an additional $15.00 for biennial license renewal. Initial applicants for all licenses issued by the Board will be assessed an application fee in addition to the licensing fees already established, and any licensee who does not renew his or her license by the date indicated on the renewal notice will be assessed a late fee.

The proposed fee increases and new fees will generate sufficient revenues to enable the Board to continue to comply with N.J.S.A. 45:1-3.2, which requires all professional and occupational licensing Boards within the scope of subtitle 1 of chapter 45 to raise funds to cover board operating costs. In compliance with the statute, the sums to be raised are estimated not to exceed the amount required to fund the Board's operations. The proposed amendment will not have a direct economic impact upon the public.

Regulatory Flexibility Analysis

The Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., requires the Board to give a description of the types and an estimate of the number of small businesses to which the proposed amendment will apply. The proposed amendment will apply to initial applicants for licensure, none of whom would be considered small businesses under the criteria of the Act, and to applicants for renewal of an M.D. or D.O. license. The Board anticipates that during the next biennial renewal period approximately 30,000 physicians will seek to renew their M.D. and D.O. licenses. If, for the purposes of the Regulatory Flexibility Act, these physicians are deemed to be "small businesses," the following analysis applies.

Compliance requirements consist of paying an increased renewal fee in a timely manner. There are no reporting or recordkeeping requirements, and no professional services are needed in order to comply. The fee increase is necessary to enable the Board to avoid operating at a loss. Since the renewal fee has been set at the lowest amount that will cover the Board's operating expenses, the intent of the Regulatory Flexibility Act to minimize adverse economic impact has been implemented.

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

13:35-6.13 Fee schedule

(a) The following fees shall be charged by the Board of Medical Examiners:

1. Medicine and Surgery (M.D. or D.O. license)		
i. Initial application fee		**$325.00**
Application for re-examination		**175.00**
[i.]**ii.** Examination—		
Both Components		500.00
[ii. Re-examination]		
Component I		300.00
Component II		325.00
iii. [License (M.D. or D.O.)		225.00]
Initial registration fee		
(1) If paid during the first year of a biennial renewal period		**250.00**
(2) If paid during the second year of a biennial renewal period		**125.00**
iv.-vi. (No change.)		
vii. Biennial registration	[220.00]	**250.00**
viii. Biennial registration for licensee over 65 without health care facility or HMO affiliation	[110.00]	**125.00**
2. Podiatry (license)		
i. Application fee		**125.00**
[i.]**ii.** Examination		150.00
[ii. Reexamination		100.00]
iii. Initial registration fee		
(1) If paid during the first year of a biennial renewal period		**170.00**
(2) If paid during the second year of a biennial renewal period		**85.00**
[iii.]**iv.** Endorsement		150.00
[iv.]**v.** Biennial registration		170.00
[v.]**vi.** Biennial registration for licensee over 65 without health care facility or HMO affiliation		85.00
3. Bio-analytical laboratory directorship, plenary license		
i. Application fee		**125.00**
[i.]**ii.** Examination (plenary license)		350.00
[ii. Reexamination		350.00]
iii. Examination (plenary license)		150.00
iv. Initial registration fee		
(1) If paid during the first year of a biennial renewal period		**170.00**
(2) If paid during the second year of a biennial renewal period		**85.00**
v. Biennial registration		**170.00**
4. Bio-analytical laboratory directorship, specialty license		

i. Application fee **125.00**
[i.]**ii.** Examination (specialty license) 350.00
[ii. Reexamination (specialty license) 350.00]
iii. Exemption (specialty license) 150.00
iv. Initial registration fee
(1) If paid during the first year of a biennial renewal period **170.00**
(2) If paid during the second year of a biennial renewal period **85.00**
[iv.]**v.** Biennial registration 170.00
5. Midwifery (license)
i. Application fee **125.00**
[i.]**ii.** Examination (lay midwife license) 50.00
[ii. Reexamination 50.00]
iii. Endorsement (lay midwife license) 50.00
iv. Initial registration fee
(1) If paid during the first year of a biennial renewal period **170.00**
(2) If paid during the second year of a biennial renewal period **85.00**
[iv.]**v.** Biennial registration 170.00
6. Certified Nurse Midwifery (registration)
i. Application fee **125.00**
[i.]**ii.** Examination, C.N.M. 50.00
[ii. Re-examination, C.N.M. 50.00]
iii. Endorsement (C.N.M.) 50.00
iv. Initial registration fee
(1) If paid during the first year of a biennial renewal period **170.00**
(2) If paid during the second year of a biennial renewal period **85.00**
[iv.]**v.** Biennial registration, C.N.M. 170.00
[7. Athletic Trainer (registration)
i. Temporary registration or authorized registration without examination 60.00
ii. Examination (reserved)
iii. Re-examination (reserved)
iv. Registration fee after examination 60.00
v. Biennial Registration 60.00
vi. Reinstatement fee 25.00
vii. Endorsement 60.00]
[8.]**7.** Orthoptist (registration)
i. Application fee **125.00**
[i.]**ii.** Registration by credentialing 25.00
iii. Initial registration fee
(1) If paid during the first year of a biennial renewal period **170.00**
(2) If paid during the second year of a biennial renewal period **85.00**
[ii.]**iv.** Biennial registration 170.00
Recodify existing 9. and 10. as **8. and 9.** (No change in text.)
[11.]**10.** General
i. Recording of name change and issuance of replacement license [25.00] **50.00**
ii. [Duplicate copy of license 25.00]
Replacement of lost engrossed copy/certified true copy/biennial registration certificate **50.00**
iii. Preparation of certification papers for applicants to other states [25.00] **50.00**
iv. Late renewal fee **100.00**

13:35-10.9 Fees

(a) The following fees shall be charged by the Board for athletic trainer registration:
1. Temporary registration or authorized registration without examination **60.00**
2. Examination **(reserved)**
3. Initial registration fee
i. If paid during the first year of a biennial renewal period **60.00**
ii. If paid during the second year of a biennial renewal period **30.00**
4. Biennial registration **60.00**
5. Endorsement **60.00**
6. Late renewal fee **50.00**

(a)

NEW JERSEY RACING COMMISSION

Thoroughbred Rules
Claimed Horse

Reproposed Amendment: N.J.A.C. 13:70-12.4

Authorized By: New Jersey Racing Commission, Frank Zanzuccki, Executive Director.
Authority: N.J.S.A. 5:5-30.
Proposal Number: PRN 1993-133.

Submit written comments by April 14, 1993 to:
Michael Vukcevich, Deputy Director
New Jersey Racing Commission
CN 088
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The New Jersey Racing Commission ("Racing Commission" or "Commission") is reproposing an amendment to N.J.A.C. 13:70-12.4, Claimed horse.

The "claimed horse" rule presently provides that a claimed horse shall not start for 30 days after the date upon which it was claimed in any race wherein the determining eligibility price is not less than 25 percent more than the price for which it was claimed. On November 2, 1992, at 24 N.J.R. 4022(a), the Racing Commission caused to be published in the New Jersey Register a proposed amendment to the rule, reducing the time period for the claimed horse racing limitation in N.J.A.C. 13:70-12.4(a) from 30 to 15 days. The Racing Commission has determined to repropose this amendment at this time, together with an alternate proposal which if adopted would eliminate the claimed horse racing limitation in N.J.A.C. 13:70-12.4(a). The latter alternative, which if adopted would require a re-drafting of the existing rule, is set forth as Alternative A below. The alternative amendment, which would reduce the time period for the claimed horse racing limitation from 30 to 15 days, is set forth as Alternative B below. The Racing Commission is interested in receiving public comment as concerns each of these proposals and, following consideration of any received public comment and other relevant materials, the Racing Commission may determine to adopt either.

A claiming race, simply put, is a race where horses are entered with the stipulation that an authorized person may purchase the entered horse at the stated (claiming) price shown in the day's race program. Any horse entered in such a race whose true value exceeds the claiming price is nonetheless subject to purchase at the claiming price. The claiming race thus has among its objectives to insure that the entered horses are of comparable competitive worth and, consequently, to prevent an accomplished horse from participating in races for purse money against horses of significantly lesser stature.

Alternative Proposed Amendments

As noted, N.J.A.C. 13:70-12.4, prohibits a claimed thoroughbred horse from starting, for 30 days after the date upon which it was claimed, in any race wherein the determining eligibility price is not less than 25 percent more than the price for which it was claimed. For example, a horse claimed on January 1, 1993 for $10,000 presently could not, until January 31, 1993 (30 days after the date upon which it was claimed), participate in a race where the determining eligibility price is $12,499.99 or less (that is, an amount less than 25 percent more than the price for which it was claimed). The proposed amendment to N.J.A.C. 13:70-12.4, Alternative B below, would reduce this restriction from 30 days to 15 days. Assuming adoption of this alternative, the horse in the above example would be free of the regulatory restriction on January 16, 1993, or 15 days after the January 1, 1993 claiming date. The application of the proposed amendment to N.J.A.C. 13:70-12.4, Alternative A below, would result in no such restriction and the horse in the above example would be free to compete immediately.

The Commission is of the view that the adoption of one of these proposed amendments will likely benefit the race industry. The reduction of the eligibility restriction imposed by N.J.A.C. 13:70-12.4, from 30 to 15 days, or the elimination of any such restriction, will likely cause more horses to be available for competition. This is considered a desirable result as there exists a need to increase the number of available horses to insure that races are conducted with the maximum possible number of entrants. A greater supply of horses, which translates to more available horses to compete, is consistent with advancing the public's interest in and perception of the sport. Moreover, such a result will likely increase the amount of wagers placed on horse races impacted by the rule, which funds ultimately result in increased income to the horseman and inure to the benefit of all aspects of the racing industry.

The adoption of either of the proposed alternative amendments will further benefit the racing industry as it will likely stimulate new investment. The claiming process serves as a major vehicle for the introduction of first time owners to horse racing. A net effect of elimination or reducing the eligibility restriction from 30 to 15 days is to provide a potential purchaser of a horse participating in a claiming race with a factor to evaluate in the purchase decision making process. If a potential owner is subject to a lesser eligibility restriction, or no restriction at all, the purchase may be viewed as more feasible as the horse will be eligible to compete in a greater array of races at an earlier time. Of course, a prospective owner's decision to purchase must encompass other factors as the true value of the horse vis-a-vis the claiming price, the horse's potential for development, etc. Similarly, all of these factors must be recognized by existing owners in their decision to enter a horse in a race where that horse would be subject to a stated claiming price.

The Racing Commission has received preliminary comments to Alternative B of the instant proposal from various segments of the racing industry. These preliminary comments are mixed in terms of opinion expressed. Some oppose the proposed alternative amendment, contending that a reduction of the eligibility restriction from 30 to 15 days will benefit the more prosperous horsemen, giving he or she an added incentive to claim a horse from one who may be of a lesser financial stature. Some take an opposing view, indicating that adoption of the amendment (Alternative B) would also benefit the latter class of horsemen because the field of races available to compete in for purse money would be expanded. Additional preliminary comments received by the Racing Commission express the opinion that the adoption of the amendment (Alternative B) will foster competition and encourage new owners to enter the race industry. Still other received preliminary comments reflect the viewpoint that adoption of the amendment (Alternative B) would not have any impact at all. One comment notes that the Commission's standardbred regulation contains no comparable eligibility restrictions and asserts that no consequent problems exist in that aspect of the race industry.

Social Impact

Either of the proposed alternative rule amendments should not adversely affect any social programs or policies. As noted, either amendment would likely benefit the race industry by causing more horses to be available for competition, by advancing the public perception and interest in the sport, and by fostering investment.

Economic Impact

Either of the proposed alternative amendments will have a positive economic impact to the extent that each would generate additional wagering funds and foster new investment in the industry. For the reasons reflected in the commentary above, any ultimate economic effect on those horsemen directly impacted by the adoption of either amendment is difficult to measure and appears to a large degree dependent on individual circumstances. It can be said, however, that adoption of either amendment would likely be one of several factors for an owner to consider in determining which claiming races to enter his or her horse(s) in. Similarly, an elimination or the reduction in the eligibility restriction would be one of several factors for a potential purchaser to consider in the evaluation of whether the horse's acquisition at a particular claiming price would be viable.

Regulatory Flexibility Statement

A regulatory flexibility analysis is not required because the proposed alternative amendments do not impose reporting, recordkeeping or other compliance requirements on small businesses, as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The proposed amendment (Alternative B) reduces the time period for the claimed horse racing limitation in N.J.A.C. 13:70-12.4(a) from 30 to 15 days. The alternative proposal (Alternative A) would eliminate this limitation altogether.

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

Alternative A

13:70-12.4 Claimed horse

[(a)] A claimed horse [shall not start for 30 days after the date upon which it was claimed in any race wherein the determining eligibility price is not less than 25 percent more than the price for which it was claimed] **may start in a race following said horse being claimed, subject to compliance with this chapter, with no restriction imposed as to that horse's ability to compete by virtue of its having been claimed.**

[(b) This provision shall not apply to starter handicaps.]

Alternative B

13:70-12.4 Claimed horse

(a) A claimed horse shall not start for [30] **15** days after the date upon which it was claimed in any race wherein the determining eligibility price is not less than 25 percent more than the price for which it was claimed.

(b) This provision shall not apply to starter handicaps.

(a)

NEW JERSEY RACING COMMISSION

Thoroughbred Rules

Possession of Drugs or Drug Instruments

Proposed Amendment: N.J.A.C. 13:70-14A.8

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

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

Proposal Number: PRN 1993-136.

Submit written comments by April 14, 1993 to:
Michael Vukcevich, Deputy Director
New Jersey Racing Commission
CN 088
Trenton, New Jersey 08625

The agency proposal follows:

Summary

N.J.A.C. 13:70-14A.8, in its present state, specifically prohibits persons aside from licensed veterinarians from possessing anywhere within the grounds of any association conducting a race meeting, or within the confines of a racetrack enclosure, any drugs not possessed in accordance with the laws of the State of New Jersey, any contraband drug or unauthorized prescription legend drugs, any hypodermic syringes or needles, or any other instrument which may be used for injection. The rule, however, excepts any injectable device possessed for self-administration provided that the individual possessing such device promptly notifies the State Steward that he is in possession of such device and as concerns the identity of the chemical substance to be administered.

The proposed amendment modifies the language of the existing rule to clarify that its mandate applies to anywhere within the confines of a racetrack enclosure, and to specifically provide that its restrictions extend to the grounds of any licensed off-track stabling facility. Accordingly, the rule as proposed would by its terms specifically prohibit persons other than licensed veterinarians from possessing anywhere within the grounds of any association conducting a race meeting, anywhere within the confines of a racetrack enclosure, or anywhere within the grounds of any licensed off-track stabling facility: any drugs not possessed in accordance with the laws of the State of New Jersey; any contraband drug or unauthorized prescription legend drugs; or any hypodermic syringes, needles, or other instruments which may be used for injection. The existing exception to the rule shall remain effective.

Social Impact

This proposed amendment to N.J.A.C. 13:70-14A.8 specifically provides for the rule's applicability to licensed off-track stabling facilities. Although the New Jersey Racing Commission ("Commission") adheres to the position that the rule in its present state encompasses such

facilities, the amendment to N.J.A.C. 13:70-14A.8 is proposed to clearly reflect this interpretation. It is anticipated that most horsemen will likely favor the amendment, viewing it as consistent with the Commission's present policy and with its duty to enhance the integrity and public confidence in the sport of horse racing. However, some horsemen may disfavor the amendment, viewing the codification of said policy as an extension of their regulatory compliance responsibilities.

Economic Impact

It is not anticipated that the proposed amendment will result in any increase or decrease in costs to the horsemen or any other party.

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 under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The amendment defines under what circumstances a person may possess drugs or drug instruments at premises subject to licensure by the New Jersey Racing Commission.

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

13:70-14A.8 Possession of drugs or drug instruments

(a) No person aside from licensed veterinarians shall have in his possession anywhere within the grounds of any association conducting a race meeting, or **anywhere within** the confines of a racetrack enclosure, **or anywhere within the grounds of any licensed off-track stabling facility,** any drugs not possessed in accordance with the laws of the State of New Jersey, nor any contraband drug or unauthorized prescription legend drugs, nor any hypodermic syringes or needles, or any other instrument which may be used for injection, unless the injectable device is possessed for self-administration, and further provided that the individual possessing such device promptly notify the State Steward:

1. That he is in possession of such device; and
2. Of the chemical substance to be administered.

(a)

NEW JERSEY RACING COMMISSION

Harness Rules

Possession of Drugs or Drug Instruments

Proposed Amendment: N.J.A.C. 13:71-23.9

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

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

Proposal Number: PRN 1993-139.

Submit written comments by April 14, 1993 to:

Michael Vukcevich, Deputy Director
New Jersey Racing Commission
CN 088
Trenton, New Jersey 08625

The agency proposal follows:

Summary

N.J.A.C. 13:71-23.9, in its present state, specifically prohibits persons aside from licensed veterinarians from possessing anywhere within the grounds of any association conducting a race meeting, or within the confines of a racetrack enclosure, any drugs not possessed in accordance with the laws of the State of New Jersey, any contraband drug or unauthorized prescription legend drugs, any hypodermic syringes or needles, or any other instrument which may be used for injection. The rule, however, excepts any injectable device possessed for self-administration provided that the individual possessing such device promptly notifies the State Steward that he is in possession of such device and as concerns the identity of the chemical substance to be administered.

The proposed amendment modifies the language of the existing rule to clarify that its mandate applies to anywhere within the confines of a racetrack enclosure, and to specifically provide that its restrictions extend to the grounds of any licensed off-track stabling facility. Accordingly, the rule as proposed would by its terms specifically prohibit persons other than licensed veterinarians from possessing anywhere within the grounds of any association conducting a race meeting, anywhere within the confines of a racetrack enclosure, or anywhere within the grounds of any licensed off-track stabling facility: any drugs not possessed in accordance with the laws of the State of New Jersey; any contraband drug or unauthorized prescription legend drugs; or any hypodermic syringes, needles, or other instruments which may be used for injection. The existing exception to the rule shall remain effective.

Social Impact

This proposed amendment to N.J.A.C. 13:71-23.9 specifically provides for the rule's applicability to licensed off-track stabling facilities. Although the New Jersey Racing Commission ("Commission") adheres to the position that the rule in its present state encompasses such facilities, the amendment to N.J.A.C. 13:71-23.9 is proposed to clearly reflect this interpretation. It is anticipated that most horsemen will likely favor the amendment, viewing it as consistent with the Commission's present policy and with its duty to enhance the integrity and public confidence in the sport of horse racing. However, some horsemen may disfavor the proposal, viewing the codification of said policy as an extension of their regulatory compliance responsibilities.

Economic Impact

It is not anticipated that the proposed amendment will result in any increase or decrease in costs to the horsemen or any other party.

Regulatory Flexibility Statement

A regulatory flexibility analysis is not required because the rule proposed for readoption with amendment does not impose reporting, recordkeeping or other compliance requirements on small businesses, as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The amendment defines under what circumstances a person may possess drugs or drug instruments at premises subject to licensure by the New Jersey Racing Commission.

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

13:71-23.9 Possession of drugs or drug instruments

(a) No person aside from licensed veterinarians shall have in his possession anywhere within the grounds of any association conducting a race meeting, or **anywhere within** the confines of a racetrack enclosure, **or anywhere within the grounds of any licensed off-track stabling facility,** any drugs not possessed in accordance with the laws of the State of New Jersey, nor any contraband drug or unauthorized prescription legend drugs, nor any hypodermic syringes or needles, or any other instrument which may be used for injection, unless the injectable device is possessed for self-administration, and further provided that the individual possessing such device promptly notify the State Steward:

1. That he is in possession of such device; and
2. Of the chemical substance to be administered.

TRANSPORTATION

(b)

DIVISION OF TRAFFIC ENGINEERING AND LOCAL AID

Speed Limits

Route N.J. 82 in Union County

Proposed Amendment: N.J.A.C. 16:28-1.108

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

Authority: N.J.S.A. 27:1A-5, 27:1A-6, and 39:4-98.

Proposal Number: PRN 1993-153.

Submit comments by April 14, 1993 to:

Charles L. Meyers
Administrative Practice Officer
Department of Transportation
Bureau of Policy and Legislative Analysis
1035 Parkway Avenue
CN 600
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The Department proposes to amend N.J.A.C. 16:28-1.108 to establish a 25 mile per hour "school speed limit zone" along Route N.J. 82 at the Livingston School located in Union Township, Union County. This speed limit should slow traffic making it safer for children going to and from school and playing at recess.

Based upon a request from local government, an engineering review of traffic conditions was conducted in this area by the Department's Bureau of Traffic Engineering and Safety Programs. This review revealed that the establishment of a "school speed limit" zone along Route N.J. 82 at the Livingston School in Union Township was warranted.

Social Impact

The proposed amendment will establish a 25 mile per hour "school speed limit" zone along Route N.J. 82 in Union Township, Union County, to slow traffic making it safer for children going to and from school and during recess at Livingston School. Appropriate signs will be erected to advise the motoring public.

Economic Impact

The Department and local government will incur direct and indirect costs for mileage, personnel and equipment requirements. The Department will bear the costs of installing the "school speed limit" zone signs. The costs involved in the installation and procurement of signs vary, depending upon the material used, size, and method of procurement. Motorists who violate the rules will be assessed the appropriate fine in accordance with the "Statewide Violations Bureau Schedule," issued under New Jersey Court Rule 7:7-3.

Regulatory Flexibility Statement

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

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

16:28-1.108 Route 82

(a) The rate of speed designated for the certain [part] **parts** of State highway Route 82 described in this subsection shall be established and adopted as the maximum legal rate of speed:

1. For both directions of traffic:

i. (No change.)

ii. In Union Township, Union County:

(1) Zone 1: 35 [mph] **miles per hour** between the Springfield Township—**Township of Union** Corporate Line and Liberty Avenue (Co. Rd. 637) (**approximate** mileposts 0.45 to 0.80); thence

(2) Zone 2: 30 [mph] **miles per hour** between Liberty Avenue and Coolidge Avenue (**approximate** mileposts 0.80 to 2.60); thence

(3) Zone 3: 40 [mph] **miles per hour** between Coolidge Avenue and Route N.J. 439 except for 25 [mph] **miles per hour** when passing through the Holy Spirit Roman Catholic School zone **and the Livingston School Zone (mileposts 3.23 to 3.58) while "25 mph when flashing" signs are operating** during recess when the presence of children is clearly visible from the roadway or while children are going to or leaving school, during opening or closing hours (**approximate** mileposts 2.60 to 4.93).

(a)

DIVISION OF TRAFFIC ENGINEERING AND LOCAL AID

Restricted Parking and Stopping Routes N.J. 7 in Essex County; N.J. 17 in Bergen County; and N.J. 71 in Monmouth County

Proposed Amendments: N.J.A.C. 16:28A-1.6, 1.9 and 1.38

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

Authority: N.J.S.A. 27:1A-5, 27:1A-6, 39:4-138.1, 39:4-197.5 and 39:4-199.

Proposal Number: PRN 1993-151.

Submit comments by April 14, 1993 to:

Charles L. Meyers
Administrative Practice Officer
Department of Transportation
Bureau of Policy and Legislative Analysis
1035 Parkway Avenue
CN 600
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The proposed amendments will establish a "restricted parking" (handicapped) space along Route N.J. 7 (at 116-118 Washington Avenue) in the Town of Belleville, Essex County; a "loading zone" along Route N.J. 17 in the Borough of North Arlington, Bergen County; and "no parking bus stop" zones along Route N.J. 71 in the Borough of Bradley Beach, Momouth County, for the efficient flow of traffic, the enhancement of safety, the safe off and on loading of passengers at established bus stops, the establishment of restricted space(s) for the handicapped, and the well-being of the populace.

The Department received Ordinance No. 2549, adopted May 28, 1991, from the Belleville Township Council requesting that a handicapped parking space be approved for 116-118 Washington Avenue (Route N.J. 7) in the Township of Belleville, Essex County; Resolution No. 212-92, adopted September 15, 1992, by the Borough Council of North Arlington, Bergen County, requesting that a "loading zone" be established along Route N.J. 17 in the Borough of North Arlington, Bergen County, during the hours of 7:00 A.M. to 4:00 P.M. Monday through Saturday; and Resolution No. 1992-129 adopted September 22, 1992, from the Borough Council of Bradley Beach, Monmouth County, requesting that certain parking prohibitions be instituted to establish bus stops along Route N.J. 71 in the Borough of Bradley Beach, Monmouth County.

Based upon the requests received from local government, and in the interest of safety, as part of a review of current conditions, the Department's Bureau of Traffic Engineering and Safety Programs conducted traffic investigations. The investigations proved that the establishment of a "restricted parking (handicapped) space" along Route N.J. 7 in the Township of Belleville, Essex County; a "loading zone" along Route N.J. 17 in the Borough of North Arlington, Bergen County; and "no parking bus stop" zones along Route N.J. 71 in the Borough of Bradley Beach, Monmouth County, were warranted.

The proposed amendment to N.J.A.C. 16:28A-1.38 is also intended to internally recodify the rule to bring it into conformity with the Department's rulemaking format regarding the restrictions pertaining to the Borough of Manasquan, Monmouth County. There has been no change in these restrictions as they appear in the Administrative Code. The Department therefore proposes to amend N.J.A.C. 16:28A-1.6, 1.9 and 1.38 based upon the requests from local government, the traffic investigations, and the need to reformat those sections in conformity with current rulemaking practices.

Social Impact

The proposed amendments will establish a "restricted parking" (handicapped) space along Route N.J. 7 (at 116-118 Washington Avenue) in the Town of Belleville, Essex County; a "loading zone" along Route N.J. 17 in the Borough of North Arlington, Bergen County; and "no parking bus stop" zones along Route N.J. 71 in the Borough of Bradley Beach, Monmouth County, for the efficient flow of traffic, the enhancement of safety, the safe on and off loading of passengers at established

bus stops, the establishment of restricted parking space(s) for the handicapped, and the well-being of the populace. Appropriate signs will be erected to advise the motoring public.

Economic Impact

The Department and local governments will incur direct and indirect costs for mileage, personnel and equipment requirements. The local governments will bear the costs for the installation of "restricted parking (handicapped)," "no parking loading zone," and "no parking bus stop" signs. The costs involved in the installation and procurement of signs vary, depending upon the material used, size, and method of procurement. Motorists who violate the rules will be assessed the appropriate fine in accordance with the "Statewide Violations Bureau Schedule," issued under New Jersey Court Rule 7:7-3.

Regulatory Flexibility Statement

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

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

16:28A-1.6 Route 7

(a) (No change.)

(b) The certain parts of State highway Route 7 described in this subsection shall be designated and established as restricted parking space for the use of persons who have been issued special vehicle identification cards by the Division of Motor Vehicles in accordance with N.J.S.A. 39:4-197.5. Under the provisions of N.J.S.A. 39:4-199, permission is granted to erect appropriate signs of the following established handicapped parking [space.] **spaces:**

1. Restricted parking in the Town of Belleville, Essex County:

(1) (No change.)

(2) Along the east side:

(A)-(B) (No change.)

(C) 116-118 Washington Avenue—Beginning at a point 100 feet north of the northerly curb line of William Street and extending for a distance of 22 feet northerly therefrom.

(c) (No change.)

16:28A-1.9 Route 17

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

(e) The certain parts of State highway Route 17 (Ridge Road) described in this subsection shall be designated and established as "no parking" zones where parking is prohibited at all times. In accordance with the provisions of N.J.S.A. 39:4-199, permission is granted to erect appropriate signs at the following established loading zones:

1. No parking (loading zone) in the Borough of North Arlington, Bergen County:

i. Along the southbound side (Ridge Road):

(1) Beginning at the southerly curb line of Front Street and extending to a point 67 feet south thereof, from 7:00 A.M. to 4:00 P.M. Monday through Saturday.

16:28A-1.38 Route 71

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

(d) The certain parts of State highway Route 71 described in this subsection are designated and established as "no parking **bus stop**" zones where parking is prohibited at all times. In accordance with the provisions of N.J.S.A. 39:4-199, permission is granted to erect appropriate signs at the following established bus stops:

[1. Along the northbound (easterly) side in the Borough of Manasquan, Monmouth County:

i. Mid-block bus stop:

(1) Main Street—Beginning 128 feet north of the northerly curb line of Main Street and extending 135 feet northerly therefrom.

2. Along the southbound (westerly) side in the Borough of Manasquan, Monmouth County:

i. Near side bus stop:

(1) Main Street—Beginning at the northerly curb line of Main Street and extending 105 feet northerly therefrom.

3. Along the southbound (westerly) side in the Borough of Spring Lake Heights, Monmouth County:

i. Mid-block bus stop: Between Snyder Avenue and 2nd Street—Beginning 268 feet north of the northerly curb line of Snyder Avenue and extending 135 feet northerly therefrom.

ii. Near side bus stop: Wall Road—Beginning at the southerly curb line of Wall Road and extending 105 feet southerly therefrom.]

1. No parking bus stop zones in Monmouth County:

i. In the Borough of Manasquan:

(1) Along the northbound (easterly) side:

(A) Mid-block bus stop:

1. Main Street—Beginning 128 feet north of the northerly curb line of Main Street and extending 135 feet northerly therefrom.

(2) Along the southbound (westerly) side:

(A) Near side bus stop:

1. Main Street—Beginning at the northerly curb line of Main Street and extending 105 feet northerly therefrom.

ii. In the Borough of Spring Lake Heights:

(1) Along the southbound (westerly) side:

(A) Mid-block bus stop:

1. Between Snyder Avenue and 2nd Street—Beginning 268 feet north of the northerly curb line of Snyder Avenue and extending 135 feet northerly therefrom.

(B) Near side bus stop:

1. Wall Road—Beginning at the southerly curb line of Wall Road and extending 105 feet southerly therefrom.

iii. In the Borough of Bradley Beach:

(1) Along Main Street on the northbound (easterly) side:

(A) Far side bus stops:

1. Ocean Park Avenue—Beginning at the northerly curb line of Ocean Park Avenue and extending 100 feet northerly therefrom.

2. La Reine Avenue—Beginning at the northerly curb line of La Reine Avenue and extending 100 feet northerly therefrom.

3. Fourth Avenue—Beginning at the northerly curb line of Fourth Avenue and extending 100 feet northerly therefrom.

(B) Near side bus stop:

1. Evergreen Avenue—Beginning at the southerly curb line of Evergreen Avenue and extending 105 feet southerly therefrom.

(2) Along Main Street on the southbound (westerly) side:

(A) Far side bus stops:

1. Ocean Park Avenue—Beginning at the prolongation of the northerly curb line of Ocean Park Avenue and extending 105 feet northerly therefrom.

2. Fourth Avenue—Beginning at the southerly curb line of Fourth Avenue and extending 100 feet northerly therefrom.

3. Evergreen Avenue—Beginning at the southerly curb line of Evergreen Avenue and extending 100 feet southerly therefrom.

(B) Near side bus stop:

1. Brinley Avenue—Beginning at the northerly curb line of Brinley Avenue and extending 105 feet northerly therefrom.

(a)

DIVISION OF TRAFFIC ENGINEERING AND LOCAL AID

Restricted Parking and Stopping Route N.J. 77 in Cumberland County

Proposed Amendment: N.J.A.C. 16:28A-1.41

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

Authority: N.J.S.A. 27:1A-5, 27:1A-6, 39:4-138.1 and 39:4-98.

Proposal Number: PRN 1993-152.

Submit comments by April 14, 1993 to:

Charles L. Meyers
Administrative Practice Officer
Department of Transportation
Bureau of Policy and Legislative Analysis
1035 Parkway Avenue
CN 600
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The Department proposes to amend N.J.A.C. 16:28A-1.41 to establish "no stopping or standing" zones along Route N.J. 77 in the City of Bridgeton, Cumberland County. The provisions of this amendment will improve the flow of traffic and enhance safety.

This amendment is being proposed at the request of a local government and as part of the Department's on-going review of current conditions. The traffic investigation conducted by the Department's Bureau of Traffic Engineering and Safety Programs proved that the establishment of "no stopping or standing" zones along Route N.J. 77 in the City of Bridgeton was warranted.

The amendment further lengthens the "no stopping or standing" zone on East Commerce Street and adds "no stopping or standing" zones at additional locations including: Church Lane; McCormick Place; Route N.J. 49; East Commerce Street; and Washington Street. Signs are required to notify motorists of the restrictions proposed herein.

Social Impact

The proposed amendment will establish "no stopping or standing" zones along Route N.J. 77 in the City of Bridgeton, Cumberland County, to improve traffic flow and enhance safety. Appropriate signs will be erected to advise the motoring public.

Economic Impact

The Department and local government will incur direct and indirect costs for mileage, personnel, and equipment requirements. The Department will bear the costs for the installation of "no stopping or standing" zone signs. The costs involved in the installation and procurement of signs vary, depending upon the material used, size, and method of procurement. Motorists who violate the rules will be assessed the appropriate fine in accordance with the "Statewide Violations Bureau Schedule," issued under New Jersey Court Rule 7:7-3.

Regulatory Flexibility Statement

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

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

16:28A-1.41 Route 77

(a) The certain parts of State [Highway] **highway** Route 77 described in this subsection [are] **shall be** designated and established as "no stopping or standing" zones **where stopping or standing is prohibited at all times except as provided in N.J.S.A. 39:4-139. In accordance with the provisions of N.J.S.A. 39:4-198, proper signs shall be erected.**

1. No stopping or standing in Cumberland County:

i. In the City of Bridgeton:

(1) Southbound on the westerly side:

(A)-(M) (No change.)

(N) Beginning at the northerly curbline of East Commerce Street to a point [50] **103** feet north therefrom.

(O)-(P) (No change.)

(Q) Beginning 55 feet north of the northerly curbline of Church Lane to a point 40.70 feet south of the southerly curbline of Church Lane.

(R) Beginning 50 feet north of the northerly curbline of McCormick Place to the northerly curbline of Route N.J. 49.

(2) Northbound on the easterly side:

(A)-(L) (No change.)

(M) Beginning at the northerly curbline of Route N.J. 49 to a point 105 feet north therefrom.

(N) Beginning at the southerly curbline of McCormick Place to a point 35.77 feet south therefrom.

(O) Beginning at the northerly curbline of McCormick Place to a point 90 feet north therefrom.

(P) Beginning at the southerly curbline of East Commerce Street to a point 200.28 feet south therefrom.

(Q) Beginning at the southerly curbline of Washington Street to a point 140.35 feet south therefrom.

2.-5. (No change.)

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

(a)

DIVISION OF TRAFFIC ENGINEERING AND LOCAL AID

Turns
Route U.S. 1 Business in Mercer County
Proposed New Rule: N.J.A.C. 16:31-1.31

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

Authority: N.J.S.A. 27:1A-5, 27:1A-6 and 39:4-125.

Proposal Number: PRN 1993-154.

Submit comments by April 14, 1993 to:

Charles L. Meyers
Administrative Practice Officer
Department of Transportation
Bureau of Policy and Legislative Analysis
1035 Parkway Avenue
CN 600
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The proposed new rule will establish "no U turn" and "no left turn" areas along Route U.S. 1 Business (formerly U.S. 1 Alternate) in Lawrence Township, Mercer County, for the efficient flow of traffic, the enhancement of safety, and the well-being of the populace.

On June 25, 1990 at the request of the Colonial Heights Civic Association, the Lawrence Township Council adopted Resolution No. 292-90, requesting that the New Jersey Department of Transportation conduct a study regarding the prohibition of "U turns" and "left turns" along Route U.S. 1 Alternate (now U.S. 1 Business) from Whitehead Road to the Brunswick Circle. Based upon this request from Lawrence Township and in the interest of safety, the Department's Bureau of Traffic Engineering and Safety Programs conducted a traffic investigation. The investigation proved that the establishment of "no U turn" and "no left turn" areas along Route U.S. 1 Business in Lawrence Township, Mercer County, was warranted. The results of the traffic investigation were forwarded to the Lawrence Township Council.

On October 2, 1991 the Lawrence Township Council adopted Resolution No. 458-91 requesting that the New Jersey Department of Transportation establish "no left turn" or "no U turn" areas at all intersections between Whitehead Road and the Brunswick Circle excluding Cherry Tree Lane and Slack Avenue. The Department proposes new rule N.J.A.C. 16:31-1.31 prohibiting "U turns" and "left turns" along Route U.S. 1 Business in Lawrence Township, Mercer County.

Social Impact

The proposed new rule will establish "no U turn" and "no left turn" areas along Route U.S. 1 Business in Lawrence Township, Mercer County, for the efficient flow of traffic, the enhancement of safety, and the well-being of the populace. Appropriate signs will be erected to advise the motoring public.

Economic Impact

The Department and local government will incur direct and indirect costs for mileage, personnel and equipment requirements. The Department will bear the costs for the installation of "no U turn" and "no left turn" signs. The costs involved in the installation and procurement of signs vary, depending upon the material used, size, and method of procurement. Motorists who violate the rules will be assessed the appropriate fine in accordance with the "Statewide Violations Bureau Schedule," issued under New Jersey Court Rule 7:7-3.

Regulatory Flexibility Statement

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

Full text of the proposed new rule follows:

16:31-1.31 Route U.S. 1 Business

(a) Turning movements on the certain parts of State highway Route U.S. 1 Business described in this subsection are regulated as follows:

1. In the Township of Lawrence, Mercer County:

i. No U turn in both directions between Whitehead Road and the Brunswick Circle.

ii. No left turn in both directions between Whitehead Road and the Brunswick Circle, except at Cherry Tree Lane—Slack Avenue and Harmony Avenue.

(a)

DIVISION OF TRANSPORTATION ASSISTANCE BUREAU OF FREIGHT SERVICES

Transportation of Hazardous Materials

Proposed Amendments: N.J.A.C. 16:49-1.3, 1.5, 2.1 and Appendix

Authorized By: Kathy A. Stanwick, Deputy Commissioner, Department of Transportation.

Authority: N.J.S.A. 27:1A-5, 27:1A-6 and 39:5B-25 et seq.

Proposal Number: PRN 1993-121.

Submit comments by April 14, 1993 to:

Charles L. Meyers
Administrative Practice Officer
Department of Transportation
Bureau of Policy and Legislative Analysis
1035 Parkway Avenue
CN 600
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The proposed amendments will revise and update N.J.A.C. 16:49, Transportation of Hazardous Materials, to conform with Public Law 93-633 (49 App. U.S.C. 1801 et seq.) as amended by the Hazardous Materials Transportation Uniform Safety Act of 1990, in the areas of shipping, packaging, marking, labeling, placarding, handling and transportation of hazardous materials to comply with regulations issued by the United States Department of Transportation (USDOT). Additionally, Part 171, 172, 173, 174, 177, 178, 179, and 180 and Parts 390 through 397, adopted by reference herein are revised as of October 1, 1992, to comply with the Code of Federal Regulations (CFR), and are summarized as follows:

Part 171 contains general information, regulations and definitions.

Part 172 contains hazardous materials table, special provisions, hazardous materials communications, emergency response information and training requirements.

Part 173 lists general requirements for shipments and packaging.

Part 174 establishes carriage by rail.

Part 177 details carriage by public highway.

Part 178 outlines shipping container specifications.

Part 179 outlines specifications for tank cars.

Part 180 depicts the continuing qualification and maintenance of packagings.

Part 390 governs the Federal Motor Carrier Safety regulations.

Part 391 outlines qualification of drivers.

Part 392 concerns driving of motor vehicles.

Part 393 outlines parts and accessories necessary for safe operation.

Part 394 outlines notification and reporting of accidents.

Part 395 governs hours of service of drivers.

Part 396 depicts inspection, repair, and maintenance of motor vehicles.

Part 397 governs the transportation of hazardous materials; driving and parking rules.

The regulations for the transportation of hazardous materials issued by the USDOT and subsequently adopted by the Department govern the movement of hazardous materials, placarding substances (as identified by the U.S. Environmental Protection Agency (EPA)) and hazardous wastes (as defined in 40 CFR Part 262 by U.S. EPA). All three types of hazardous forms are regulated while they are in transportation, defined broadly to include loading, unloading, and temporary storage. The term "hazardous materials" as used herein, is used in the broadest sense, intended to refer to hazardous materials, substances, and wastes unless otherwise noted. All materials posing a hazardous risk during transportation are listed by USDOT in the Hazardous Materials Table, Part 172.101 of the CFR, Title 49.

The Hazardous Materials Regulations identify the proper shipping name of all hazardous materials, substances, and wastes and prescribe the conditions under which they may be transported. These regulations set standards for shipping, packaging, storing, loading, and transporting hazardous materials, substances, and wastes. Specifications for containers are defined to ensure against breakage or leakage in the event of an accident. All materials must be packaged in appropriate containers. All packages must be labeled according to their hazard class, and marked with the proper shipping name of the contents. Vehicles must be placarded to identify the hazard class being transported. Drivers are to be trained in both hazardous materials and general motor carrier safety requirements.

The Hazardous Materials Regulations are designed to prevent incidents from occurring. They do not define emergency response procedures. The hazardous material shipping name identification along with its UN (United Nations) or NA (North American) number, and the placarding - warning label requirements do, however, correspond directly to the emergency response techniques described in the Emergency Response Guidebook published by the U.S. Department of Transportation. This guidebook is designed specifically for response to hazardous material incidents where an "incident" is defined to be **any** release of hazardous materials.

The proposed amendments do not effect any changes in any requirements previously imposed by the USDOT on the shippers or carriers transporting hazardous materials.

Social Impact

The proposed amendments impact shippers, motor carriers and their personnel involved in interstate or intrastate commerce who transport hazardous materials in and between the State(s), in that they will be required to comply with and be knowledgeable of the new provisions of the rules. Interstate operations are already subject to the revised provisions.

The impact on the general public will be beneficial in that the safe transportation of hazardous materials will be assured along the highway and rail systems of New Jersey.

Economic Impact

The proposed amendments will have no significant economic impact on the motor carrier or railroad industries since the amendments effect only minor changes required to make New Jersey's rules consistent with the Federal regulations. Interstate carriers are already subject to these rules under Federal law. The Department and the Division of State Police will incur no added administrative or operational costs as a result of these amendments. Additionally, the proposed amendments do not effect any changes in requirements imposed on those transporting hazardous materials; therefore, no new or additional costs are involved as a result.

Regulatory Flexibility Statement

The proposed amendments do not place any reporting or recordkeeping requirements on small businesses as the term is defined by the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. However, a majority of shippers and motor carriers, who could be considered small businesses, must meet the compliance requirements of shipping, packaging, marking, labeling, placarding, handling and transportation of hazardous materials. The proposed amendment does not effect any changes in requirements already established by the USDOT, since shippers and motor carriers in the transportation of hazardous materials know these requirements and any changes would be pre-empted by Federal regulations. There will be no capital costs incurred by small businesses, because the changes effected do not require any change in the operational procedures or equipment required. Small businesses will not need to employ professional services as a result of the changes being effected. The Department, therefore, cannot provide or contemplate any differentiation or exemption based on the size of the business because the requirements of the proposed amendments are mandated by the U.S. Department of Transportation. The rules primarily affect shippers and motor carriers and those agencies responsible for the enforcement of these rules.

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

(**Note:** An ellipsis (. . .) is used to indicate Appendix paragraphs, not affected by the proposed amendments, which are not reproduced herein.)

16:49-1.3 General requirements

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

(h) This chapter [established] **establishes** minimum standards which must be complied with in conjunction with the transportation of hazardous materials. Therefore, in the event of a conflict between this chapter and any other State regulation, the stricter, more stringent standard shall apply and govern. This chapter is intended to complement, and not to limit, those related statutory and regulatory provisions of the New Jersey Department of Environmental Protection **and Energy** regarding hazardous wastes, radioactive materials, spill compensation and control.

(i) This chapter may be amended from time to time by the New Jersey Department of Transportation. The Federal "Hazardous Materials Regulations" referenced herein, are adopted as revised as of [October 1, 1989] **October 1, 1992**. The "Federal Motor Carrier Safety Regulations" as referenced in 49 CFR 177.804 are adopted as revised as of [October 1, 1989] **October 1, 1992**. The New Jersey Department of Transportation intends to amend these rules as new Federal publications become available.

(j)-(k) (No change.)

16:49-1.5 Document availability

(a) Copies of the Federal "Hazardous Materials Regulations," Title 49, Code of Federal Regulations, Parts 171, 172, 173, 174, 177, 178, 179, and 180 revised as of [October 1, 1989] **October 1, 1992**, and referenced herein, may be purchased from the places listed below. The "Federal Motor Carrier Safety Regulations," Title 49, Code of Federal Regulations, Parts 390 through 397 revised as of [October 1, 1989] **October 1, 1992**, and adopted by reference in Section 177.804 of the Appendix to the Regulations Regarding the Transportation of Hazardous Materials, may also be purchased at the places listed below.

1.-3. (No change.)

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

16:49-2.1 Parts adopted by reference

(a) The New Jersey Department of Transportation, pursuant to N.J.S.A. 39:5B-25 et seq., hereby incorporates by reference the following portions of Title 49—Transportation, Code of Federal Regulations, revised as of [October 1, 1989] **October 1, 1992**. The parts adopted by reference are found in Chapter 1, referred to as "Research and Special Programs Administration, Department of Transportation." These parts are detailed in the APPENDIX TO THE REGULATIONS REGARDING THE TRANSPORTATION OF HAZARDOUS MATERIALS. The portions adopted are summarized below.

1. Part 171[,]—General Information, Regulations, and Definitions. (Sections 171.1, 171.4, 171.5, [171.10,] **171.6** and 171.20 are omitted from adoption herein; modifications are made to Sections 171.15 and 171.16).

2. Part 172[,]—Hazardous Materials Table[s], [and] **Special Provisions**, Hazardous Materials Communications, [Regulations] **Emergency Response Information, and Training Requirements**. (Modifications are made to Section 172.3.)

3. Part 173[,]—Shippers—General Requirements for Shipments and Packagings ([section]**Section** 173.32a is excluded from adoption herein).

4. Part 174[,]—Carriage by Rail.

5. Part 177[,]—Carriage by Public Highway.

6. Part 178[,[—[Shipping Container] Specifications **for Packagings**.

7. Part 179[,]—Specifications for Tank Cars. (Sections 179.3, 179.4, and 179.5 are excluded from adoption herein.)

8. Part 180[,]—Continuing Qualification and Maintenance of Packagings.

APPENDIX TO THE REGULATIONS REGARDING THE TRANSPORTATION OF HAZARDOUS MATERIALS

This Appendix to the Regulations Regarding the Transportation of Hazardous Materials details the adopted portions of Title 49, C.F.R., by section. All sections are listed by number and title to identify content for the reader. Detailed modifications are stated within the appropriate section.

CHAPTER I

RESEARCH AND SPECIAL PROGRAMS ADMINISTRATION, U.S. DEPARTMENT OF TRANSPORTATION

(Subchapter B is not being incorporated upon adoption.)

SUBCHAPTER C—HAZARDOUS MATERIALS REGULATIONS

PART 171—GENERAL INFORMATION, REGULATIONS, AND DEFINITIONS

Section 171.2	General [Requirements] **requirements.**
Section 171.3	Hazardous [Waste] **waste.**
Section 171.7	[Matter incorporated by reference] **Reference material.**

These materials incorporated by reference are technical documents referred to, on occasion, in Title 49, Code of Federal Regulations. Specific technical document names, associations, and addresses where they may be found are contained in Section 171.7 of Title 49, Code of Federal Regulations.

. . .

Section 171.10	**Units of measure.**

. . .

Section 171.14	[Specification markings] **Transitional provisions for implementing requirements based on the UN Recommendations.**
Section 171.15	Immediate notice of certain hazardous materials incidents. (New Jersey [Revisions] **revisions** as noted below.)

Section 171.15 is revised to state the following. (Note: Paragraph (a) has been changed and paragraph (d) has been added.)

(a) At the earliest practicable moment, each carrier who transports hazardous materials (including hazardous wastes) shall give notice in accordance with paragraph (b) or paragraph (d) of this section after each incident that occurs during the course of transportation (including loading, unloading and temporary storage) in which

1. As a direct result of hazardous materials:

i.-iii. (No change.)

iv. An evacuation of the general public occurs [lasing] **lasting** one or more hours; or

v.-vi. (No change.)

2. Fire, breakage, spillage, or suspected radioactive contamination occurs involving shipment of radioactive material (see also §§174.45, 175.45, 176.48, and 177.807 of this subchapter **or in Title 49, Code of Federal Regulations, as appropriate**); or

3. (No change.)

4. A situation exists of such a nature (e.g., a continuing danger to life exists at the scene of the incident) that, in the [judgement] **judgment** of the carrier, it should be reported in accordance with (b) and (d) of this section.

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

(d) If a New Jersey Police Accident Report has been filed with the New Jersey Division of Motor Vehicles, or if a Spill Report has been filed with the New Jersey Department of Environmental Protection **and Energy**, then reports requested above in paragraphs (b) and (c) are not required of intrastate carriers who are not under the jurisdiction of U.S.D.O.T. All other carriers are subject to the U.S.D.O.T. reporting requirements as usual.

Section 171.16—Detailed hazardous materials incident[s] reports. (New Jersey [Revision] **revision** as noted below.)

Section 171.16 is revised to state the following: (Note: Paragraphs (a) and (b) [has] **have** been changed and paragraph (e) has been added.)

(a) Each carrier who transports hazardous materials shall report in writing in duplicate on DOT Form 5800.1 (Rev. 6/89) to the U.S. Department of Transportation within 30 days of the date of discovery, unless the requirements of paragraph (e) in this section are met, each incident that occurs during the course of transportation (including loading, unloading, or temporary storage) in which any of the circumstances set forth in Section 171.15(a) occurs or there has been an unintentional release of hazardous materials from a package (including a tank) or any quantity of hazardous waste has been discharged during transportation. If a report pertains to a hazardous waste discharge—

1. A copy of the hazardous waste manifest for the waste must be attached to the report [,]; and

2. (No change.)

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

(e) If a New Jersey Police Accident Report has been filed with the New Jersey Division of Motor Vehicles or if a Spill Report has been filed with the New Jersey Department of Environmental Protection **and Energy**, then other reports requested in this section are not required of intrastate carriers who are not under the jurisdiction of U.S.D.O.T. All other carriers are subject to the U.S.D.O.T. reporting requirements as usual.

...

PART 172—[HAZARDOUS MATERIALS TABLES AND HAZARDOUS MATERIALS COMMUNICATION REGULATIONS] **HAZARDOUS MATERIALS TABLE, SPECIAL PROVISIONS, HAZARDOUS MATERIALS COMMUNICATIONS, EMERGENCY RESPONSE INFORMATION, AND TRAINING REQUIREMENTS**

...

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

Subpart B—Table[s] of Hazardous Materials, Their Description, Proper Shipping Name, Class, Label, Packaging, and Other Requirements

Section 172.101 Purpose and use of Hazardous Materials [table] **Table**, including the Hazardous Materials Table, the CERCLA List, and the List of Hazardous Substances and Reportable Quantities.

[Section 172.102 Purpose and Use of Optional Hazardous Materials Table for international shipments, including the Optional Hazardous Materials Table.]

Section 172.102 Special provisions.

[Appendix A to Subpart B above] **Index**—Identification Number Cross Reference to Proper Shipping Names in Section 172.101 [and Section 172.102].

Subpart C—(No change.)

Subpart D—Marking.

...

Section 172.301 General marking requirements **for non-bulk packagings**.

[Section 172.302 Export shipment by water.]

Section 172.302 General marking requirements for bulk packaging.

Section 172.303 Prohibited marking.

...

[Section 172.306 Consignee's or consignor's name and address.]

...

Section 172.312 Liquid hazardous materials **in non-bulk packagings**.

Section 172.313 Poisonous hazardous materials.

Section 172.316 Packagings containing materials classed as ORM-D.

Section 172.320 Explosive hazardous materials.

Section 172.324 Hazardous substances **in non-bulk packagings**.

Section 172.325 Elevated temperature materials.

...

Section 172.336 Identification numbers; special provisions [and exceptions].

...

Subpart E—Labeling.

...

Section 172.400a Exceptions from labeling.

...

Section 172.411 [EXPLOSIVE A, EXPLOSIVE B, EXPLOSIVE C, AND BLASTING AGENTS labels] **EXPLOSIVE 1.1, 1.2, 1.3, 1.4, 1.5, and 1.6 labels, and EXPLOSIVE Subsidiary label.**

...

Section 172.431 KEEP AWAY FROM FOOD label.

[Section 172.432 IRRITANT label.]

Section 172.432 INFECTIOUS SUBSTANCE label.

...

[Section 172.444 ETIOLOGIC AGENT label.]

Section 172.446 CLASS 9 label.

...

Subpart F—Placarding

...

Section 172.502 Prohibited **and permissive** placarding.

...

[Section 172.505 Special placarding requirements for certain poisonous materials.]

Section 172.505 Placarding for subsidiary hazards.

...

[Section 172.514 Cargo tanks and portable tanks.]

Section 172.514 Bulk packagings other than tank cars.

...

[Section 172.522 EXPLOSIVES A placard.]

Section 172.522 EXPLOSIVES 1.1, EXPLOSIVES 1.2 and EXPLOSIVES 1.3 placards.

[Section 172.523 EXPLOSIVES B placard.]

Section 172.523 EXPLOSIVES 1.4 placard.

[Section 172.524 BLASTING AGENTS placard.]

Section 172.524 EXPLOSIVES 1.5 placard.

[Section 172.525 Standard requirements for the RESIDUE placard.]

Section 172.525 EXPLOSIVES 1.6 placard.

Section 172.526 Standard requirements for the RESIDUE placard.

...

[Section 172.536 CHLORINE placard.]

...

Section 172.542 FLAMMABLE placard [and modification].

Section 172.544 COMBUSTIBLE placard [and modification].

...

Section 172.547 SPONTANEOUSLY COMBUSTIBLE placard.

[Section 172.548 FLAMMABLE SOLID W placard.]

Section 172.548 DANGEROUS WHEN WET placard.

...

Section 172.553 KEEP AWAY FROM FOOD placard.

...

Section 172.560 CLASS 9 placard.

Subpart G—(No change.)

Subpart H—Training

Section 172.700 Purpose and scope.

Section 172.701 Federal-State relationship.

Section 172.702 Applicability and responsibility for training and testing.

Section 172.704 Training requirements.

...

[Appendix B—Dimensional Specification for Placards]

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PART 173—SHIPPERS—GENERAL REQUIREMENTS FOR SHIPMENTS AND PACKAGINGS

Subpart A—General

...

[Section 173.2 Classification of material having more than one hazard as defined in this part.]

Section 173.2 Hazardous materials classes and index to hazard class definitions.

Section 173.2A Classification of a material having more than one hazard.

...

[Section 173.6 Shipments by air.]

...

[Section 173.9 Cars, truck bodies or trailers containing lading which has been fumigated or treated with flammable liquids, flammable gases, poisonous liquids or solids or poisonous gases.]

Section 173.9 Cars, truck bodies, freight containers or trailers containing lading which has been fumigated or treated with Class 3, Division 2.1, 2.3, or 6.1 materials.

...

Subpart B—Preparation of Hazardous Materials for Transportation.

...

Section 173.22a Use of packagings authorized **under** exemptions.

...

[Section 173.24 Standard requirements for all packages.]

Section 173.24 General requirements for packagings and packages.

Section 173.24a Additional general requirements for non-bulk packagings and packages.

Section 173.24b Additional general requirements for bulk packagings.

...

Section 173.26 Quantity limitations [and metric measurements].

[Section 173.27 Aircraft quantity limitations.]

Section 173.27 General requirements for transportation by aircraft.

[Section 173.28 Reuse of packagings(containers).]

Section 173.28 Reuse, reconditioning and remanufacture of packagings.

...

Section 173.32 Qualification, maintenance and use of portable tanks [other than Specification IM portable tanks].

Section 173.32a Approval of Specification IM portable tanks.

...

[Section 173.32d Additions, modifications and removals of entries in the IM Tank Table.]

...

Section 173.40 General packaging requirements for poisonous materials required to be packaged in cylinders.

[Subpart C—Explosives and Blasting Agents; Definitions and Preparation]

Subpart C—Definitions, Classification and Packaging for Class 1

[Section 173.50 An Explosive.]

Section 173.50 Class 1—definitions.

[Section 173.51 Forbidden explosives.]

Section 173.51 Authorization to offer and transport explosives.

[Section 173.52 Acceptable explosives.]

Section 173.52 Classification codes and compatibility groups of explosives.

[Section 173.53 Definition of Class A explosives.]

Section 173.53 Provisions for using old classifications of explosives.

[Section 173.54 Ammunition for cannon.]

Section 173.54 Forbidden explosives.

[Section 173.55 Ammunition, nonexplosive.

Section 173.56 Ammunition, projectiles, grenades, bombs, mines, gas mines, and torpedoes.]

Section 173.56 New explosives—definition and procedures for classification and approval.

[Section 173.57 Rocket ammunition.]

Section 173.57 Acceptance criteria for new explosives.

[Section 173.58 Ammunition for small arms.]

Section 173.58 Assignment of class and division for new explosives.

[Section 173.59 Chemical ammunition, explosives.]

Section 173.59 Description of terms for explosives.

[Section 173.60 Black powder and low explosives.]

Section 173.60 General packaging requirements for explosives.

[Section 173.61 High explosives.]

Section 173.61 Mixed packaging requirements.

[Section 173.62 High explosives, liquid.]

Section 173.62 Specific packaging requirements.

[Section 173.63 High explosive with liquid explosive ingredient.]

Section 173.63 Packaging exceptions.

[Section 173.64 High explosives with no liquid explosive ingredient and propellant explosives, Class A.

Section 173.65 High explosives with no liquid explosive ingredient nor any chlorate.

Section 173.66 Detonators.

Section 173.68 Detonating primers.

Section 173.69 Detonating fuses, Class A, with or without radioactive components, detonating fuse parts containing an explosive, boosters, bursters, or supplementary charges.

Section 173.70 Diazodinitrophenol or lead mononitroresorcinate.

Section 173.71 Fulminate of mercury.

Section 173.72 Guanyl nitrosamino guanylidene hydrazine.

Section 173.73 Lead azide.

Section 173.74 Lead styphnate.

Section 173.75 Nitro mannite.

Section 173.76 Nitrosoguanidine.

Section 173.77 Pentaerythrite tetranitrate.

Section 173.78 Tetrazene.

Section 173.79 Jet thrust units (jato), Class A explosives; rocket motors, Class A explosive; igniters, jet thrust (jato), Class A explosives; and igniters, rocket motor, Class A explosives.

Section 173.80 Charged well casing jet perforating guns.

Section 173.81 Cord, detonating.

Section 173.86 New explosives definitions; approval and notification.

Section 173.87 Explosives in mixed packaging.

Section 173.88 Definition of Class B explosives.

Section 173.89 Ammunition for cannon with empty projectiles, inert-loaded projectiles, solid projectiles, tear gas projectiles or without projectiles.

Section 173.90 Rocket ammunition with empty, inert-loaded, or solid projectiles.

Section 173.91 Special fireworks.

Section 173.92 Jet thrust units (jato), Class B explosives; rocket motors, Class B explosives; igniters, jet thrust (jato), Class B explosives; igniters, rocket motors, Class B explosives; and starter cartridges, jet engine, Class B explosives.

Section 173.93 Propellant explosives (solid) for cannon, small arms, rockets, guided missiles, or other devices, and propellant explosives (liquid).

Section 173.94 Explosive power devices, Class B.

Section 173.95 Rocket engines (liquid), Class B explosives.

Section 173.100 Definition of Class C explosives.

Section 173.101 Small-arms ammunition.

Section 173.101a Cartridges, practice ammunition.

Section 173.102 Explosive cable cutters; explosive power devices, Class C; explosive release devices, or starter cartridges, jet engine, Class C explosives.
Section 173.103 Detonators, Class C explosives, and detonating primers, Class C explosives.
Section 173.104 Cord, detonating fuse, mild detonating, metal clad or flexible; or flexible linear shaped charges, metal clad.
Section 173.105 Percussion, tracer combination, time fuses and tracers.
Section 173.106 Cartridge bags, empty, with black powder igniter, igniters, safety squibs, electric squibs, delay electric igniters, igniter fuse-metal clad, and fuse lighters or fuse igniters.
Section 173.107 Primers, percussion caps, and grenades, empty, primed.
Section 173.108 Common fireworks, signal flares, hand signal devices, smoke signals, smoke candles, smoke grenades, smoke pots, and Very signal cartridges.
Section 173.109 Toy caps.
Section 173.110 Charged well casing jet perforating guns, total explosive content in guns not exceeding 20 pounds per motor vehicle.
Section 173.111 Cigarette loads, explosive auto alarms, toy propellant devices, toy smoke devices, trick matches, and trick noise makers, explosive.
Section 173.112 Oil well cartridges.
Section 173.113 Detonating fuses, Class C explosives.
Section 173.114 Actuating cartridges, explosive, fire extinguisher or valve.
Section 173.114a Blasting agents.]

[Subpart D—Flammable, Combustible, and Pyrophoric Liquids; Definitions and Preparation.]

Subpart D—Definitions, Classification, Packing Group Assignments and Exceptions for Hazardous Materials Other Than Class 1 and Class 7

[Section 173.115 Flammable, combustible, and pyrophoric liquids; definitions.]
Section 173.115 Class 2, Divisions 2.1, 2.2, and 2.3—Definitions.
[Section 173.116 Outage.]
Section 173.116 Class 2—Assignment of hazard zone.
[Section 173.117 Closing and cushioning.
Section 173.118 Limited quantities of flammable liquids.
Section 173.119 Flammable liquids not specifically provided for.
Section 173.120 Automobiles, motorcycles, tractors, or other self-propelled vehicles.]
Section 173.120 Class 3—Definitions.
[Section 173.121 Carbon bisulfide (disulfide).]
Section 173.121 Class 3—Assignment of packing group.
[Section 173.122 Acrolein, inhibited.
Section 173.123 Ethyl chloride.
Section 173.124 Ethylene oxide.]
Section 173.124 Class 4, Divisions 4.1, 4.2, and 4.3—Definitions.
[Section 173.125 Alcohol, n.o.s. (flammable liquid).]
Section 173.125 Class 4—Assignment of packing group.
[Section 173.126 Nickel carbonyl.
Section 173.127 Nitrocellulose or collodion cotton, fibrous or nitro starch, wet; nitrocellulose flakes; colloided nitrocellulose, granular, flake, or block, and lacquer base or lacquer chips, wet.]
Section 173.127 Class 5, Division 5.1—Definition and assignment of packing groups.
[Section 173.128 Paint and paint related material (flammable liquids).]
Section 173.128 Class 5, Division 5.2—Definitions and types.
Section 173.129 Class 5, Division 5.2—Assignment of packing group.
[Section 173.130 Refrigerating machines.
Section 173.131 Road asphalt, or tar, liquid.
Section 173.132 Adhesive; cement; container cement; linoleum cement; pyroxylin cement; rubber cement; tile cement; wallboard cement, and coating solution.]
Section 173.132 Class 6, Division 6.1—Definitions.
[Section 173.133 Spirits of nitroglycerin.]
Section 173.133 Division 6.1—Assignment of packing group and hazard zones.
[Section 173.134 Pyroforic liquids, n.o.s.]
Section 173.134 Class 6, Division 6.2—Definitions.
[Section 173.135 Diethyl dichlorosilane, dimethyl dichlorosilane, ethyl dichlorosilane, methyl trichlorosilane, trimethyl chlorosilane, and vinyl trichlorosilane.
Section 173.136 Methyl dichlorosilane and trichlorosilane.]
Section 173.136 Class 8—Definitions.
[Section 173.137 Lithium aluminum hydride, ethereal.]
Section 173.137 Class 8—Assignment of packing group.
[Section 173.138 Pentaborane.
Section 173.139 Ethylene imine, inhibited, and propylene imine, inhibited.
Section 173.140 Zirconium, metallic, solutions, or mixtures thereof, liquid.]
Section 173.140 Class 9—Definitions.
[Section 173.141 Amyl mercaptan, butyl mercaptan, ethyl mercaptan, isopropyl, propyl mercaptan, and aliphatic mercaptan mixtures.]
Section 173.141 Class 9—Assignment of packing group.
[Section 173.143 Methylchloromethyl ether, anyhydrous.
Section 173.144 Ink (flammable liquid).]
Section 173.144 Other Regulated Materials (ORM)—Definitions.
[Section 173.145 Dimethylhydrazine, unsymmetrical, and methylhydrazine.]
Section 173.145 Other Regulated Materials—Assignment of packing group.
[Section 173.146 Heaters for refrigerator cars, flammable liquid fuel type.
Section 173.147 Methyl vinyl ketone, inhibited.
Section 173.148 Monoethylamine.
Section 173.149 Methyl magnesium bromide in ethyl ether in concentrations not over 40 percent.
Section 173.149a Nitromethane.]

[Subpart E—Flammable Solids, Oxidizers, and Organic Peroxides: Definitions and Preparation.

Section 173.150 Flammable solid; definition.]
Section 173.150 Exceptions for Class 3 (flammable and combustible liquids).
[Section 173.151 Oxidizer; definition.]
Section 173.151 Exceptions for Division 4.1 (flammable solids).
[Section 173.151a Organic peroxide; definition.
Section 173.152 Packing.]
Section 173.152 Exceptions for Division 5.1 (oxidizers) and Division 5.2 (organic peroxides).
[Section 173.153 Limited quantities of flammable solids, oxidizers and organic peroxides.]
Section 173.153 Exceptions for Division 6.1 (poisonous materials).
[Section 173.154 Flammable solids, organic peroxide solids, oxidizers and organic peroxides.
Section 173.154a Fusees.]
Section 173.154 Exceptions for Class 8 (corrosive materials).
Section 173.155 Exceptions for Class 9 (miscellaneous hazardous materials).
[Section 173.156 Barium peroxide and calcium peroxide.]
Section 173.156 Exceptions for ORM materials.
[Section 173.157 Benzoyl peroxide, chlorobenzoyl peroxide (para),cyclohexanone peroxide, dimethylhexane dihydroperoxide, lauroyl peroxide, or succinic acid peroxide, wet.

Section 173.158 Benzoyl peroxide, dry; chlorobenzoyl peroxide (para) dry; cyclohexanone peroxide, dry; lauroyl peroxide, dry; or succinic acid peroxide, dry.]

Subpart E—Non-bulk Packaging for Hazardous Materials Other Than Class I and Class 7

Section 173.158 Nitric acid.
[Section 173.159 Burnt cotton.]
Section 173.159 Batteries, wet.
[Section 173.160 Calcium chlorite and sodium chlorite.]
Section 173.160 Bombs, smoke, non-explosive (corrosive).
[Section 173.161 Calcium phosphide.]
Section 173.161 Chemical kits.
[Section 173.162 Charcoal.]
Section 173.162 Gallium.
[Section 173.163 Chlorate of soda, chlorate of potach, and other chlorates.]
Section 173.163 Hydrogen fluoride.
[Section 173.164 Chromic acid or chromic acid mixture, dry.]
Section 173.164 Mercury (metallic and articles containing mercury).
[Section 173.165 Coal, ground bituminous, sea coal, coal facings.
Section 173.166 Cobalt resinate, precipitated, calcium resinate, and calcium resinate fused.
Section 173.168 Lithium amide, powdered.
Section 173.171 Fish scrap or fish meal.]
Section 173.171 Smokeless powder for small arms.
Section 173.172 Aircraft hydraulic power unit fuel tank.
[Section 173.173 Aluminum dross or magnesium dross.]
Section 173.173 Paint, paint-related material, adhesives and ink.
[Section 173.174 Iron sponge, spent oxide, spent iron mass, spent iron sponge.]
Section 173.174 Refrigerating machines.
[Section 173.175 Lacquer base, or lacquer chips, dry.
Section 173.176 Safety matches.
Section 173.176a Strike anywhere matches.
Section 173.177 Motion-picture film and X-ray film.
Section 173.178 Calcium carbide, calcium silicon powder, and magnesium granules, coated.
Section 173.179 N-methyl-N'-nitro-N-nitrosoguanidine.]
Section 173.181 Pyrophoric materials (liquid).
[Section 173.182 Nitrates.]
Section 173.182 Barium azide—50 percent or more water wet.
[Section 173.183 Potassium nitrate mixed (fused) with sodium nitrite.]
Section 173.183 Nitrocellulose base film.
[Section 173.184 Nitrocellulose or collodion cotton, wet, or nitrocellulose, colloided, granular, or flake, wet, or nitro starch, wet, or nitroguanidine, wet.]
Section 173.184 Highway or rail fusee.
Section 173.185 Lithium batteries and cells.
Section 173.186 Matches.
[Section 173.187 Potassium peroxide; potassium superoxide; sodium peroxide or sodium superoxide.]
Section 173.187 Pyrophoric solids, metals or alloys, n.o.s.
[Section 173.188 Phosphoric anhydride.]
Section 173.188 White or yellow phosphorous.
[Section 173.189 Phosphorous, amorphous, red.
Section 173.190 Phosphorous, white or yellow.
Section 173.191 Phosphorous pentachloride.
Section 173.192 Ammonium picrate, picric acid, trinitrobenzoic acid, and urea nitrate, wet.]
Section 173.192 Packaging for certain Packing Group I poisonous materials.
[Section 173.193 Picric acid, trinitrobenzoic acid, or urea nitrate, wet.]
Section 173.193 Bromoacetone, methyl bromide, chloropicrin and methyl bromide or methyl chloride mixtures, etc.
[Section 173.194 Potassium permanganate.]
Section 173.194 Gas identification sets.
[Section 173.195 Pyroxylin plastic scrap.]
Section 173.195 Hydrogen cyanide, anhydrous, stabilized (hydrocyanic acid, aqueous solution.)
Section 173.196 Infectious substances (etiologic agents).
[Section 173.197 Pyroxylin plastics, in sheets, rolls, rods, or tubes.]
Section 173.197 Regulated medical waste.
[Section 173.197a Smokeless powder for small arms.
Section 173.198 Sodium hydride.]
Section 173.198 Nickel carbonyl.
Section 173.201 Non-bulk packagings for liquid hazardous materials in Packing Group I.
[Section 173.202 Sodium metal liquid alloy, potassium metal liquid alloy, and sodium potassium liquid alloy.]
Section 173.202 Non-bulk packagings for liquid hazardous materials in Packing Group II.
[Section 173.203 Tetranitromethane.]
Section 173.203 Non-bulk packagings for liquid hazardous materials in Packing Group III.
[Section 173.204 Sodium hydrosulfite.]
Section 173.204 Non-bulk, non-specification packagings for certain hazardous materials.
[Section 173.205 Sodium picramate, wet.]
Section 173.205 Specification cylinders for liquid hazardous materials.
[Section 173.206 Sodium or potassium, metallic; sodium amide; sodium potassium alloy; sodium aluminum hydride; lithium metal; lithium silicon; lithium ferro silicon; lithium hydride; lithium borohydride; lithium aluminum hydride; lithium acetylide-ethylene diamine complex; aluminum hydride; cesium metal; rubidium metal; zirconium hydride, powdered.
Section 173.207 Sulfide of sodium or sulfide of potassium, fused or concentrated, when ground.
Section 173.208 Titanium metal powder, wet or dry.]
Section 173.211 Non-bulk packagings for solid hazardous materials in Packing Group I.
[Section 173.212 Trinitrobenzene and trinitrotoluene, wet.]
Section 173.212 Non-bulk packagings for solid hazardous materials in Packing Group II.
Section 173.213 Non-bulk packagings for solid hazardous materials in Packing Group III.
[Section 173.214 Hafnium metal or zirconium metal, wet, minimum 25 percent water by weight, mechanically produced, finer than 270 mesh particle size; hafnium metal or zirconium metal, dry in an atmosphere of inert gas, mechanically produces, finer than 270 mesh particle size; hafnium metal or zirconium metal, wet, minimum 25 percent water by weight, chemically produced (See Note 1), finer than 20 mesh particle size; hafnium metal or zirconium metal, dry, in an atmosphere of inert gas, chemically produces (See Note 1), finer than 20 mesh particle size.
Note 1: Produced by means other than attrition or grinding.
Note 2: Any product containing 10 percent or more, particle size specified, shall be subject to this section.
Note 3: Any product containing less than 25 percent water by weight is considered dry for purposes of these regulations.]
Section 173.214 Packagings which require approval by the Associate Administrator for Hazardous Materials Safety.
[Section 173.216 Zirconium picramate, wet.]
Section 173.216 Asbestos, blue, brown, or white.

[Section 173.217 Calcium hypochlorite, hydrated, Calcium hypochlorite mixture, dry; lithium hypochlorite mixture, dry; mono-(trichloro) tetra-(monopotassium dichloro)-penta-s-triazinetrione, dry; potassium dichloro-s-triazine-trione, dry; sodium dichloro-s-triazinetrione, dry; trichloro-s-triazinetrione, dry.]

Section 173.217 Carbon dioxide, solid (dry ice).

[Section 173.218 Isopropyl percarbonate, unstabilized.]

Section 173.218 Fish meal or fish scrap.

[Section 173.219 Potassium perchlorate.]

Section 173.219 Life-saving appliances.

[Section 173.220 Magnesium or zirconium scrap consisting of borings, clippings, shavings, sheets, turnings, or scalpings, and magnesium metallic (other than scrap), powder, pellets, turnings, or ribbon; magnesium aluminum powder.]

Section 173.220 Internal combustion engines, self-propelled vehicles, and mechanical equipment containing internal combustion engines or wet batteries.

[Section 173.221 Liquid organic peroxides, n.o.s., and liquid organic peroxide solutions, n.o.s.]

Section 173.221 Polystyrene beads, expandable.

[Section 173.222 Acetyl peroxide and acetyl benzoyl peroxide, solution.]

Section 173.222 Wheelchairs equipped with wet electric storage batteries.

[Section 173.223 Peracetic acid.

Section 173.224 Cumene hydroperoxide, dicumyl peroxide, diisopropylbenzene hydroperoxide, paramenthate hydroperoxide, pinane hydroperoxide, and tertiary butylisopropyl benzene hydroperoxide.]

Section 173.224 Packaging and control and emergency temperatures for self-reactive materials.

[Section 173.225 Phosphorous trisulfide, phosphorous sesquisulfide, phosphorous heptasulfide, and phosphorous pentasulfide.]

Section 173.225 Packaging requirements and other provisions for organic peroxides.

Section 173.226 Materials poisonous by inhalation, Division 6.1, Packing Group I, Hazard Zone A.

[Section 173.227 Urea peroxide.]

Section 173.227 Materials poisonous by inhalation, Division 6.1, Packing Group I, Hazard Zone B.

[Section 173.228 Zinc ammonium nitrite.]

Section 173.228 Bromine pentafluoride or bromine trifluoride.

[Section 173.229 Chlorate and borate mixtures or chlorate and magnesium chloride mixtures.]

Section 173.229 Chloric acid solution or Chlorine dioxide hydrate, frozen.

[Section 173.230 Sodium, metallic, dispersion in organic solvent.]

Section 173.230 Non-bulk packagings for ORM-D materials.

[Section 173.231 Calcium, metallic, crystalline.

Section 173.232 Aluminum, metallic powder.

Section 173.234 Sodium nitrite and sodium nitrite mixtures.

Section 173.235 Ammonium bichromate (ammonium dichromate).

Section 173.236 Decaborane.

Section 173.237 Chlorine dioxide hydrate, frozen; chloric acid.

Section 173.239 Barium azide-50 percent or more water wet.

Section 173.239a Ammonium perchlorate.]

[Subpart F—Corrosive Materials: Definition and Preparation.]

Subpart F—Bulk Packaging for Hazardous Materials Other Than Class 1 and Class 7

[Section 173.240 Corrosive material; definition.]

Section 173.240 Bulk packaging for certain low hazard solid materials.

[Section 173.241 Outage.]

Section 173.241 Bulk packaging for certain low hazard liquid and solid materials.

[Section 173.242 Bottles containing corrosive liquids.]

Section 173.242 Bulk packagings for certain medium hazard liquids and solids, including solids with dual hazards.

[Section 173.243 Closing and cushioning.]

Section 173.243 Bulk packaging for certain high hazard liquids and dual hazard liquids which pose a moderate hazard.

[Section 173.244 Limited quantities of corrosive materials.]

Section 173.244 Bulk packaging for certain pyrophoric liquids (Division 4.2) and poison liquids with inhalation hazards (Division 6.1).

[Section 173.245 Corrosive liquids not specifically provided for.

Section 173.245a Corrosive liquids, n.o.s. shipped in bulk.

Section 173.245b Corrosive solids not specifically provided for.]

Section 173.245 Bulk packaging for extremely hazardous materials such as poisonous gases (Division 2.3).

[Section 173.246 Antimony pentafluoride, bromide pentafluoride, iodine pentafluoride, bromine trifluoride, and chlorine trifluoride.

Section 173.247 Acetyl bromide; acetyl chloride; acetyl iodide; antimony pentachloride; benzoyl chloride; boron trifluoride-acetic acid complex; chromyl chloride; dichloroacetyl chloride; diphenylmethyl bromide solutions; pyrosulfuryl chloride; silicon chloride; sulfur chloride (mono and di); sulfuryl chloride; thionyl chloride; tin tetrachloride (anhydrous); titanium tetrachloride; trimetyl acetyl chloride.]

Section 173.247 Elevated temperature material.

[Section 173.247a Vanadium tetrachloride and vanadium oxytrichloride.

Section 173.248 Spent sulfuric acid, or spent mixed acid.

Section 173.249 Alkaline corrosive liquids, n.o.s.; alkaline liquids, n.o.s.; alkaline corrosive battery fluid; potassium fluoride solution; potassium hydrogen fluoride solution; sodium aluminate, liquid; sodium hydroxide solution; potassium hydroxide solution.]

Section 173.249 Bromine.

[Section 173.249a Cleaning compound liquid; coal tar dye, liquid; dye intermediate, liquid; mining reagent, liquid; and textile treating compound mixture, liquid.

Section 173.250 Automobiles, other self-propelled vehicles, engines or other mechanical apparatus.

Section 173.250a Benzene phosphorous dichloride and benzene phosphorous thiodichloride.

Section 173.251 Boron trichloride and boron tribromide.

Section 173.252 Bromine.

Section 173.253 Chloroacetyl chloride.

Section 173.254 Chlorosulfonic acid and mixtures of chlorosulfonic acid-sulfur trioxide.

Section 173.255 Dimethyl sulfate.

Section 173.256 Compounds, cleaning, liquid.

Section 173.257 Electrolyte (acid) and alkaline corrosive battery fluid.

Section 173.258 Elcetrolyte, acid or alkaline corrosive battery fluid, packed with storage batteries.

Section 173.259 Electrolyte, acid, or alkaline corrosive battery fluid, packed with battery charger, radio current supply device, or electronic equipment and actuating devices.

Section 173.260 Electric storage batteries, wet.

Section 173.261 Fire-extinguisher charges.

Section 173.262 Hydrobromic acid.

Section 173.263 Hydrochloric (muriatic) acid, hydrochloric (muriatic) acid mixtures; hydrochloric (muriatic) acid solution, inhibited; sodium

chlorite solution (not exceeding 42 percent sodium chlorite); and cleaning compounds, liquids, containing hydrochloric (muriatic) acid.
Section 173.264 Hydrofluoric acid; white acid.
Section 173.265 Fluosilicic acid (hydrofluorosilicic acid) (hydrofluosilicic acid).
Section 173.266 Hydrogen peroxide solution in water.
Section 173.267 Mixed acid (nitric and sulfuric acid) (nitrating acid).
Section 173.268 Nitric acid.
Section 173.269 Perchloric acid.
Section 173.270 Phosphorous tribromide.
Section 173.271 Methyl phosphonic dichloride, phosphorous oxybromide, phosphorous oxychloride, phosphorous truchloride, and thiophosphoryl chloride.
Section 173.272 Sulfuric acid.
Section 173.273 Sulfur trioxide.
Section 173.274 Fluosulfonic acid.
Section 173.275 Difluorophosphoric acid, anhydrous, monofluorophosphoric acid, anhydrous hexafluorophosphoric acid, and mixtures thereof.
Section 173.276 Anhydrous hydrazine and hydrazine solution.
Section 173.277 Hypochlorite solutions.
Section 173.278 Nitrohydrochloric acid.
Section 173.279 Anisoyl chloride.
Section 173.280 Trichlorosilanes.
Section 173.281 Benzyl bromide (bromotoluene, alpha).
Section 173.282 Isopropyl percarbonate, stabilized.
Section 173.283 Fluoboric acid.
Section 173.284 Tungsten hexafluoride.
Section 173.286 Chemical kits
Section 173.287 Chromic acid solution.
Section 173.288 Chloroformates.
Section 173.289 Formic acid and formic acid solutions.
Section 173.290 Mixtures of hydrofluoric and sulfuric acid.
Section 173.291 Flame retardant compound, liquid.
Section 173.292 Hexamethylene diamine solution.
Section 173.293 Iodine monochloride.
Section 173.294 Chloroacetic acid, liquid or solution.
Section 173.295 Benzyl chloride.
Section 173.296 Di iso octyl acid phosphate.
Section 173.297 Titanium sulfate solution containing not more than 45 percent sulfuric acid.
Section 173.299 Etching acid liquid, n.o.s.
Section 173.299a Tris-(1-aziridinyl) phosphine oxide.]

[Subpart G—Gases; Definition and Preparation.]
Subpart G—Gases; Preparation and Packaging.
[Section 173.300 Definitions.]
...
Section 173.314 Requirements for compressed gases in tank [cars] **car tanks.**
...
Section 173.321 Ethylamine.
Section 173.322 Ethyl chloride.
Section 173.323 Ethylene oxide.
Section 173.324 Ethyl methyl ether.

Subpart H—[Poisons Materials, Etiologic Agents, and Radioactive Materials; Definition and Preparation.] **(Reserved)**
[Section 173.325 Classes of poisonous materials.
Section 173.326 Poison A.
Section 173.327 General packaging requirements for Poison A materials.
Section 173.328 Poison A materials not specifically provided for.
Section 173.329 Bromacetone; chlorpicrin and methyl chloride mixtures; chlorpicrin and nonflammable, nonliquefied compressed gas mixtures.
Section 173.330 Chemical ammunition.
Section 173.331 Gas identification sets.
Section 173.332 Hydrocyanic acid, liquid (prussic acid) and hydrocyanic acid liquefied.
Section 173.333 Phosgene or diphosgene.]
...
Section 173.335 Gas generator assemblies.
...
Section 173.338 Tungsten hexafluoride.
Section 173.340 Tear gas devices.
[Section 173.343 Poison B.
Section 173.344 General packaging requirements for Poison B liquids.
Section 173.345 Limited quantities of Poison B Liquids.
Section 173.346 Poison B liquids not specifically provided for.
Section 173.347 Aniline oil.
Section 173.348 Arsenic acid.
Section 173.349 Carbolic acid (phenol) liquid.
Section 173.350 Chemical ammunition.
Section 173.351 Hydrocyanic acid solutions.
Section 173.352 Sodium and potassium cyanide solutions, and cyanide solution, n.o.s.
Section 173.353 Methyl bromide and methyl bromide mixtures.
Section 173.353a Methyl bromide, liquid, and non-flammable, non-liquefied compressed gas mixtures.
Section 173.354 Motor fuel antiknock compound or tetraethyl lead.
Section 173.355 Phenyldichlorarsine.
Section 173.356 Thiophosgene.
Section 173.357 Chloropicrin and chloropicrin mixtures containing no compressed gas or Poison A liquid.
Section 173.358 Hexaethyl tetraphosphate, methyl parathion, organic phosphate compound, organic phosphorous compound, parathion, tetraethyl dithio pyrophosphate, and tetraethyl pyrophosphate, liquid.
Section 173.359 Hexaethyl tetraphosphate mixtures; methyl parathion mixtures; organic phosphorous compound mixtures; organic phosphate compound mixtures; parathion mixtures; tetraethyl pyrophosphate mixtures, liquid (includes solutions, emulsions, or emulsifiable liquids).
Section 173.360 Perchloro-methyl-mercaptan.
Section 173.361 Aldrin mixtures, liquid, with more than 60 percent aldrin.
Section 173.362 4-chloro-o-toluidine hydrochloride.
Section 173.362a Dinitrophenol solutions.
Section 173.363 General packaging requirements for Poison B solids.
Section 173.364 Limited quantities of Poison B solids.
Section 173.365 Poison B solids not specifically provided for.
Section 173.366 Arsenic (arsenic trioxide) or arsenic acid (solid).
Section 173.367 Arsenical compounds, n.o.s.; arsenate of lead; calcium arsenate; Paris green; and arsenical mixtures.
Section 173.368 Arsenical dust, arsenical flue dust, and other poisonous noncombustible by-product dusts; also arsenic trioxide, calcium arsenate, and sodium arsenate.
Section 173.369 Carbolic acid (phenol), not liquid.
Section 173.370 Cyanides and cyanide mixtures, dry.
Section 173.371 Dinitrobenzol (dinitrobenzene).
Section 173.372 Mercury bichloride (mercuric chloride).
Section 173.373 Nitroaniline, ortho or para.
Section 173.374 Nitrochlorobenzene, meta or para.
Section 173.375 Sodium azide.
Section 173.376 Aldrin and aldrin mixtures, dry, with more than 65 percent aldrin.
Section 173.377 Hexaethyl tetraphosphate mixtures; methyl parathion mixtures; organic phosphorous compound mixtures, organic phosphate compound mixtures; parathion mixtures; tetraethyl dithio

pyrophosphate mixtures; and tetraethyl pyrophosphate mixtures, dry.
Section 173.379 Cyanogen bromide.
Section 173.381 Irritating materials; definition and general packaging requirements.
Section 173.382 Irritating materials, not specifically provided for.
Section 173.383 Chemical ammunition.
Section 173.384 Monochloracetone, stabilized.
Section 173.385 Tear gas grenades, tear gas candles, or similar devices.
Section 173.386 Etiologic agents; definition and scope.
Section 173.387 Packaging requirements for etiologic agents.
Section 173.388 Labeling of packages containing etiologic agents.]

Subpart I—Radioactive Materials.

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[Section 173.421-1 Additional requirements for excepted radioactive materials.]
Section 173.421-1 Additional requirements for excepted packages containing Class 7 (radioactive) materials.

...

[Subpart J—Other Regulated Material; Definition and Preparation.
Section 173.500 Definitions.
Section 173.505 Exceptions for Other Regulated Material (ORM).
Section 173.510 General packaging requirements.

Subpart K—Other Regulated Material; ORM-A
Section 173.605 Ammonium hydrosulfide solution, ammonium polysulfide solution, bromochloromethane, dibromodifluoromethane, dichlorodifluoroethylene dichloromethane, 1,1,1-trichloroethane perfluoro-2-butene, tetrachloroethylene, and trichloroethylene.
Section 173.610 Camphene.
Section 173.615 Carbon dioxide, solid (dry ice).
Section 173.620 Carbon tetrachloride, ethylene dibromide (1,2-dibromoethane), and tetrachloroethane.
Section 173.630 Chloroform.
Section 173.635 Ferrophosphorous.
Section 173.645 Ferrosilicon.
Section 173.650 Hexachloroethane.
Section 173.655 Naphthalene or naphthalin.

Subpart L—Other Regulated Material, ORM-B
Section 173.800 Ammonium hydrogen sulfate, ammonium fluoride, barium oxide, chloroplantinic acid, copper chloride, ferric chloride, lead chloride, molybdenum pentachloride, potassium hydrogen sulfate, sodium aluminate, sodium hydrogen sulfate, and/or sodium hydrogen sulfite (each in solid form).
Section 173.850 Lime, unslaked; quicklime; and calcium oxide.
Section 173.860 Mercury, metallic.
Section 173.861 Gallium metal, liquid.
Section 173.862 Gallium metal, solid.

Subpart M—Other Regulated Material; ORM-C
Section 173.906 Inflatable life rafts, escape slides, and evacuation slides.
Section 173.910 Ammonium sulfate nitrate.
Section 173.915 Battery parts.
Section 173.920 Bleaching powder.
Section 173.945 Calcium cyanamide, not hydrated.
Section 173.952 Castor beans and castor pomace.
Section 173.955 Coconut meal pellets.
Section 173.960 Copra.
Section 173.965 Cotton and other fibers.
Section 173.985 Exothermic ferrochrome, ferromanganese, and silicon-chrome.
Section 173.995 Fish scrap and fish meal.
Section 173.1010 Lead dross or scrap containing three percent or more free acid.
Section 173.1015 Lithium batteries, for disposal.
Section 173.1025 Ferrous metal borings, shavings, turnings, or cuttings (excluding stainless steel).
Section 173.1040 Pesticide, water-reactive.
Section 173.1045 Petroleum coke, uncalcined.
Section 173.1065 Rubber curing compound, solid.
Section 173.1070 Sawdust or wood shavings.
Section 173.1080 Sulfur, molten or solid.
Section 173.1090 Asbestos.

Subpart N—Other Regulated Material; ORM-D.
Section 173.1200 Consumer Commodity.
Section 173.1201 Small arms ammunition.

Subpart O—Other Regulated Material; ORM-E.
Section 173.1300 Hazardous waste, liquid or solid, n.o.s.; hazardous substance, liquid or solid, n.o.s.]

[Appendix A—Method of Testing Corrosion to Skin.
Appendix B—Procedure for testing chemical compatibility and Rate of Permeation in Polythene Packaging and Receptacles.]
Appendix A to Part 173—Method of Testing Corrosion to Skin.
Appendix B to Part 173—Procedure for Testing Chemical Compatibility and Rate of Permeation in Plastic Packaging and Receptacles.
Appendix C to Part 173—Procedure for Base-level Vibration Testing.
Appendix D to Part 173—Test Methods for Dynamite (Explosive, Blasting, Type A).
Appendix E to Part 173—Guidelines for the Classification and Packing Group Assignment of Class 4 Materials.
Appendix F to Part 173—Guidelines for the Classification and Packing Group Assignment of Division 5.1 Materials.
Appendix G to Part 173—Definition of Regulated Medical Waste.

Part 174—CARRIAGE BY RAIL

Subpart A—General Requirements[.]

...

Subpart B—(No change.)

Subpart C—General Handling and Loading Requirements[.]

...

[Section 174.81 Segregation and separation requirements for hazardous materials in rail cars.]
Section 174.81 Segregation of hazardous materials.

[Subpart D—Handling of Placarded Cars.]
Subpart D—Handling of Placarded Rail Cars, Transport Vehicles and Freight Containers.
Section 174.82 General requirements for the handling of placarded rail cars, transport vehicles, freight containers, and bulk packages.
[Section 174.83 Switching of cars containing hazardous materials.]
Section 174.83 Switching placarded rail cars, transport vehicles, freight containers, and bulk packagings.
[Section 174.84 Switching of flat cars carrying placarded trailers, freight containers, portable tanks or IM portable tanks.]
Section 174.84 Position in train of loaded placarded rail cars, transport vehicles, freight containers or bulk packagings when accompanied by guards or technical escorts.
[Section 174.85 Placement of freight cars placarded "EXPLOSIVES A" in yards, on sidings, or side tracks.]

Section 174.85 Position in train of placarded cars, transport vehicles, freight containers, and bulk packagings.

[Section 174.86 Position in train of cars placarded "EXPLOSIVES A" or "POISON GAS" when accompanied by cars carrying guards or technical escorts.]

Section 174.86 Maximum allowable operating speed.

[Section 174.87 Placarded cars prohibited in passenger trains, limited in mixed trains.

Section 174.88 Position in train of cars placarded "EXPLOSIVES A"

Section 174.89 Position in train of cars placarded "RADIOACTIVE".

Section 174.90 Separating cars placarded "EXPLOSIVES A" or "POISON GAS" from other cars in trains.

Section 174.91 Position in train of loaded placarded tank car other than car placarded "COMBUSTIBLE".

Section 174.92 Separating loaded placarded tank cars other than cars placarded "COMBUSTIBLE" from other cars in trains.

Section 174.93 Position in train of a tank car displaying residue placards.]

[Subpart E—Detailed Requirements for Explosives]

Subpart E—Class I (Explosive) Materials

[Section 174.100 Forbidden explosives.]

Section 174.100 Forbidden Class I (explosive) Materials.

[Section 174.101 Loading explosives.]

Section 174.101 Loading Class 1 (explosive) materials.

...

[Section 174.104 Class A explosives; car selection, preparation, inspection, and certification.]

Section 174.104 Division 1.1 or 1.2 (Class A explosive) materials; car selection, preparation, inspection, and certification.

[Section 174.105 Routing shipments, Class A explosives.]

Section 174.105 Routing shipments, Division 1.1 or 1.2 (Class A explosive) materials.

[Section 174.106 "Order-Notify" or "C.O.D." shipments, Class A explosives.]

Section 174.106 "Order-Notify" or "C.O.D." shipments, Division 1.1 or 1.2 (Class A explosive) materials.

[Section 174.107 Shipping days for Class A explosives.]

Section 174.107 Shipping days for Division 1.1 or 1.2 (Class A explosive) materials.

...

[Section 174.112 Loading Class B explosives (Also see Section 174.101).]

Section 174.112 Loading Division 1.3 (Class B explosive) materials (Also see Section 174.102).

[Section 174.114 Record to be made of change of seals on "EXPLOSIVES A" laden cars.]

Section 174.114 Record to be made of change of seals on "Cars loaded with Division 1.1 or 1.2 (explosive) materials" laden cars.

[Section 174.115 Loading Class C explosives.]

Section 174.115 Loading Division 1.4 (Class C explosive) materials.

[Subpart F—Detailed Requirements for Gases]

Subpart F—Detailed Requirements for Class 2 (Gases) Materials

...

[Section 174.201 Compressed gas cylinders.]

Section 174.201 Class 2 (gases) material cylinders.

...

[Section 174.280 Poison gases with foodstuffs.]

Section 174.280 Division 2.3 (poisonous gas) materials with foodstuffs.

[Section 174.290 Poison A shipped by, for, or to the Department of Defense.]

Section 174.290 Materials extremely poisonous by inhalation shipped by, for, or to the Department of Defense.

[Subpart G—Detailed Requirements for Flammable Liquid]

Subpart G—Detailed Requirements for Class 3 (Flammable Liquid) Materials

...

[Section 174.304 Flammable liquids in tank cars.]

Section 174.304 Class 3 (flammable liquid) materials in tank cars.

[Section 174.380 Poisonous flammable liquids in tank cars.]

Section 174.380 Class 3 (flammable liquid) materials, with a subsidiary hazard of Division 6.1 (poisonous) materials, with foodstuffs.

[Subpart H—Detailed Requirements for Flammable Solids]

Subpart H—Detailed Requirements for Class 4 (Flammable Solid) Materials

...

Section 174.430 Special handling requirements for Division 4.2 (pyrophoric liquid) materials.

...

[Section 174.480 Poisonous flammable solids with foodstuffs.]

Section 174.480 Class 4 (flammable solid) materials, with a subsidiary hazard of Division 6.1 (poisonous) materials, with foodstuffs.

[Subpart I—Detailed Requirements for Oxidizers]

Subpart I—Detailed Requirements for Division 5.1 (Oxidizing) Materials

...

[Section 174.580 Poisonous oxidizers with foodstuffs.]

Section 174.580 Division 5.1 (oxidizer) materials, with a subsidiary hazard of Division 6.1 (poisonous materials), with foodstuffs.

[Subpart J—Detailed Requirements for Poisonous Materials]

Subpart J—Detailed Requirements for Division 6.1 (Poisonous) Materials

[Section 174.600 Special handling requirements for Poison A materials.]

Section 174.600 Special handling requirements for materials extremely poisonous by inhalation.

...

[Section 174.680 Poisons with foodstuffs.]

Section 174.680 Division 6.1 (poisonous) materials with foodstuffs.

[Subpart K—Detailed Requirements for Radioactive Materials]

Subpart K—Detailed Requirements for Class 7 (Radioactive) Materials

[Section 174.700 Special handling requirements for radioactive materials.]

Section 174.700 Special handling requirements for Class 7 (radioactive) materials.

...

[Subpart L—Detailed Requirements for Corrosive Materials]

Subpart L—Detailed Requirements for Class 8 (Corrosive) Materials

Section 174.800 Special handling requirements for **class 8 (corrosive)** materials.

...

[Section 174.812 Special handling requirements for nitric acid.]

[Subpart M—Detailed Requirements for Other Regulated Materials]

Subpart M—Detailed Requirements for Class 9 (Miscellaneous Hazardous) Materials

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PART 177—CARRIAGE BY PUBLIC HIGHWAY

Subpart A—General Information **and** Regulations

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Motor carriers and other persons subject to this part shall comply with 49 CFR Parts 390 through 397 (excluding Section 391.69, 393.81, and 397.3) revised as of [October 1, 1989] **October 1, 1992,** to the extent those rules apply. Carriers transporting hazardous materials, substances, or wastes as defined herein must comply with these parts as listed below.

(See N.J.A.C. 16:49-1.3(1) herein).

MOTOR CARRIER SAFETY REGULATIONS

PART 390—FEDERAL MOTOR CARRIER SAFETY REGULATIONS: GENERAL

Subpart A (No change.)

Subpart B—General Requirements and Information

Section 390.9 State and local [law] **laws,** effect on.

...

[Section 390.23 Relief from hours-of-service regulations—disasters.]

Section 390.23 Relief from regulations.

Section 390.25 Extension of relief from regulations—emergencies.

...

PART 391—QUALIFICATION OF DRIVERS

Subpart A–Subpart F (No change.)

Subpart G—Limited Exemptions

...

[Section 391.62 (Reserved)]

...

Section 391.71 Intrastate drivers of vehicles transporting combustible liquids. (Section 391.71(a) and (b) are revised to state the following:)

(a) The provisions of Section 391.11(b) (relating to minimum age), Section 391.21 (relating to application for employment), Section 391.23 (relating to investigations and inquiries), Section 391.31 (relating to road test), and Section 391.35 (relating to written examination) do not apply to a driver who is otherwise qualified and was a regularly employed driver (as defined in Section 390.5 of [the] **this** subchapter) as of January 1, 1991, and continues to be a regularly employed driver of that motor carrier and who drives a motor vehicle that:

1. Is transporting combustible liquids (as defined in Section [173.115] **173.120(b)** of this title), and

2. Is being operated in intrastate commerce.

(b) In addition to the exemptions provided in paragraph (a) of this section, a person who has been a regularly employed driver as defined in Section 390.5 as of January 1, 1991, but who is not physically qualified to drive under Section 391.41(b) and who is otherwise qualified under N.J.S.A. 39:3-10 to drive a motor vehicle, may continue to drive a motor vehicle provided that person is in possession of a valid New Jersey driver license issued prior to January 1, 1991, and continues to be a regularly employed driver of that motor carrier and drives a vehicle that:

1.-2. (No change.)

3. Is transporting combustible liquids (as defined in Section [173.115] **173.120(b)** of this title), and

4. (No change.)

Subpart H—Controlled Substances Testing

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Section 391.89 Access to individual test results or test findings.

...

Section 391.117 Disqualification[s].

...

PART 392-PART 394 (No change.)

PART 395—HOURS OF SERVICE OF DRIVERS

[Section 395.1 (Reserved)]

Section 395.1 Scope of rules in this part.

...

PART 396—INSPECTION, REPAIR, AND MAINTENANCE

...

Section 396.15 Driveaway-towaway operations[,] **and** inspections.

...

Section 396.25 Qualifications of brake inspectors.

Appendix G to Subchapter B—Minimum Periodic Inspection Standards

PART 397—TRANSPORTATION OF HAZARDOUS MATERIALS[:]; DRIVING AND PARKING RULES[.]

...

Subpart D—Routing of Class 7 (Radioactive) Materials

Section 397.101 Requirements for motor carriers and drivers.

Section 397.103 Requirements for State routing designations.

Subpart E—Preemption Procedures

Section 397.201 Purpose and scope of the procedures.

Section 397.203 Standards for determining preemption.

Section 397.205 Preemption application.

Section 397.207 Preemption notice.

Section 397.209 Preemption processing.

Section 397.211 Preemption determination.

Section 397.213 Waiver of preemption application.

Section 397.215 Waiver notice.

Section 397.217 Waiver processing.

Section 397.219 Waiver determination and order.

Section 397.221 Timeliness.

Section 397.223 Petition for reconsideration.

Section 397.225 Judicial review.

PART 177—CARRIAGE BY PUBLIC HIGHWAY (CONTINUED)

...

[Section 177.818 Special instructions; flammable cryogenic liquids.]

Section 177.818 Special instructions; Division 2.1 (flammable gas) materials that are cryogenic liquids.

...

[Section 177.825 Routing and training requirements for radioactive materials.]

Section 177.825 Routing and training requirements for Class 7 (radioactive) materials.

[Section 177.826 Carrier's registration statement; flammable cryogenic liquids.]

Section 177.826 Carrier's registration statement; Division 2.1 (flammable gas) materials that are cryogenic liquids.

Subpart B—Loading and Unloading

...

[Section 177.835 Explosives.]

Section 177.835 Class 1 (explosive) materials.

...

[Section 177.838 Flammable solids and oxidizing materials.]

Section 177.838 Class 4 (flammable solid) materials, Class 5 (oxidizing) materials, and Division 4.2 (pyrophoric liquid) materials.

[Section 177.839 Corrosive liquids.]

Section 177.839 Class 8 (corrosive) materials.

[Section 177.840 Compressed gases.]

Section 177.840 Class 2 (gases) materials.

[Section 177.841 Poisons.]

Section 177.841 Division 6.1 (poisonous) and Division 2.3 (poisonous gas) materials.

[Section 177.842 Radioactive material.]
Section 177.842 Class 7 (radioactive) material.

...

Subpart C—Segregation and Separation Chart of Hazardous Materials

[Section 177.848 Segregation and Separation chart of hazardous materials.]
Section 177.848 Segregation of hazardous materials.

Subpart D—Vehicles and Shipments in Transit; Accidents

...

[Section 177.855 Accidents; explosives.]
Section 177.855 Accidents; Class 1 (explosive) materials.
[Section 177.856 Accidents; flammable liquids.]
Section 177.856 Accidents; Class 3 (flammable liquid) materials.
[Section 177.857 Accidents; flammable solids and oxidizing materials.]
Section 177.857 Accidents; Class 4 (flammable solid) or Class 5 (oxidizing) materials.
[Section 177.858 Accidents; corrosive materials.]
Section 177.858 Accidents; Class 8 (corrosive) materials.
[Section 177.859 Accidents; compressed gases.]
Section 177.859 Accidents; Class 2 (gases) materials.
[Section 177.860 Accidents or leakage; poisons.]
Section 177.860 Accidents or leakage; Division 6.1 (poisonous) or Division 2.3 (poisonous gas) materials.
[Section 177.861 Accidents; radioactive materials.]
Section 177.861 Accidents; Class 7 (radioactive) materials.

Subpart E—Regulations Applying to Hazardous Material on Motor Vehicles Carrying Passengers for Hire[.]

[16:49-2.1 TRANSPORTATION OF HAZARDOUS MATERIALS]

Section 177.870 Regulations for passenger carrying vehicles.

[APPENDIX A—RELATIONSHIP BETWEEN ROUTING REQUIREMENTS IN PART 177 WITH STATE AND LOCAL REQUIREMENTS]

[Appendix A above, of Part 177, is excluded from adoption herein.]

PART 178—[SHIPPING CONTAINER] SPECIFICATIONS **FOR PACKAGINGS**

[Section 178.0 Purpose, scope, and applicability.]

[Subpart A—Specifications for Carboys, Jugs in Tubs, and Rubber Drums]

...

Section 178.2 Applicability and manufacturers' responsibility.
Section 178.3 Marking of packagings.
[Section 178.4 Specification 1D; boxed glass carboys.
Section 178.5 Specification 1X; boxed carboys, 5 to 6½ gallons, for export only.
Section 178.6 Specification 1EX; glass carboys in plywood drums.
Section 178.13 Specification 1H; polyethylene carboys in low carbon steel or other equally efficient metal crates.
Section 178.14 Specification 1K; glass carboys cushioned with expandable polystyrene in wooden wirebound box outside container.
Section 178.16 Specification 35; non-reusable molded polyethylene drum for use without overpack; removable head required.
Section 178.17 Specification 1M; non-reusable glass carboy in non-reusable expanded polystyrene packaging.
Section 178.19 Specification 34; reusable molded polyethylene drum for use without overpack. Removable head not authorized.]

Subpart B—Specifications for Inside Containers, and Linings[.]

[Section 178.21 Specification 2T; polyethylene container.
Section 178.22 Specification 2C; inside containers, corrugated fiberboard cartons.
Section 178.23 Specification 2D; inside containers, duplex paper bags.
Section 178.24 Specification 2U; molded or thermoform polyethylene containers.
Section 178.24a Specification 2E; inside polyethylene bottle.
Section 178.25 Specification 2F; inside metal containers and liners.
Section 178.26 Specification 2G; inside containers, fiber cans and boxes.
Section 178.27 Specification 2TL; polyethylene container.
Section 178.28 Specification 2J; inside containers waterproof paper bags for linings.
Section 178.29 Specification 2K; inside containers, paper bags for linings.
Section 178.30 Specification 2L; lining for boxes.
Section 178.31 Specification 2M; waterproofed paper lining.
Section 178.32 Specification 2N; inside containers, metal cans.
Section 178.33 Specification 2P; inside nonrefillable metal containers.]
Section 178.33 Specification 2P; inner nonrefillable metal receptacles.
[Section 178.33a Specification 2Q; inside nonrefillable metal containers.]
Section 178.33a Specification 2Q; inner nonrefillable metal receptacles.
[Section 178.34 Specification 2R; inside containment vessel.
Section 178.35 Specification 2S; polyethylene container.
Section 178.35a Specification 2SL; molded or thermoformed polyethylene container.]

Subpart C—Specifications for Cylinders

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Section 178.60 Specification 8AL; steel cylinders with approved porous [filing] **filling** for acetylene.
Section 178.61 Specification 4BW; welded steel cylinders made of [defintely] **definitely** prescribed steel with electric-arc welded longitudinal seam.
Section 178.65 Specification 39; non-reusable [(nonrefillable)] **(non-refillable)** cylinder.

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[Subpart D—Specifications for Metal Barrels, Drums, Kegs, Cases, Trunks, and Boxes

Section 178.80 Specification 5; steel barrels or drums.
Section 178.81 Specification 5A; steel barrels or drums.
Section 178.82 Specification 5B; steel barrels or drums.
Section 178.83 Specification 5C; steel barrels or drums.
Section 178.88 Specification 5K; nickel barrels or drums.
Section 178.89 Specification 5L; steel barrels or drums.
Section 178.90 Specification 5M; monel drums.
Section 178.92 Specification 5P; lagged steel drums.
Section 178.98 Specification 6B; steel barrels or drums.
Section 178.99 Specification 6C; steel barrels or drums.
Section 178.100 Specification 6J; steel barrels and drums.
Section 178.102 Specification 6D; cylindrical steel overpack, straight sided, for inside plastic container.
Section 178.103 Specification 6L; metal packaging.
Section 178.104 Specification 6M; metal packaging.
Section 178.107 Specification 42B; aluminum drums.
Section 178.109 Specification 42D; aluminum drums.
Section 178.115 Specification 17C; steel drums.
Section 178.116 Specification 17E; steel drums.
Section 178.117 Specification 17F; steel drums.
Section 178.118 Specification 17H; steel drums.
Section 178.120 Specification 20PF; pheonolic-foam insulated, metal overpack.
Section 178.121 Specification 21PF; fire and shock resistant, phenolic-foam insulated, metal overpack.

Section 178.130 Specification 37K; steel drums.
Section 178.131 Specification 37A; steel drums.
Section 178.132 Specification 37B; steel drums.
Section 178.133 Specification 37P; steel drums with polyethylene liner.
Section 178.134 Specification 37M; cylindrical steel overpack, straight sided for inside plastic container; nonreusable containers.
Section 178.135 Specification 37C; steel drums.
Section 178.137 Specification 37D; steel drum. Nonreusable container. Open-head not authorized.
Section 178.140 Specification 13; metal kegs.
Section 178.141 Specification 13A; metal drums.
Section 178.146 Specification 32A; metal cases, riveted or lock-seamed.
Section 178.147 Specification 32B; metal cases, welded or riveted.
Section 178.148 Specification 32C; metal trunks.
Section 178.149 Specification 32D; metal boxes for old and worn-out motion-picture film no longer exhibitable.
Section 178.150 Specification 33A; polystyrene cases. Nonreusable containers.

Subpart E—Specifications for Wooden Barrels, Kegs, Boxes, Kits and Drums.

Section 178.156 Specification 10B; wooden barrels and kegs (tight).
Section 178.165 Specification 14; wooden boxes, nailed.
Section 178.168 Specification 15A; wooden boxes, nailed.
Section 178.169 Specification 15B; wooden boxes, nailed.
Section 178.170 Specification 15C; wooden boxes, nailed.
Section 178.171 Specification 15D; wooden boxes, nailed.
Section 178.172 Specification 15E; wooden boxes, fiberboard lined.
Section 178.176 Specification 15L; wooden boxes with inside containers for desensitized liquid explosives.
Section 178.177 Specification 15M; wooden boxes, metal lined, with inside containers for desensitized liquid explosives.
Section 178.181 Specification 15X; wooden boxes for two five-gallon cans.
Section 178.182 Specification 15P; glued plywood, or wooden box for inside containers.
Section 178.185 Specification 16A; plywood or wooden boxes, wire-bound.
Section 178.186 Specification 16B; wooden boxes, wirebound.
Section 178.187 Specification 16D; wooden wirebound overwrap for inside containers.
Section 178.190 Specification 19A; wooden boxes, glued plywood, cleated.
Section 178.191 Specification 19B; wooden boxes, glued plywood, nailed.
Section 178.193 Specification 18B; wooden kits.
Section 178.194 Specification 20WC; wooden-steel protective jacket.
Section 178.195 Specification 21WC; wooden-steel protective overpack.
Section 178.196 Specification 22A; wooden drums, glued plywood.
Section 178.197 Specification 22B; wooden drums, glued plywood.
Section 178.198 Specification 22C; plywood drum for plastic inside container.

Subpart F—Specifications for Fiberboard Boxes, Drums, and Mailing Tubes.

Section 178.205 Specification 12B; fiberboard boxes.
Section 178.206 Specification 12C; fiberboard boxes.
Section 178.207 Specification 12D; fiberboard boxes.
Section 178.208 Specification 12E; fiberboard boxes.
Section 178.209 Specification 12H; fiberboard boxes.
Section 178.210 Specification 12A; fiberboard boxes.
Section 178.211 Specification 12P; fiberboard boxes. Nonreusable containers for inside plastic containers greater than 1-gallon capacity, as prescribed in Part 173 of this subchapter.
Section 178.212 Specification 12R; paperfaced expanded polystyrene board boxes. Nonreusable containers.
Section 178.214 Specification 23F; fiberboard boxes.
Section 178.218 Specification 23G; special cylindrical fireboard box for high explosives.
Section 178.219 Specification 23H; fiberboard boxes.
Section 178.224 Specification 21C; fiber drum.
Section 178.225 Specification 21P; fiber drum overpack for inside plastic container.
Section 178.226 Specification 29; mailing tubes.

Subpart G—Specifications for Bags, Cloth, Burlap, Paper or Plastic

Section 178.230 Specification 36A; lined cloth bags (triplex).
Section 178.233 Specification 36B; burlap bags, lined.
Section 178.234 Specification 36C; burlap bags, paper lined.
Section 178.236 Specification 44B; multiwall paper bags.
Section 178.237 Specification 44C; multiwall paper bags.
Section 178.238 Specification 44D; multiwall paper bags.
Section 178.239 Specification 44E; multiwall paper bags.
Section 178.240 Specification 45B; bags, cloth and paper, lined.
Section 178.241 Specification 44P; all-plastic bags.]

Subpart H (No change.)

Subpart J—Specifications for Containers for Motor Vehicle Transportation

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Section 178.320 General requirements applicable to all DOT specification cargo tank motor vehicles.

[Section 178.337 Specification MC 331; cargo tanks constructed of steel, primarily for transportation of compressed gases as defined in the Compressed Gas Station.]

Section 178.337 Specification MC 331; cargo tank motor vehicle primarily for transportation of compressed gases as defined in Subpart G of Part 173 of this subchapter.

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Section 178.345 General design and construction requirements applicable to Specifications DOT 406 (Section 178.346), DOT 407 (Section 178.347), and DOT 412 (Section [178,348] **178.348**) cargo tank motor vehicles.

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[Subpart K—Specifications for General Packagings]

Subpart K—Specifications for Packagings for Class 7 (Radioactive) Materials.

. . .

Section 178.352 Specification 6L; metal packaging.
Section 178.354 Specification 6M; metal packaging.
Section 178.356 Specification 20PF phenolic-foam insulated, metal overpack.
Section 178.358 Specification 21PF fire and shock resistant, phenolic-foam insulated, metal overpack.
Section 178.360 Specification 2R; inside containment vessel.
Section 178.362 Specification 20WC wooden protective jacket.
Section 178.364 Specification 21WC wooden-steel protective overpack.

[Appendix A—Specifications for Steel]

Subpart L—Non-bulk Performance-oriented Packaging Standards

Section 178.500 Purpose, scope and definitions.
Section 178.502 Identification codes for packagings.
Section 178.503 Marking of packagings.
Section 178.504 Standards for steel drums.

Section 178.505 Standards for aluminum drums.
Section 178.506 Standards for metal drums other than steel or aluminum.
Section 178.507 Standards for plywood drums.
Section 178.508 Standards for fiber drums.
Section 178.509 Standards for plastic drums and jerricans.
Section 178.510 Standards for wooden barrels.
Section 178.511 Standards for steel jerricans.
Section 178.512 Standards for steel or aluminum boxes.
Section 178.513 Standards for boxes of natural wood.
Section 178.514 Standards for plywood boxes.
Section 178.515 Standards for reconstituted wood boxes.
Section 178.516 Standards for fiberboard boxes.
Section 178.517 Standards for plastic boxes.
Section 178.518 Standards for woven plastic bags.
Section 178.519 Standards for plastic film bags.
Section 178.520 Standards for textile bags.
Section 178.521 Standards for paper bags.
Section 178.522 Standards for composite packagings with inner plastic receptacles.
Section 178.523 Standards for composite packagings with inner glass, porcelain, or stoneware receptacles.

Subpart M—Testing of Non-bulk Packagings and Packages

Section 178.600 Purpose and scope.
Section 178.601 General requirements.
Section 178.602 Preparation of packagings and packages for testing.
Section 178.603 Drop test.
Section 178.604 Leakproofness test.
Section 178.605 Hydrostatic pressure test.
Section 178.606 Stacking test.
Section 178.607 Cooperage test for bung-type wooden barrels.
Section 178.608 Vibration standard.
Section 178.609 Test requirements for packagings for infectious substances (etiologic agents).

Appendix A—Specifications for Steel

Appendix B—Alternative Leakproofness Test Methods

PART 179—SPECIFICATIONS FOR TANK CARS

Subpart A—Introduction, Approvals, and Reports[.]

...

Subpart B (No change.)

Subpart C—Specifications for Pressure Tank Car Tanks (Classes DOT—105, 109, 112 and 114)[.]

...

Section 179.104 Special requirements for spec. 105-A200-F tank car tanks.
[Section 179.105 Special requirements for Specifications 112 and 114 tank cars.]
Section 179.105 Special requirements for Specification 105S, 105J, 111J, 112S, 112J, 112T, 114S, 114J and 114T tank cars.
[Section 179.106 Special requirements for Specification 105 tank cars.]

Subpart D—Specifications for Non-Pressure Tank Car Tanks (Classes DOT—103, 104, 111AF, 111AW, and 115AW)[.]

...

[Section 179.202 Special commodity requirements for non-pressure tank car tanks.]
Section 179.203 Special requirements for specification [III] **111** tank cars.

...

Subpart E—Specifications for Multi-Unit Tank Car Tanks (Classes DOT—106A and 110AW)[.]

Section 179.300 General [Specifications] **specifications** applicable to multi-unit tank car tanks designed to be removed from car structure for filling and emptying (Classes DOT—106A and 110AW).

...

[Section 179.302 Special commodity requirements for multi-unit tank car tanks.]

Subpart F to Part 180, Subpart E (No change.)

TREASURY-TAXATION

(a)

DIVISION OF TAXATION

General Policies and Procedures

Payment of Taxes by Electronic Funds Transfer

Proposed New Rules: N.J.A.C. 18:2-3

Authorized By: Leslie A. Thompson, Director, Division of Taxation.
Authority: N.J.S.A. 54:50-1.
Proposal Number: PRN 1993-143.

Submit comments by April 14, 1993 to:
Nicholas Catalano
Chief, Tax Services Branch
Division of Taxation
50 Barrack Street
CN 269
Trenton, NJ 08646

The agency proposal follows:

Summary

Public Law 1992, c.140, effective November 16, 1992 (but inoperative until March 1, 1993) requires certain taxpayers to pay their State taxes by electronic funds transfer (EFT). The proposed new rules provide the basic requirements for payment by EFT. The rules also provide that taxpayers may choose either the ACH debit or the ACH credit method of EFT, which choice may be switched by giving 60 days notice.

The EFT law requires taxpayers to pay by EFT based on whether their "prior year liability" meets certain dollar thresholds, which decrease every year until 1997. Accordingly, the proposed rules clarify which "prior year" will be used to determine prior year liability.

The proposed rules include provisions whereby, if the taxpayer meets the prior year threshold for any type of tax, the taxpayer must remit by EFT for all the types of taxes for which the taxpayer is liable. This proposed requirement is based on the wording in the first part of subsection a and the wording in subsection b(1)-(4) of P.L. 1992, c.140. The first part of subsection a provides: "**All** tax payments described in subsection b of this section, other than those payments enumerated in subsection c of this section, shall be made by electronic funds transfer ..." (emphasis added). The tax payments described in subsection b are payments made by taxpayers that meet the prior year liability thresholds in b(1)-(4). Accordingly, the Division concludes that "all" tax payments made by taxpayers who meet the pertinent prior year liability threshold must be made by electronic funds transfer, except the types of tax payments excepted under subsection c.

The proposed rules also contain provisions related to the Division notifying taxpayers prior to requiring compliance, provisions related to voluntary EFT payment, and provisions related to late payment penalties and interest. When a taxpayer is required to pay by EFT and, instead, the taxpayer pays by check or similar instrument, the proposed rules deem payment to have occurred on the third business day after the Director receives the check or similar instrument.

Social Impact

The compliance thresholds and the exceptions to compliance in P.L. 1992, c.140 are to ensure that only large business taxpayers will be affected by the EFT requirements. The result is that only a very small percentage of business taxpayers will be affected in the first phase. Then in the last phase and afterwards, only approximately five percent of business taxpayers will be affected. Even so, businesses are increasingly using EFT for ordinary business transactions. The EFT requirements

merely bring certain tax payments into the existing trend towards EFT payment. Thus, the overall societal impact of the new EFT requirements would be very small.

Economic Impact

The EFT requirements have the economic effect of the State receiving actual tax monies on the tax payment due date, instead of receiving the tax monies only after the payment check has "cleared." Concomitantly, the EFT requirements would have the result of taxpayers no longer receiving interest on tax payment monies for the period between the date of handing over the check and the date the check "clears."

The other economic impacts on taxpayers are the slight costs of paying any bank fees for the EFT and any administrative costs, if any, of making whatever arrangements are necessary. These impacts would be minimal because the requirements only apply to businesses that have large tax liabilities, which are businesses that would have the financial resources to absorb any minor increase in the costs of paying taxes. Also, the EFT fees and administrative costs might be similar to or even less than the fees and administrative costs associated with paying by check.

Regulatory Flexibility Analysis

Public Law 1992, c.140 requires EFT payments from taxpayers that meet large tax thresholds, which would apply to few, if any, small businesses, as that term is defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. Further, any small businesses that must comply with P.L. 1992, c.140 are, of course, already required to pay taxes and keep adequate records of collection and payment of taxes. Also, the Division anticipates that, eventually, certain EFT payment transmittals will substitute for return requirements, thereby significantly reducing paperwork. Thus, the proposed new rules do not impose any additional reporting, recordkeeping or other compliance requirements on small businesses.

Full text of the proposed new rules follows:

SUBCHAPTER 3. REQUIREMENTS FOR PAYMENT OF TAXES BY ELECTRONIC FUNDS TRANSFER

18:2-3.1 Purpose

These rules enable the State to receive the actual tax monies from certain taxpayers, by the payment due date, because the taxpayers are required to pay their taxes by electronic funds transfer, instead of being allowed to pay by check or other similar instrument.

18:2-3.2 Scope

This subchapter establishes the bases for determining which taxpayers must pay taxes by electronic funds transfer (EFT), as well as the basic requirements for paying by EFT.

18:2-3.3 Definitions

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

"ACH" (automated clearing house) means a Federal reserve bank, or an organization established by agreement with the National Automated Clearing House Association (NACHA), which operates as a clearing house for transmitting or receiving entries between banks and bank accounts, and which authorizes an electronic transfer of funds between the banks or bank accounts.

"ACH credit" means a transaction in which the taxpayer, through its own bank, originates an entry crediting the State of New Jersey's bank account and debiting its own bank account for the amount of the payment due.

"ACH debit" means a transaction in which the State of New Jersey, through its designated depository bank, originates an ACH transaction debiting the taxpayer's bank account and crediting the State's bank account for the amount of the payment due.

"Director" means the Director of the Division of Taxation in the Department of Treasury.

"EFT" (electronic funds transfer) means any transfer of funds, other than a transaction originated by check, draft or similar paper instrument, that is initiated through an electronic terminal, telephonic instrument or computer or magnetic tape for the purpose of ordering, instructing or authorizing a financial institution to debit or credit an account.

"Prior year liability" means the total liability for any tax imposed on, collected by or withheld by the taxpayer in the calendar year or the fiscal or calendar privilege period, as determined under the specific law regarding that tax, ending before the calendar year or fiscal or calendar privilege period for which an electronic funds transfer payment is determined to be required.

"State tax" means any tax which is payable to or collectible by the Director.

"Taxpayer" means any person or entity owing or liable to pay any tax, or any person or entity deemed to be so owing or liable.

18:2-3.4 Payments required to be paid by electronic funds transfer

(a) Between March 1, 1993, and February 28, 1994, a taxpayer that had a prior year liability for any type of tax, with certain exceptions in (f) below, in the amount of $200,000 or more shall remit all its State tax payments of all types, with certain exceptions in (f) below, by using EFT. The taxpayer may choose the ACH debit method or the ACH credit method of EFT.

(b) Between March 1, 1994, and February 28, 1995, a taxpayer that had a prior year liability for any type of tax, with certain exceptions in (f) below, in the amount of $100,000 or more shall remit all its State tax payments of all types, with certain exceptions in (f) below, by using EFT. The taxpayer may choose the ACH debit method or the ACH credit method of EFT.

(c) Between March 1, 1995, and February 29, 1996, a taxpayer that had a prior year liabiltiy for any type of tax, with certain exceptions in (f) below, in the amount of $50,000 or more shall remit all its State tax payments of all types, with certain exceptions in (f) below, by using EFT. The taxpayer may choose the ACH debit method or the ACH credit method of EFT.

(d) Beginning March 1, 1996, a taxpayer that had a prior year liability for any type of tax, with certain exceptions in (f) below, in the amount of $20,000 or more shall remit all its State tax payments of all types, with certain exceptions in (f) below, by using EFT. The taxpayer may choose the ACH debit method or the ACH credit method of EFT.

(e) The EFT requirements of (a) through (d) above apply to any estimated tax payments due from a taxpayer.

(f) The EFT requirements of (a) through (d) above do not apply to payments of the following types of taxes:

1. Transfer inheritance tax imposed pursuant to N.J.S.A. 54:33-1;
2. Estate tax imposed pursuant to N.J.S.A. 54:38-1;
3. Gross income tax payments of estimated or final tax liability imposed pursuant to N.J.S.A. 54:8-5 and N.J.S.A. 54:8-1, but not including withholding tax imposed pursuant to N.J.S.A. 54A:7-1 and 54A:7-1.1.

18:2-3.5 Specific requirements

(a) A taxpayer that is required to pay by EFT shall initiate the transfer and take whatever other steps are necessary so that any tax payment due is deposited in the State of New Jersey's account in the designated depository, on or before the date that the tax is due according to the pertinent law.

(b) A taxpayer shall make separate EFT transactions for each payment of each type of tax.

(c) A taxpayer may switch its choice of method to the other method of EFT for all its payments if the taxpayer gives the Director notice in writing 60 days in advance of using the other method.

(d) Whichever method (ACH credit or ACH debit) a taxpayer chooses for complying with its EFT requirements, the taxpayer shall use the same method for payment of all the types of taxes it is required to pay by EFT.

(e) If a taxpayer chooses the ACH debit payment option and the banking information necessary to generate ACH debits changes, the taxpayer shall give the Director notice in writing at least 60 days prior to the date the change will take effect.

18:2-3.6 Determination of prior year liability

(a) The Director will annually, on such date as is practicable, determine taxpayers' prior year liability for one or more types of taxes. If an actual prior year liability cannot be determined, the Director may make a determination according to an estimated prior year liability.

(b) For tax payments due between March 1, 1993 and February 28, 1994, the Director shall base "prior year liability" on:

1. The tax liability for calendar year 1992, if the Director is determining a prior year liability with regard to a type of tax for which liability is based on one or more calendar months, one or more calendar quarters or a calendar year; or

2. The tax liability for any fiscal year or privilege period ending between January 1, 1992 and January 31, 1992, if the Director is determining a prior year liability with regard to a type of tax for which liability is based on a fiscal year or privilege period.

(c) For tax payments due between March 1, 1994 and February 28, 1995, the Director shall base "prior year liability" on:

1. The tax liability for calendar year 1993, if the Director is determining a prior year liability with regard to a type of tax for which liability is based on one or more calendar months, one or more calendar quarters or a calendar year; or

2. The tax liability for any fiscal year or privilege period ending between January 1, 1993 and January 31, 1993, if the Director is determining a prior year liability with regard to a type of tax for which liability is based on a fiscal year or privilege period.

(d) For tax payments due between March 1, 1995 and February 29, 1996, the Director shall base "prior year liability" on:

1. The tax liability for calendar year 1994, if the Director is determining a prior year liability with regard to a type of tax for which liability is based on one or more calendar months, one or more calendar quarters or a calendar year; or

2. The tax liability for any fiscal year or privilege period ending between January 1, 1994 and January 31, 1994, if the Director is determining a prior year liability with regard to a type of tax for which liability is based on a fiscal year or privilege period.

(e) For tax payments due in March of 1996 and thereafter, the Director shall base "prior year liability" on:

1. The tax liability for the calendar year preceding the calendar year in which the Director makes the prior year liability determination, if the Director is determining a prior year liability with regard to a type of tax for which liability is based on one or more calendar months, one or more calendar quarters or a calendar year; or

2. The tax liability for any fiscal year or privilege period ending in the calendar year preceding the calendar year in which the Director makes the prior year liability determination, if the Director is determining a prior year liability with regard to a type of tax for which liability is based on a fiscal year or privilege period.

18:2-3.7 Notice to taxpayers

(a) The Director will notify taxpayers of their EFT payment requirements at least 30 days prior to the date on which the Director first requires compliance with N.J.A.C. 18:2-3.4(a) through (e).

(b) The failure of the Director to notify a taxpayer as required by (a) above shall not relieve a taxpayer from compliance with its EFT payment requirements. However, if the Division's records indicate that the Director failed to notify the taxpayer as required by (a) above, the Director may take the lack of notice into consideration with respect to any request for a waiver of penalty or interest.

(c) The Director will annually, on such date as is practicable, notify those taxpayers that do not meet the current "prior year liability" threshold for being required to pay by EFT.

18:2-3.8 Penalties and interest for late EFT payments

(a) If an EFT payment is deposited later than the date required by N.J.A.C. 18:2-3.5(a), the Director shall, for the period between the required and the actual deposit date, assess late payment penalties and interest as provided under the State Tax Uniform Procedure Law or under the pertinent State tax law.

(b) If the availability of funds for EFT payment is delayed, and if the taxpayer shows, to the satisfaction of the Director, that the delay was due to reasons beyond the control of the taxpayer, the Director shall abate penalties and interest. Circumstances such as the taxpayer being in a poor financial condition will not, by itself, be deemed to be reasons beyond the control of the taxpayer.

18:2-3.9 Failure to comply

(a) If a taxpayer is required to remit a tax payment by EFT and the taxpayer pays (with sufficient funds) by check, draft or similar instrument, payment shall be deemed to have been made on the third business day after the date the Director receives the check, draft or similar paper instrument.

(b) The Director will not consider any claim or assertion by a taxpayer that its check, draft or other instrument cleared prior to the date it was deemed to have been paid under (a) above.

18:2-3.10 Voluntary EFT payment

(a) A taxpayer not required to remit payments by EFT may, upon written approval from the Director, use the ACH debit or ACH credit method for EFT payment for such types of taxes as the taxpayer elects.

(b) Once the Director has given written approval, a taxpayer must use the approved EFT method of payment unless the taxpayer gives the Director notice in writing at least 30 days prior to withdrawing from voluntary participation.

(c) Except as otherwise provided in this section, any taxpayer voluntarily remitting taxes by EFT must follow the EFT requirements of this subchapter and any pertinent guidelines prescribed by the Director.

18:2-3.11 Effect of subchapter

If the provisions of these rules conflict with the provisions of any other tax rule concerning the payment of State taxes, except those taxes excepted in N.J.A.C. 18:2-3.4(f), the provisions of N.J.S.A. 54:48-4.1 and these rules shall govern, unless the context clearly indicates otherwise.

OTHER AGENCIES

(a)

CASINO CONTROL COMMISSION

Applications
Fees

Proposed Amendments: N.J.A.C. 19:41-9.1 and 9.4

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

Authority: N.J.S.A. 5:12-69(a) and 70(e).

Proposal Number: PRN 1993-124.

Submit written comments by April 14, 1993 to:

Mary S. LaMantia, Counsel
Casino Control Commission
Tennessee and Boardwalk
Atlantic City, New Jersey 08401

The agency proposal follows:

Summary

The Casino Control Act, N.J.S.A. 5:12-1 et seq. ("the Act"), directs that the operating costs of the Commission and the Division shall be financed exclusively from fees assessed each year upon applicants, licensees and registrants. The Commission's fee rules reflect the policy that each applicant or licensee should, to the extent reasonable, pay the investigatory and regulatory costs attributable to that applicant or licensee. However, the Commission's fee structure recognizes that the actual costs of investigating and processing individual employee and casino service industry enterprise licenses often far exceed the amount that such applicants can reasonably be expected to pay. As a result, there is an amount of the annual combined budgets of both agencies that is not recovered through fee assessments. Since the casino industry benefits directly or indirectly from all aspects of the regulatory process, such unrecouped costs are annually allocated among licensed casino facilities.

Previous regulatory amendments modifying the Commission's fee structure will enable the Commission to reduce the total year-end assessment. The amendments proposed herein provides a fair and reasonable method of allocating that assessment among all licensed casinos.

At present, total uncollectible expenditures are equally apportioned among all licensed casino operators. While, arguably, each casino has an equal opportunity to employ or do business with licensed employees and casino service industry enterprises, the issue addressed by the current proposal is whether smaller casino facilities should in fact be held accountable for the same share as larger casinos. Authorized gaming

floor size controls the number of gaming devices which are possible. Larger casino facilities are therefore likely to require a greater number of employees in order to operate efficiently. Similarly, a larger amount of authorized gaming area may correspond to a larger number of gaming-related casino service industry enterprises utilized by a casino. Notably, a substantial portion of the year-end assessment is attributable to the investigation and processing of gaming-related casino service industry enterprises. The proposed amendment to N.J.A.C. 19:41-9.4(f) thus provides that each licensed casino facility's share of the year-end assessment shall be based upon its approved casino room and simulcasting facility square footage. Specifically, the proportion of a licensee's share to the total liability shall be equal to the proportion of the licensee's average daily authorized casino room and casino simulcasting facility square footage to the average daily authorized casino room and casino simulcasting facility square footage for all licensed casino facilities.

Other proposed amendments modify the language of N.J.A.C. 19:41-9.1 and 9.4 consistent with the proposed new method of allocation. Additionally, an amendment to N.J.A.C. 19:41-9.1(a) deletes a reference to work permits consistent with the recent elimination of such requirement from section 106 of the Act. Another technical change simply corrects the name of the Commission's Division of Financial Evaluation.

Social Impact

The proposed amendments will enable the Commission to equitably allocate among casino operators the total amount of expenditures otherwise unrecouped through specific fee assessments. As such, this statutory and regulatory scheme allows the Commission to implement the legislative mandate that the operating costs of the regulatory agencies be financed from fees assessed each year upon casino licensees. N.J.S.A. 5:12-139.

The proposed change from equal share assessments to allocated assessments based on approved square footage provides a fair method of allocation. Such method will ensure that each casino operator is assessed a share of the regulatory costs that is reasonably related to the benefits it receives from the regulatory process.

Economic Impact

The proposed amendments provide a fair and reasonable means by which the Commission may allocate the year-end assessment for uncollectable expenditures among all licensed casino facilities. The amendments allocate each casino operator's share of the year-end assessment based upon approved casino and simulcasting facility square footage. The difference between this allocated assessment and the current equal share assessment will vary for each casino operator, with the greatest economic impact obviously upon the largest and smallest of the licensed casino operators. The amendments will result in a larger share of the assessment being billed to larger casinos, with a corresponding economic benefit to the smaller facilities, which will bear a lesser proportion of the total assessment.

Regulatory Flexibility Statement

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

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

19:41-9.1 General description of fees and policy

(a) Under the Act, the Commission and Division are required to be financed exclusively from fees charged each fiscal year to applicants, licensees and registrants. Generally, the Act divides fees into two broad categories: those pertaining to casino licenses and those pertaining to all other forms of licensure or approval. Section 139 of the Act requires the Commission to establish, by regulation, fees for the issuance and renewal of casino licenses. The statutory basis for the casino license issuance fee is the cost of investigation and consideration of the application. The statutory basis for the casino license renewal fee is the cost of maintaining the control and regulatory activities of the Commission and the Division. In contrast, [Sections] **section** 141 [and 142] of the Act [require] **requires** the Commission to establish, by regulation, issuance and renewal fees for all non-casino licenses [and work permits], but [indicate] **indicates** no cost basis for establishing such fees.

(b) (No change.)

(c) To the extent fairly possible, each applicant or licensee should pay the investigatory or regulatory costs attributable to that applicant or licensee. However, since individual employees and casino service industry enterprises cannot always be expected to cover the full amount expended [and since a portion of the costs incurred by the agencies pertain to the industry generally], there will be an amount of the annual combined budgets of the agencies which will not be recoverable through specified fees for particular services. This amount cannot be predicted with precision because of the necessarily variable allocation of Commission and Division efforts.

(d) Given the mandate of the Act to recover the cost of maintaining control and regulatory activities from casino license renewal fees and given the fact that all such activities are undertaken for the direct or indirect benefit or protection of casino operations, the obligation to supply additional funds necessary to recover the otherwise uncollected expenditures of the agencies should be [spread] **allocated** among the licensed casino facilities. [By their nature the agency activities generating the otherwise uncollected expenditures are not attributable to any specific casino operation and they produce benefits for all such operations, for example, creating a pool of licensed individuals to employ and enlarging the class of licensed casino service industries to contract with for goods and services. Thus, it is reasonable to apportion the assessment for the otherwise uncollected costs equally among the licensed casino facilities subject to an appropriate adjustment where a particular facility is not authorized to conduct operations for an entire fiscal year or where a change of ownership or control of casino operations occurs during the fiscal year.]

(e) (No change.)

19:41-9.4 Casino license fees

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

(f) A licensed casino facility shall be required to pay, as a component of the renewal fee for any casino license necessary to casino **or casino simulcasting** operations therein and as a condition of any such casino license **renewal**, a share of the amount of any liability of the Casino Control Fund existing as of the close of business on June 30 of each fiscal year. The share for each licensed casino facility shall be the amount which [is in] **bears** the same proportion to the total liability **of all licensees** as the proportion [of the number of months in the fiscal year when casino operations are conducted or authorized in the facility] **which that licensed casino facility's average daily authorized casino room and casino simulcasting facility square footage bears** to the total [number of such months] **average daily authorized casino room and casino simulcasting facility square footage** for all licensed casino facilities. For purposes of this calculation any part of a calendar [month] **day** shall be considered a full [month] **day**. Any [months] **days** during which a necessary casino license or operation certificate for a licensed casino facility has been suspended shall also be counted in determining the share of such facility. Further, the operation of the facility by **a** conservator or [a] trustee shall be deemed continued operation by the casino operator for these purposes. The [primary] obligation to pay the assessed share of a licensed casino facility shall be [upon] **that of** the casino operator; provided, **however,** that [where] **if** a change of casino operators occurs during the fiscal year, each such operator shall be liable for an amount of the share apportioned according to the time during which each operator functioned. Any share calculated in accordance with this section shall be paid in full by December 31 of the year following the fiscal year. The Commission, through its Division of Financial Evaluation [and Control], [shall have the authority to] **may** estimate from time to time during the fiscal year the share for each licensed casino facility incurred to that time and [to demand] **require** payment of such estimated share **on a monthly or other periodic basis during the fiscal year.**

(a)

CASINO CONTROL COMMISSION

Hearings

Proposed Readoption: N.J.A.C. 19:42

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

Authority: N.J.S.A. 5:12-63a, 63b, 63c, 63d, 63e, 63g, 64, 65, 66, 69a, 70d, 70e, 71, 80, 86, 89, 90, 91, 92, 94, 95, 102, 107, 108, 109, 129 and N.J.S.A. 52:14B-4, 8 and 12.

Proposal Number: PRN 1993-125.

Submit written comments by April 14, 1993 to:
Mary S. LaMantia, Counsel
Casino Control Commission
Tennessee and Boardwalk
Atlantic City, New Jersey 08401

The agency proposal follows:

Summary

Pursuant to Executive Order No. 66(1978), N.J.A.C. 19:42 is scheduled to expire on May 12, 1993. The rules were initially promulgated in 1978 to prescribe procedures for hearings conducted by the Casino Control Commission (Commission) or any hearing examiner, as required by N.J.S.A 5:12-70d.

The chapter establishes procedures for the conduct of contested case proceedings against licensees, registrants and applicants; proceedings concerning applications for initial and renewal licensure or registration; investigative hearings; rulemaking hearings; hearings on complaints against the Division of Gaming Enforcement pursuant to N.J.S.A. 5:12-63g; proceedings for the exclusion of persons from licensed casino premises; requests for declaratory rulings; and administrative suspension of a license or registration, or dismissal of an application, where a fee or civil penalty remains unpaid.

N.J.A.C. 19:42 was substantially reorganized and amended in 1983, through repeal and readoption as a new rule. 15 N.J.R. 534(a), 15 N.J.R. 931(c). The rules were readopted without change in 1988. 20 N.J.R. 764(a), 20 N.J.R. 1209(b).

The Commission has continued to review and update the rules in N.J.A.C. 19:42. 1988 amendments to subchapter 4 provided that a preliminary exclusion hearing, pending completion of the plenary hearing, will be held only upon the application of the Division. 20 N.J.R. 2250(a); 20 N.J.R. 2801(a). The rules were again amended in 1989 to specify procedures for the conduct of rulemaking hearings. 21 N.J.R. 1975(b); 21 N.J.R. 3022(b). New rules concerning underage gaming violations were adopted in 1991. 20 N.J.R. 3084(a), 24 N.J.R. 109(c). Subchapter 10 was added in 1992 to establish procedures whereby the Commission may administratively suspend a license or registration, or dismiss an application, when a fee or civil penalty remains unpaid. 23 N.J.R. 3249(a); 24 N.J.R. 298(a).

The Commission has determined that the rules in N.J.A.C. 19:42 are reasonable and proper for the purposes for which they were originally promulgated. The standards and procedures set forth in N.J.A.C. 19:42 are essential to the fair and efficient operation of Commission hearings. Since the rules in N.J.A.C. 19:42 will continue to be reviewed and updated through the Commission's ongoing regulatory review process, the chapter is proposed for readoption at this time without amendment.

Social Impact

Readoption of the rules in N.J.A.C. 19:42 will maintain fair and consistent standards and procedures for the conduct of Commission hearings. By promoting efficiency and uniformity, the rules benefit the regulatory agencies as well as the parties to such proceedings. The rules assure that persons affected by Commission action will have a reasonable opportunity to be heard, and have the necessary guidance to determine their rights and duties under the law. The proceedings outlined in N.J.A.C. 19:42 enable the regulatory agencies to implement and enforce the Act, and thus assure the credibility and integrity of the regulatory process and of casino gaming.

Economic Impact

The regulatory agencies incur substantial costs in implementing the hearing procedures set forth in N.J.A.C. 19:42. Among other things, considerable staff time is expended in investigations, appearances and preparation of documents. However, these costs are outweighed by the State's interest in providing clear, reasonable and efficient procedures that ensure each affected person a reasonable opportunity to be heard.

Licensees, applicants and other parties also incur costs in complying with the procedural requirements in N.J.A.C. 19:42, such as the time and expense involved in the preparation and filing of requisite submissions; appearances; or retaining legal counsel. Nonetheless, compliance with these standards and procedures is essential to the successful implementation of the hearing process required by the Act.

Regulatory Flexibility Analysis

Certain proceedings outlined in N.J.A.C. 19:42 may involve casino service industry enterprises, some of which may qualify as small businesses under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. All parties to Commission hearings, including such small businesses, will incur costs in complying with the procedural requirements in N.J.A.C. 19:42, such as the time and expense involved in the preparation and filing of requisite submissions; appearances; or retaining legal counsel. The extent of such costs will of course depend upon the nature of the proceedings. Nonetheless, for these standards and procedures to be effective they must be consistently applied to all parties involved in the hearing process, without any exception or preferential treatment for small businesses. It is such procedural fairness and uniformity that serves the public interest.

Full text of the proposed readoption can be found in the New Jersey Administrative Code at N.J.A.C. 19:42.

(b)

CASINO CONTROL COMMISSION

General Provisions

Professional Practice; Multiple Party Representation

Proposed Amendment: N.J.A.C. 19:42-5.3

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

Authority: N.J.S.A. 5:12-69a, 70d, 70k.

Proposal Number: PRN 1993-164.

Submit written comments by April 14, 1993 to:
Dennis Daly, Assistant General Counsel
Casino Control Commission
Tennessee and Boardwalk
Atlantic City, New Jersey 08401

The agency proposal follows:

Summary

The proposed amendment sets forth a process for attorneys to petition for approval to represent multiple respondents in the same case or substantially similar cases brought pursuant to N.J.S.A. 5:12-108. The Rules of Professional Conduct which apply in these matters, N.J.A.C. 1:1-5.3, detail the procedure and standards for multiple party representation in particular situations, R.P.C. 1.7 through 1.10. In matters where administrative penalties are sought for violations of the Casino Control Act or its attendant rules, the amendment requires that a petition be filed if an attorney seeks to represent a casino or casino service industry enterprise licensee and an employee of the casino or casino service industry enterprise licensee, or two employees of the same casino or casino service industry enterprise licensee, one of whom has supervisory responsibilities over the other. The proposed amendment would apply with equal force to applicants for casino or casino service industry enterprise licenses.

The proposed amendment further provides that a petition for multiple party representation shall be evaluated and determined by the Chairman of the Casino Control Commission or such other member of the Commission as the Chair shall designate or, if the matter has been transmitted to the Office of Administrative Law (OAL), by the Administrative Law Judge assigned to the case. Lastly, the proposed amendment provides for appeal from an adverse determination to the full Commission if the initial determination was made by the Chair or a Commissioner, or to the Director of the OAL if the initial determination was made by an Administrative Law Judge. Time frames and other procedural requirements are set forth.

Social Impact

The prompt and efficient resolution of the potential conflict of interest situations inherent in multiple party representations will have a positive effect on the integrity of the administrative proceedings before the Commission, as well as on regulated entities and individuals.

Economic Impact

The standards and procedures set forth in the proposed amendment will promote greater efficiency in the administrative process because it facilitates the identification and resolution of potential conflicts of interest at the initial stages of the contested case hearing process on complaints against licensees and registrants under the Casino Control Act. The proposed amendment can thus be expected to provide an economic benefit to the casino industry and the agency itself. The costs expected to be incurred by the regulated entity and individuals in filing the petition required by the proposed amended rule are minimal. Any assessment of consequential costs beyond those associated with the filing of petitions would be speculative. Such costs would depend in large measure upon the number of petitions filed and denied (itself an undiscernible number), and whether and by whom substitute counsel is retained. Furthermore, the fee for the substituted counsel may be more or less than that of the disqualified attorney/petitioner.

Regulatory Flexibility Analysis

The proposed amendment will impact on those attorneys practicing before the Commission. Some law firms affected by the new standards may qualify as small businesses as defined by the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The proposed amendments set forth requirements regarding the filing of a petition in accordance with N.J.A.C. 19:42-5.3(e); however, this requirement is expected to impose no undue burden upon attorney/petitioners. These standards must be consistently applied to all those appearing before the Commission. The public interest would not be served by excluding small businesses from the proposed amendments.

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

19:42-5.3 Notice of defense; **multiple party representation**

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

(c) In any circumstance described in (d) below, an attorney who intends to represent more than one party in the same or a substantially related matter shall file a petition for approval no later than 10 days after filing a pleading or entering an appearance in the matter, whichever is earlier. The petitioner shall file such petition with the Commission, or with the Office of Administrative Law if the matter has been transmitted to it, and one copy with the Division.

(d) No attorney shall represent the following parties respondent, unless the petition is granted:

1. A casino licensee or applicant and any person who at the time of the alleged violation was an employee of said licensee or applicant;

2. A casino service industry enterprise licensee or applicant and any person who at the time of the alleged violation was employed by said licensee or applicant;

3. Two persons who at the time of the alleged violation were employed by the same casino licensee or applicant where one such employee had supervisory responsibility over the other employee; or

4. Two persons who at the time of the alleged violation were employed by the same casino service industry enterprise licensee or applicant where one such employee had supervisory responsibility over the other employee.

(e) Any petition filed pursuant to this section shall be in writing and shall include:

1. The nature of the petition and the reasons therefor;

2. The name and docket number of the matter involved;

3. The name and address of the parties represented;

4. A concise statement of the nature of the allegations raised in the complaint and the reasons why no conflict of interest is presented;

5. The certification of the attorney/petitioner detailing the basis of his or her belief that the representation will not adversely affect his or her relationship with each party respondent; and

6. The certification of each respondent acknowledging full disclosure of the potential conflict of interest and consenting to his or her representation by the attorney/petitioner.

(f) Upon receipt of a petition under (e) above:

1. If the matter will be heard by the Commission, the matter shall be forwarded to the Chair or to such other Commission member as the Chair may designate. Thereafter, with the advice and recommendation of the General Counsel of the Commission, the petition shall be evaluated on the papers submitted and in conformity with the Rules of Professional Conduct governing conflict of interest, R.P.C. 1.7 through 1.10, and any applicable statutory provisions, judicial decisions, rules of court, or determinations of the Supreme Court's Advisory Committee on Professional Ethics or other appropriate authority.

2. If the matter has been transmitted to the Office of Administrative Law for hearing, the petition shall be forwarded to the Office of Administrative Law for determination by an administrative law judge.

(g) The attorney/petitioner shall be advised of the decision of the Chair or the Chair's designee either orally or in writing no later than 10 days after receipt of the petition. If the decision is communicated orally, it shall be reduced to writing and mailed to the petitioner within five days.

(h) Any time limitations imposed by (c) and (g) above may be extended by the Chair or the Chair's designee for good cause, upon notice to all parties.

(i) Any party may appeal from the determination of the Chair or the Chair's designee to the full Commission upon written notice filed within five days. If the petition is determined by an administrative law judge, appeal shall be to the Director of the Office of Administrative Law pursuant to N.J.A.C. 1:1-14.10.

(a)

CASINO CONTROL COMMISSION

Gaming Equipment

Gaming Chips, Tokens and Plaques; Storage and Security

Casino Vaults

Proposed Amendment: N.J.A.C. 19:46-1.6

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

Authority: N.J.S.A. 5:12-63(c), 69(a), 70(i), 70(l) and 70(m), 99(a)4, 6, 9 and 10, and 100(c).

Proposal Number: PRN 1993-126.

Submit written comments by April 14, 1993 to:

Leonard J. DiGiacomo, Senior Counsel
Casino Control Commission
Arcade Building
Tennessee Avenue and Boardwalk
Atlantic City, NJ 08401

The agency proposal follows:

Summary

The proposed amendment will permit casino licensees, with prior Commission approval, to store their secondary set or their reserve gaming chips and plaques in any secure area that is adjacent to and accessible exclusively from the casino. Currently, reserve gaming chips may be stored in locked compartments either in a casino vault or in the cashiers' cage, whereas the secondary set of chips and plaques may only be stored in a vault.

Very few casino licensees have a bank-style vault that is available for such storage. "Casino vault" is not a defined term and, consequently, many casino licensees use whatever space is available, in their cashiers' cages or otherwise, for storing gaming chips and plaques.

Although the Commission has approved such storage because it has been satisfied that there is adequate security, in doing so the Commission has not employed a strict interpretation of the term "vault." The proposed amendment would alleviate the congestion in cashiers' cages without sacrificing regulatory concerns by permitting such storage in

approved, secure areas adjacent to and accessible exclusively from the casino. Of course, those casino licensees with bank-style vaults will be allowed to continue to use them to store gaming chips and plaques.

The proposed amendment also requires a casino licensee to ensure that there is adequate security throughout the day for all gaming chips and plaques in its possession. The existing requirement contemplates that a casino will be closed to the public for some portion of the day, and provides that gaming chips and plaques are to be stored securely during that time. Although adequate security for all gaming chips and plaques has always been required around-the-clock, a casino licensee's obligation to provide such security, given the advent of 24-hour gaming, will now be made explicit.

Social Impact

No significant social impact is anticipated as a result of the proposed amendment to N.J.A.C. 19:46-1.6 because the amendment only specifies where and under what circumstances gaming chips and plaques may be stored.

Economic Impact

By giving casino licensees more options for storing gaming chips and plaques, the Commission anticipates that casino licensees may experience cost-savings through a more efficient use of the limited space available in cashiers' cages. Moreover, permitting chips to be stored in a secure area other than a bank-style vault will allow casino licensees to forego the higher cost of constructing such vaults because they are no longer required.

The Commission anticipates that it will cost casino licensees a minimal amount to comply with the amendments if adopted, particularly if casino licensees continue to use storage areas which have already been approved.

Of course, there may be less of a demand for the services of those companies which build vaults. However, any adverse economic impact to such companies may be ameliorated if they have the capacity to construct other types of secure areas for storing gaming chips.

Regulatory Flexibility Statement

No regulatory flexibility analysis is required because the proposed amendment will only affect the operation of New Jersey casino licensees, none of which is a "small business" as defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16, et seq.

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

19:46-1.6 Receipt of gaming chips, tokens or plaques from manufacturer or distributor; inventory, **security,** storage and destruction of chips, tokens and plaques

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

(c) If any of the gaming chips or plaques received **from such manufacturer or distributor** are to be held in reserve and not utilized for active gaming either at the gaming tables or in the cashiers' cage, they shall be **recorded in the chip inventory ledger as reserve chips or plaques and shall be** stored in [a] separate locked [compartment either] **compartments** in [the]:

1. An approved casino vault [or in];

2. The cashiers' cage [and shall be recorded in the chip inventory ledger as reserve chips or plaques]; **or**

3. A secure area, approved by the Commission, which is adjacent to and accessible exclusively from the casino.

(d) Any gaming chips received **from such manufacturer or distributor** that are part of the secondary set of chips shall be recorded in the chip inventory ledger as such and shall be stored **separately from the value and non-value reserve chips** in [a] locked [compartment] **compartments** in [the]:

1. An approved casino vault [separate from the reserve chips];

2. The cashiers' cage; or

3. A secure area, approved by the Commission, which is adjacent to and accessible exclusively from the casino.

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

(h) [When the casino is not open to the public,] **A casino licensee shall ensure that all times there is adequate security, as approved by the Commission, for** all **gaming** chips and plaques in [the] **its** possession [of the casino shall be stored in the chip bank, in the casino vault, or in a locked compartment in the cashiers' cage, except that chips or plaques may be locked in a transparent compartment on gaming tables provided that there is adequate security as approved by the Commission].

(i) (No change.)

(a)

CASINO CONTROL COMMISSION

Rules of the Games
Permissible Additional Wager
Proposed Amendment: N.J.A.C. 19:47-2.17

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

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

Proposal Number: PRN 1993-127.

Submit written comments by April 14, 1993 to:

Barbara A. Mattie, Chief Analyst
Casino Control Commission
Arcade Building
Tennessee Avenue and Boardwalk
Atlantic City, NJ 08401

The agency proposal follows:

Summary

The proposed amendment to N.J.A.C. 19:47-2.17 would provide casino licensees with the ability to limit the amount of an Over/Under 13 wager to the lesser of the amount wagered on the player's blackjack hand or a limit as determined by the casino licensee and posted at the table. Currently, N.J.A.C. 19:47-2.17(g) provides that the additional wager for Over/Under 13 may not exceed the amount of the player's blackjack wager. The proposed amendment would permit a casino licensee to limit the amount wagered at Over/Under 13 to less than the original blackjack wager if the amount of the original blackjack wager exceeds the posted table limit on the Over/Under 13 wager.

Social Impact

The proposed amendment will impact on those players who currently place Over/Under 13 wagers and who in the future may be restricted from wagering an amount equal to their blackjack wager. This type of restriction may make the game less socially acceptable for those players.

Economic Impact

The proposed amendment should benefit casinos who offer the Over/Under 13 wager by giving them the ability to limit their exposure to potential losses. Conversely, patrons may be limited to the amount they may win.

Regulatory Flexibility Statement

No regulatory flexibility analysis is required because the proposed amendments will only affect the operation of New Jersey casino licensees, none of which is a "small business" as defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16, et seq.

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

19:47-2.17 Permissible additional wagers

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

(g) Any additional wager made pursuant to this section shall not exceed the **lesser of:**

1. The amount of the blackjack wager made by the player pursuant to N.J.A.C. 19:47-2.3(a) and (d)[.]; **or**

2. A maximum limit established by the casino licensee.

(h) A casino licensee shall post the maximum limit of the additional wager, as established in (g) above, in accordance with N.J.A.C. 19:47-8.3.

(i) An additional wager shall have no bearing on any other wager made by the player at the game of blackjack.

(a)

CASINO CONTROL COMMISSION

Casino Hotel Alcoholic Beverage Control

Proposed Readoption: N.J.A.C. 19:50

Authorized By: Casino Control Commission, Joseph A. Papp, Executive Secretary.
Authority: N.J.S.A. 5:12-70q and 103.
Proposal Number: PRN 1993-128.

Submit written comments by April 14, 1993 to:
Mary S. LaMantia, Counsel
Casino Control Commission
Tennessee Avenue and Boardwalk
Atlantic City, New Jersey 08401

The agency proposal follows:

Summary

Pursuant to Executive Order No. 66(1978), N.J.A.C. 19:50 is scheduled to expire on May 12, 1993. N.J.A.C. 19:50 was initially promulgated in 1978 to regulate the distribution and consumption of alcoholic beverages on casino premises, as required by N.J.S.A. 5:12-70q. The rules were reorganized and updated upon readoption in 1983 (15 N.J.R. 539(b), 15 N.J.R. 932(b)), and again upon readoption in 1988. 20 N.J.R. 770(a), 20 N.J.R. 1210(a).

The chapter was substantially amended in 1992. 23 N.J.R. 3087(b), 24 N.J.R. 110(b). The rules were reorganized and streamlined, and revised so as to clarify the interrelationship between the casino hotel alcoholic beverage (CHAB) statutory scheme and the alcoholic beverage statutory controls in Title 33 of New Jersey Statutes. A number of unnecessary or obsolete provisions were eliminated. For example, Commission approval is no longer required for every alteration of the physical structure of a CHAB location, but only for major changes creating new CHAB locations, expanding or decreasing the size of existing CHAB locations, or changing the type of CHAB authorizations used therein. The Commission also eliminated a rule requiring the presence of an alcoholic beverage supervisor on the casino floor, as well as a provision which had prohibited licensees from including the cost of a drink in a showroom admission price. Other changes implemented legislative amendments to section 103 of the Casino Control Act, N.J.S.A. 5:12-1 et seq. For example, there are now six types of CHAB authorizations instead of seven, and the prohibition against offering food in the casino rooms was eliminated. The 1992 revisions also codified prior Commission rulings concerning the waiver of certain restrictions on New Year's Eve (for example, an open bar prohibition), eliminating the need for licensees to apply for individual waivers.

The Commission has determined that the rules in N.J.A.C. 19:50 are reasonable and proper for the purposes for which they were originally promulgated. Since N.J.A.C 19:50 was recently subject to comprehensive review and revision, the rules are proposed for readoption at this time without amendment.

Social Impact

The readoption of N.J.A.C. 19:50 will enable the Commission to continue to fulfill its statutory mandate to regulate the distribution and consumption of alcoholic beverages on casino premises. N.J.S.A. 5:12-70q. Further, by controlling and monitoring the promotion and sale of alcoholic beverages within casino hotels, the rules enhance the public confidence in the integrity of the casino industry. Finally, the rules allow CHAB licensees promotional flexibility and marketing opportunities which will enhance the hospitality industry in New Jersey and Atlantic City in accordance with the goals of the Act. See N.J.S.A. 5:12-1b(5).

Economic Impact

Compliance with the rules in N.J.A.C. 19:50 involves time and expense for CHAB licensees. Each applicant for CHAB licensure or license renewal is assessed an application fee as set forth in N.J.A.C. 19:41-9.7. Costs are also incurred in maintaining compliance with the various standards and procedures set forth in the rules. The Commission and Division also expend staff time in controlling and monitoring alcoholic beverage operations within the casino industry. Nevertheless, the costs associated with these rules are unavoidable if the Commission is to effectively regulate the distribution and consumption of alcoholic beverages on casino premises. However, as reflected in recent amendments, the Commission has streamlined and simplified the CHAB rules to the extent possible so as to maximize efficiency and reduce costs for both the licensees and the regulatory agencies.

Regulatory Flexibility Statement

N.J.A.C. 19:50 regulates CHAB licensees, generally casino licensees which do not qualify as small businesses under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. However, certain other CHAB licensees may qualify as small businesses under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. These include individuals or other organizations that sell alcoholic beverages in a portion of the casino hotel which they occupy pursuant to a lease or license. All CHAB licensees, including such small businesses, are assessed an application fee as set forth in N.J.A.C. 19:41-9.7. Costs are also necessarily incurred by any CHAB licensee in ensuring that its sale of alcoholic beverages in the casino hotel are fully in compliance with Commission standards and the standards of the Division of Alcoholic Beverage Control. Although some small businesses are affected by these amended rules, the objective of regulating the sale, service and consumption of alcoholic beverages in casino hotels may be met only by imposing uniform compliance upon all CHAB licensees. Thus no exemption is provided for small businesses.

Full text of the proposed readoption may be found in the New Jersey Administrative Code at N.J.A.C. 19:50.

PERSONNEL

(b)

MERIT SYSTEM BOARD

Selection and Appointment

Proposed Readoption with Amendments: N.J.A.C. 4A:4

Authorized By: Merit System Board, Anthony J. Cimino, Commissioner, Department of Personnel.
Authority: N.J.S.A. 11A:2-6(d), 11A:4-1 et seq., 11A:7-13, 40A:9-1.3 through 1.10, 40A:14-10.1a, 40A:14-12, 40A:14-45, 40A:14-123.1a, 40A:14-127, 40A:14-127.1, 38:23A-2, L. 1992 c.197, and Executive Order No. 10(1982).
Proposal Number: PRN 1993-141.

A **public hearing** concerning the proposed readoption with amendments will be held on:
Wednesday, March 31, 1993 at 5:30 P.M.
Office of Administrative Law
9 Quakerbridge Plaza
Hamilton Township, New Jersey

Please call the Regulations Unit at (609) 984-0118 if you wish to be included on the list of speakers.

Submit written comments by April 14, 1993 to:
Janet Share Zatz
Director of Appellate Practices and Labor Relations
Department of Personnel
CN 312
Trenton, New Jersey 08625

The agency proposal follows:

Summary

Pursuant to Executive Order No. 66(1978), N.J.A.C. 4A:4 expires on June 6, 1993. The Merit System Board has reviewed the rules in this chapter and, with the following exceptions has determined them to be necessary, reasonable and proper for the purposes for which they were originally promulgated, as required by the Executive Order.

Subchapter 1 concerns types of appointments which may be made. No changes are proposed to N.J.A.C. 4A:4-1.1, Career service appointments; 4A:4-1.3, Unclassified appointments; 4A:4-1.4, Conditional regular appointments; 4A:4-1.5, Provisional appointments; 4A:4-1.8, Emergency appointments; 4A:4-1.9, return of employees to their permanent titles; and 4A:4-1.11, Vacancy Review Board: State Service. However, the Board does propose a technical change to N.J.A.C. 4A:4-1.2, Senior executive service appointments: State Service, to correct a cross-reference.

The Board also proposes changes to the interim appointment rule, N.J.A.C. 4A:4-1.6, to specify the conditions under which an interim

appointment may be made. If the appointing authority wishes to fill the position/title as provided in this section, it must make an interim appointment, as long as the absent employee is on a leave for more than six months, or is on an indefinite suspension or has been removed or demoted for disciplinary reasons and is awaiting a final administrative determination by the Merit System Board. In addition, while the current rule already provides that the interim appointment is to be made from the eligible list when a complete eligible list exists for the title at issue, an amendment clarifies that applicable certification procedures, such as the rule of three, are applicable. N.J.A.C. 4A:4-1.6 and 4A:4-1.7, Temporary appointments, will include a cross-reference to N.J.A.C. 4A:4-4.7, which provides that an individual's acceptance or refusal of a temporary or interim appointment is not cause for the removal of his or her name from an eligible list. The proposed N.J.A.C. 4A:4-1.7 also included proposed language to clarify that consecutive temporary appointments in excess of the permissible periods are prohibited. Clarifying language is proposed for N.J.A.C. 4A:4-1.10, on the role of the Department of Personnel in approving appointments.

Subchapter 2 covers competitive examinations. N.J.A.C. 4A:4-2.1 would inlcude a cross-reference to a proposed new N.J.A.C. 4A:4-2.17, Application processing fees, which is further discussed below. The Board proposes changes to N.J.A.C. 4A:4-2.4, Promotional title scope: Local service, to note that when a promotion is to be made from the noncompetitive division to a related entry level career service title, the examination must also be open to all applicants who meet the complete open competitive requirements and who are in any competitive title. The Board further proposes changes to N.J.A.C. 4A:4-2.5, Promotional title scope: State Services, which are intended to provide a more rational system for State service promotional examinations. Among other changes, the rule will provide for promotion from a noncompetitive to a related competitive title, whether or not the competitive title is entry-level. It will also include a definition of "bridge title." Proposed changes to N.J.A.C. 4A:4-2.6, Eligibility for promotional examination, reflect current practice with respect to continuous permanent service requirements. In addition, service credit for promotional eligibility purposes will be calculated in the same manner as seniority for promotional scoring purposes. In subsection (f), an amendment will clarify that the opportunity to take a promotional examination will be given to those who are demoted or laterally displaced as a result of layoff, but return to the title and unit scope before the examination date. The Board also proposes a technical language change to N.J.A.C. 4A:4-2.7, Promotion upon waiver of competitive examination.

In addition, the Board proposes changes to N.J.A.C. 4A:4-2.8 (scheduling of examinations) which reflects current practice in that the proposed (c)1 and (c)2 cover all late admittance situations. In addition, with regard to written examinations or examinations containing written and performance parts, an amendment provides that candidates must arrive within 15 minutes of the scheduled time, instead of 30 minutes. This change will ensure that candidates arriving a few minutes late can take the test without disruption for other candidates.

In N.J.A.C. 4A:4-2.9, subsection (b) is being amended with regard to the situations in which police and fire promotional examination candidates are entitled to make-up examinations. Under the amendment, make-up examinations will be allowed for these candidates only in cases of debilitating injury or illness, death in the candidate's immediate family, or a candidate wedding. Changes to N.J.A.C. 4A:4-2.9 (make-up examinations) also include a deletion of (e)1 and 2 since it is not necessary to specify make-up procedures for particular types of examinations. The language to remain in (e) should cover all make-up examination situations. Proposed amendments to subsection (h) explain that in those unusual circumstances in which a make-up examination will not be held, candidates will be so notified at least 45 days prior to the examination. N.J.A.C. 4A:4-2.10 (conduct and security of examinations) will include a cross-reference to N.J.A.C. 4A:4-2.16, which provides for those examination records which are open for public inspection.

N.J.A.C. 4A:4-2.11, concerning residence standards, is being amended to address certain issues which arose following an amendment which took effect October 7, 1991 (see 23 N.J.R. 1984(a) and 2999(a)). The rule would provide that, unless otherwise specified, residency standards must be met by the announced closing date. However, as provided in *In re Leary*, 91 *N.J.* 151 (1982), a municipal appointment authority may choose to require police officer and fire fighter candidates to be residents as of the date of appointment. In those instances, the amendment would provide that residency must be continuously maintained from the closing date up to and including the date of appointment. The requirement for residency as of the date of appointment would also apply to local appointment authorities which require residence for non-uniformed employees, pursuant to N.J.S.A. 40A:9-1.3.

Technical changes to N.J.A.C. 4A:4-2.14, Accommodation and waiver of examinations, delete all references to the term "handicap" and leave "disabled" as the governing term, to reflect the intent of the federal Americans with Disabilities Act (ADA), 42 U.S.C. 12101 et seq. This amendment was suggested by the Department of Personnel's ADA Task Force on Employment. This change is intended to emphasize the uniqueness, abilities and worth of individual persons first and treat their disabilities as secondary factors.

The rule on the rating of examinations, N.J.A.C. 4A:4-2.15, is proposed to be changed to include provisions on calculating seniority for promotional examination scoring credit identical to the calculation of seniority for layoff purposes. In addition, actual practice concerning promotional scoring credit for police and fire examinations is proposed for codification.

A notable change to subchapter 2 is the addition of a new N.J.A.C. 4A:4-2.17, Application processing fees, which is required to implement P.L. 1992, c.197. The new law requires the Department of Personnel to establish a five dollar application processing fee for all open competitive and promotional examinations. Under the law, only persons receiving specific kinds of public assistance are exempted from this fee requirement, and only with respect to open competitive examinations.

The Board does not propose changes to N.J.A.C. 4A:4-2.2, Types of examinations; 4A:4-2.3, Open competitive examinations; 4A:4-2.12, Professional qualifications substitution program; 4A:4-2.13, College level examination programs; and 4A:4-2.16, Retention and inspection of examination records.

In subchapter 3, concerning eligible lists, proposed modifications to N.J.A.C. 4A:4-3.2 reflect the existing procedure for the order of names on an open competitive eligible list when there are residency requirements, pursuant to N.J.S.A. 40A:9-1.6. Proposed changes to N.J.A.C. 4A:4-3.7, Priority of eligible lists, clarify that, with regard to special reemployment list priority, an autonomous agency is equivalent to a department. "Autonomous agency" is defined in a proposed subsection (c). However, the Board proposes no changes to N.J.A.C. 4A:4-3.1, Types of eligible lists; 4A:4-3.3, Duration and cancellation of lists; 4A:4-3.4, Revival of lists; 4A:4-3.5, Consolidation of lists; 4A:4-3.6, Additions to lists; and 4A:4-3.8, Correction of errors.

Subchapter 4, concerning certification from eligible lists, includes proposed changes to N.J.A.C. 4A:4-4.7(a)8 contains a proposed exception to removal of a name because of discontinuance of an eligible's employment in the unit scope. If this situation is a result of the eligible accepting a temporary or interim appointment, then removal is not warranted. This concept is further supported in a proposed subsection (f). The Board does not propose amendments to N.J.A.C. 4A:4-4.1, Need for certification; 4A:4-4.2, Certification issuance; 4A:4-4.3, Certification from appropriate lists; 4A:4-4.4, Limitations on number of times eligible is certified; 4A:4-4.5, Certifications limited to BFOQ; 4A:4-4.6, Eligibles on military leave; 4A:4-4.9, Appointment date; and 4A:4-4.10, Certification of addditional eligibles. A technical change is proposed for N.J.A.C. 4A:4-4.8, Disposition of a certification involving the correction of a cross-reference.

Subchapter 5, concerning the working test period, includes a proposed amendment to N.J.A.C. 4A:4-5.2(b)2, to provide that an appointing authority request for an extension of a four-month working test period in State service **should** be submitted to the Department of Personnel at least five working days before the end of the period. However, the appointment authority must notify the employee of this request in writing no later than the last day of the period.

N.J.A.C. 4A:4-5.3, concerning working test period progress reports, includes a proposed change to implement a successful delegation program for State service which recently expired after a duration of three years. The amendment tracks the requirements set by the delegation program. The State appointing authority would be required to retain all working test period progress reports in the individual personnel file for each employee serving a working test period for the duration of the employee's employment and seven years thereafter. It would have to submit to the Department of Personnel a final working test period progress report and written termination notice, if applicable, within five days of the end of the working test period. If the appointing authority fails to make this submission within that timeframe, the Department of Personnel would be empowered to disapprove the termination. The appointing authority also would be required to submit to the Department

of Personnel copies of progress reports concerning a working test period when any one such report is unsatisfactory. Finally, an appointing authority would be required to retain any other working test period records identified by the Department of Personnel for auditing purposes.

No changes are proposed for N.J.A.C. 4A:4-5.1, General provisions; 4A:4-5.4, Working test period appeals; and 4A:4-5.5, Restoration to eligible list or former title.

Subchapter 6, concerning examination and selection disqualification and appeals, includes a proposed amendment to N.J.A.C. 4A:4-6.1 to implement P.L. 1992, c.197, on the application processing fee. The proposed language states that failure of a person to provide the fee and, in the case of an open competitive examination, to provide documentation of exemption from the fee, in a timely manner, constitute grounds for examination and selection disqualification. Recently, proposed changes to N.J.A.C. 4A:4-6.4, Review of examination items, scoring and administration, and 4A:4-6.6, Disqualification appeals, reflect a reorganization and restructuring of offices within the Department of Personnel. Examination appeals now have two, rather than three, levels of review. See the proposal in the December 21, 1992 issue of the New Jersey Register at 24 N.J.R. 4467(a). The Board does not propose changes to N.J.A.C. 4A:4-6.2, Actions against disqualified persons, and 4A:4-6.3, Examination and selection appeals. Technical cross-reference changes are proposed for N.J.A.C. 4A:4-6.5, Medical and psychological disqualification appeals.

Subchapter 7 concerns other types of appointments and employee movements. No changes are proposed to N.J.A.C. 4A:4-7.1, Transfers; 4A:4-7.2, Reassignments; 4A:4-7.4, Retention of rights; 4A:4-7.7, Appeals; 4A:4-7.10, Regular reemployment; 4A:4-7.11, Transfers or combining of functions; and 4A:4-7.12, Reinstatement following disability retirement. The Board does propose amendments to N.J.A.C. 4A:4-7.3, Relocation assistance in State service, to expand the program to include permanent employees who are transferred or reassigned on a permanent basis due to a relocation of an office or unit. The program will still be subject to available appropriations. The Board also proposes an amendment to N.J.A.C. 4A:4-7.5, Transfer during a working test period, to reflect the actual practice of permitting an employee serving in a working test period to complete the period if he or she is transferred because of the exercise of lateral displacement rights in the layoff process.

Technical and substantive changes are proposed for N.J.A.C. 4A:4-7.6, Lateral title change. The proposed amendment to subsection (a) would permit a lateral title change between the competitive and noncompetitive divisions, while the change in paragraph (a)3 provides that a lateral title change from the non-competitive to the competitive division is considered a promotion. The proposed amendment to paragraph (c)1 provides that, in the case of a lateral title change when the nature of the work, education and experience qualifications of the titles are dissimilar, examination procedures shall be waived, permanent status retained and aggregate seniority granted if the employee held the title permanently during current continuous service. A proposed amendment to N.J.A.C. 4A:4-7.6(d) includes clarifying language involving situations in which a lateral title change does not require the consent of the employee.

The Board also proposes amendments to N.J.A.C. 4A:4-7.8, Voluntary demotions, to make the situation equivalent to that involved in the layoff process in certain instances. Proposed changes to subsection (b) specify that, upon voluntary demotion to a previously held title, all permanent continuous service in that title is aggregated for seniority purposes. Thus, seniority rights for voluntary demotions would be parallel to those found in N.J.A.C. 4A:8-2.4(e), concerning appointments to a previously held title. In subsection (c), amendments clarify that during, or upon successful completion of, the working test period in the lower title, an employee may seek to return to his or her former, higher title by asking to be placed on a regular reemployment list. However, if the employee does not successfully complete the working test period, the employee is entitled to return to the former title. A proposed change to N.J.A.C. 4A:4-7.9, Resignation/new appointment, requires the employee's new appointing authority to inform the employee that he or she resigned permanent status prior to this new appointment.

Social Impact

The proposed readoption of N.J.A.C. 4A:4 includes numerous technical and substantive changes to the current rules concerning the selection and appointment of persons for employment in State and local government. The changes generally reflect Department of Personnel review of the rules with an eye toward clarifying and identifying current practice, correcting cross-references and some confusing language, and responding to change circumstances and recently enacted legislation.

Subchapter 1, which concerns the types of appointments that may be made, should assist appointing authorities in determining when an interim appointment is appropriate for purposes of filling a crucial slot. Adding language requiring use of applicable certification procedures when a complete eligible list exists for the title at issue ensures that a qualified individual will be selected for the position.

As for subchapter 2, which concerns competitive examinations, proposed amendments are aimed at simplifying the process of determining promotional title scopes and promotional eligibility. The changes also reflect the increasing number of noncompetitive titles and provide a path for promotion into the competitive service. Other proposed codifications of existing practice will assist applicants in understanding how the examination process works and will reduce confusion in this area. Furthermore, Subchapter 2 will make seniority calculations for eligibility and scoring purposes uniform with layoff seniority calculations, which should promote equity in treatment of employees and further the merit-based formula for promotions. The changes to the rule on make-up examinations will benefit police and fire promotional candidates who are unable to take a test due to circumstances beyond their control.

The major proposed addition to subchapter 2, N.J.A.C. 4A:4-2.17, Application processing fees, is required by recently enacted legislation. This rule should reduce the number of "no-shows," by discouraging applicants from applying for examinations they do not intend to take.

Proposed changes to subchapter 3, on eligible lists, include language to explain existing procedures with respect to residency and eligible list priorities. Proposed changes to subchapter 4 should benefit temporary and interim appointments by protecting them from removal from a list because of acceptance of one of these types of appointments.

Subchapter 5, concerning the working test period, will benefit employees by requiring an appointing authority to notify the employee by the last day of the working test period of a working test period extension. Proposed language for N.J.A.C. 4A:4-5.3, which implements a successful delegation program, will promote through recordkeeping in the area of working test periods, while reducing the amount of paperwork that must be sent from State appointing authorities to the Department of Personnel.

Subchapter 6, which involves examination and selection disqualifications and appeals, as proposed, describes more precisely than the current rules how and why candidates may be disqualified from the selection process and how such a disqualification may be challenged. In particular, new language providing grounds for disqualification in a person's failure to pay an examination processing fee or to provide documentation of an exemption from the fee is important for applicants so that they will be familiar with all eligibility criteria for a given examination.

Finally, subchapter 7, concerning other types of appointments and employee movements, includes a proposed beneficial change on relocation assistance in State service. A proposed expansion of the program to provide for employee eligibility in the case of the relocation of the employee's office or unit would allow, appropriations permitting, a wider use of this program by deserving employees. This change should boost employee morale. another helpful amendment, permitting an employee to complete the working test period he or she had already commenced before a transfer due to the exercise of lateral displacement rights in a layoff, will help to cushion the blow of the layoff process and prevent the forfeiture of a new opportunity upon which the employee has just embarked. Proposed amendments to the rules on lateral title changes and voluntary demotions make aspects of employee rights in certain instances equivalent to those afforded in a layoff situation. The extension of lateral title changes to movement between the noncompetitive and competitive divisions will enhance employee mobility. A new requirement that an employee's new appointing authority inform the employee of a resignation/new appointment situation will forestall confusion about his or her status.

In addition to the amendments described above, the rules in N.J.A.C. 4A:4 proposed for readoption without change will continue to provide a clear regulatory framework for vital activities of the Department of Personnel concerning selection and appointment. These rules have a substantial impact upon 208,000 merit system employees and 378 State and local appointing authorities. In the absence of readoption of this chapter, these individuals and government agencies would have no guidance on matters involving selection and appointment of personnel, other than the provisions of Title 11A, New Jersey Statutes.

Economic Impact

This proposed readoption with amendments will have at least a partial economic impact upon employees, appointing authorities and the public at large. Many of the proposed changes clarify existing policy. However, the proposed examination application processing fee, required by P.L. 1992, c.197, will exact a price on the filing of applications. Nevertheless, fairness is inherent in this program in that the neediest people will not be forced to pay the fee and, at the same time, will have an opportunity to compete for a job to improve their economic circumstances. Moreover, the fees generated by this program will assist the Department of Personnel in fulfilling its mission.

The proposed amendments to N.J.A.C. 4A:4-5.3, Working test period reports, will assist the Department of Personnel in keeping its costs down by requiring full working test period recordkeeping by State appointing authorities, to which the Department will have access when necessary.

Finally, the proposed expansion of the relocation assistance program will have a positive economic impact on affected State employees whose burden from such drastic changes as the relocation of an office or unit may be lessened.

The rules proposed for readoption without change continue to provide a fair and equitable system for employing and promoting public employees, based on the constitutional and statutory standards of merit and fitness. As such, these rules are beneficial to the economic security of public employees. Moreover, by insuring that government employees are selected on the basis of their knowledge, skill and abilities, these rules help secure a well-trained and efficient workforce and thus provide an economic benefit to State and local governments and the taxpayers they serve. If this chapter is not readopted, there would be a substantial negative economic impact on public employers and employees, as well as the taxpaying public. Since the provisions of Title 11A, New Jersey Statutes, provide only broad, general guidance on matters of selection and appointment, costly litigation would be needed to resolve disputes concerning the application of these statutory provisions.

Regulatory Flexibility Statement

A regulatory flexibility analysis is not required since this proposed readoption with amendments will have no effect on small businesses as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The rules proposed for readoption with amendments.

Full text of this readoption may be found in the New Jersey Administrative Code at N.J.A.C. 4A:4.

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

4A:4-1.2 Senior executive service appointments: State service

(a) A senior executive service appointment may be made to any position allocated to the senior executive service by the Board.

(b) Permanent career service employees and qualified persons without permanent status are eligible for senior executive service appointments. See N.J.A.C. [4A:3-1] **4A:3-2.**

4A:4-1.6 Interim appointments

[(a) An appointing authority may make an interim appointment to a specific position in State service or a specific title in local service, where a permanent employee is on a leave of absence. The appointing authority may reserve a position/title for the employee on leave as a vacant position/title, rather than make an interim appointment.]

(a) When an appointing authority makes an appointment to a specific position in State service or a specific title in local service, an interim appointment shall be made where the position/title is held by a permanent employee who:

1. Is on a leave of absence for more than six months;

2. Is on indefinite suspension; or

3. Has been removed or demoted for disciplinary reasons and is awaiting final administrative action by the Merit System Board on appeal.

(b) When an appointing authority does not make an appointment in the situations listed in (a) above, the appointing authority shall reserve a position/title for the absent employee as a vacant position/title.

[1.](c) Any interim appointment shall remain in effect only during the period of time that the permanent employee is on an approved leave of absence, **on indefinite suspension or awaiting final administrative action of the Merit System Board on the appeal of a disciplinary demotion or removal.**

[2.]**1.** At the end of the interim appointment, the appointee shall return to his or her permanent title.

[(b)](**d**) An interim appointee shall possess the minimum qualifications for the title.

[(c)](**e**) If a complete eligible list exists for the title, the interim appointment shall be made from that list **through applicable certification procedures. It is the responsibility of the appointing authority to request the appropriate type of certification.** An interim appointee's name shall remain on the eligible list for consideration for permanent employment.

[(d)](**f**) An interim appointee shall continue to accrue seniority in his or her permanent title.

[(e)](**g**) The layoff rights of an interim appointee shall be determined from his or her permanent title. See N.J.A.C. 4A:8-2.

[(f)](**h**) The appointing authority shall advise interim appointees of their rights under an interim appointment. **See N.J.A.C. 4A:4-4.7 for effect on permanent appointment rights.**

4A:4-1.7 Temporary appointments

(a) The Commissioner may approve temporary positions for an aggregate period of not more than six months in a 12-month period. A temporary appointment for a maximum of 12 months may be approved by the Commissioner to a position established as a result of a short-term grant.

(b) A temporary appointee shall meet the minimum qualifications for the title.

(c) [The acceptance or refusal of a temporary appointment shall not affect any future permanent appointment rights.] **See N.J.A.C. 4A:4-4.7 for effect on permanent appointment rights.**

(d) Consecutive temporary appointments in excess of the periods set forth in (a) above are prohibited.

4A:4-1.10 Approval of appointments by Department of Personnel

(a) All **initial and subsequent** appointments, promotions, and related personnel actions are subject to the **review and** approval of the Department of Personnel.

(b) Following submission and review of personnel actions, the appointing authority shall be notified by the Department of Personnel whether the action has been approved or disapproved, and the reasons for any disapproval. The appointing authority shall provide written notice to all affected employees of such personnel actions.

SUBCHAPTER 2. COMPETITIVE EXAMINATIONS

4A:4-2.1 Announcements and applications

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

(i) See N.J.A.C. 4A:4-2.17 for application processing fee procedures.

4A:4-2.4 Promotional title scope: local service

(a) If a title which is the subject of a promotional examination is part of a title series, then the examination shall be open to one of the following:

1. The next lower or next two lower in-series titles; or

2. All applicants in the unit scope who meet the open competitive requirements and all applicants in the next lower or next two lower in-series titles.

(b) The title scope described in (a)2 above may be used when the appointing authority requests a wider title scope or provisionally promotes an employee who does not have permanent status in an in-series title.

(c) When the title which is the subject of the promotional examination is not part of a title series, the examination shall be open to all applicants having a total of one year permanent service who meet the open competitive requirements.

(d) When a promotion is to be made from the noncompetitive division of the career service to a related entry level title in the competitive division of the career service, the examination shall be open to all applicants who meet the complete open competitive requirements and who are either:

1. Serving in the next lower or next two lower in-series noncompetitive titles **or in any competitive title**; or

2. Serving in all related noncompetitive titles **or in any competitive title.**

(e) In extraordinary circumstances, the Commissioner may set another appropriate title scope.

4A:4-2.5 Promotional title scope: State service

(a) For the purpose of announcing promotional examinations, all titles will be divided into one of the following categories:

1. Professional, which requires a Bachelor's or higher level degree, **with or without a clause to substitute experience for education;**

2. Para-professional, which requires at least 60 general college credits or 12 or more specific college credits (but less than a full degree), **with or without a clause to substitute experience for education;** or

3. Non-professional, which requires less than 60 general college credits or less than 12 specific college credits.

(b) When a promotion is within the same category **as listed in (a) above,** the examination, with or without **all or part of the** open competitive requirements, as appropriate, shall be open to **permanent competitive division employees serving in** one of the following:

1. The next lower or next two lower in-series titles. See N.J.A.C. 4A:1-1.3 for definition of title series.

2. [All titles at or up to four class codes below the class code of the title which is the subject of the examination.] **The next lower in-series title, if one exists, and all other competitive division titles at specified class code levels below the promotional title.** See N.J.A.C. 4A:1-1.3 for definition of class code.

3. [All titles to a level that is more than four class codes below the class code of the title which is the subject of the examination. In such case, applicants must meet the open competitive requirements unless the Commissioner finds sufficient justification not to require one or all of the open competitive requirements.] **The next lower in-series title, if one exists, and all other permanent competitive division employees who meet the complete open competitive requirements.**

[4. All applicants in the unit scope who meet the open competitive requirements.]

[5.]**4.** To related titles, pursuant to an established plan approved by the Commissioner.

[6.]**5.** In extraordinary circumstances, the Commissioner may set another appropriate title scope.

(c) When a promotion is between categories as listed in (a) above, the [Department shall open the examination to either all applicants having a total of one year permanent service who meet the open competitive requirements, or to all titles at or up to three class codes below the class code of the title which is the subject of the examination, with or without open competitive requirements, as appropriate] **examination shall be open to permanent competitive division employees currently serving in the announced unit scope and who meet one of the following criteria:**

1. All applicants who meet the complete open competitive requirements;

2. All applicants who are permanent in a bridge title or titles approved by the Commissioner and who meet the complete open competitive requirements. A bridge title is one which is recognized by the Department of Personnel as related to a higher category title in terms of work performed and knowledge, skills and abilities required;

3. All titles that are in the same category as the announced title and that are in specified class codes below the announced title, including the next lower in-series title if one exists, with or without all or part of the open competitive requirements, as appropriate, and all applicants as described in (c)2 above; or

4. In extraordinary circumstances, the Commissioner may set another appropriate title scope.

(d) When a promotion is to be made from the noncompetitive division [of the career service] to a related [entry level] title in the competitive division [of the career service], the examination shall be open to all [applicants] **permanent employees** who meet [the complete open competitive requirements and who are, either] **one of the following:**

1. Serving in the next lower or next two lower in-series noncompetitive titles **and possessing the complete open competitive requirements;** [or]

2. Serving in all related noncompetitive titles **and possessing the complete open competitive requirements;**

3. All competitive division titles at specified class code levels below the announced title, with or without all or part of the open competitive requirements, and all titles as described in (d)1 or 2 above;

4. Competitive division employees who meet complete open competitive requirements and all titles as described in (d)1 or 2 above; or

5. In extraordinary circumstances, the Commissioner may set another appropriate title scope.

(e) The movement of a permanent employee in the noncompetitive division to a related title **in the same category and** with the same class code in the competitive division [of the career service] shall be considered a promotion for purposes of this subchapter. The **title scope of the** examination shall be [open to all applicants who meet the complete open competitive requirements and who are either:

1. Serving in a related noncompetitive title with the same class code as the promotional title, the next lower in-series noncompetitive title and related lower competitive titles; or

2. Serving in competitive and noncompetitive titles with the same class code or up to three class codes below the title which is the subject of the examination] **established as set forth in (d) above.**

4A:4-2.6 Eligibility for promotional examination

(a) Applicants for promotional examinations shall meet all of the following criteria by the announced closing date:

1. Have one year of continuous permanent service for an aggregate of one year **immediately preceding the closing date** in a title or titles to which the examination is open. Aggregate service [does not include periods of suspension, leaves of absence without pay, and periods of layoff or furlough] **shall be calculated in the same manner as seniority as set forth in N.J.A.C. 4A:4-2.15.**

2. [Meet] **Be currently serving in the announced unit scope in a title to which the examination is open and meet** all other requirements contained in the announcement. If an examination announcement is amended, all requirements must be met by the announced closing date **whether or not the application filing date is changed;**

3. Have not received a Performance Assessment Review (PAR) final rating of a Four, Marginally Below Standards, or Five, Significantly Below Standards (or equivalent in an approved local service evaluation program) in each of the two rating periods immediately preceding the announced closing date; and

4. File an application on or before the application filing date.

(b) In local service, applicants for promotion from entry level law enforcement or firefighter titles shall have three years of continuous permanent service in a title to which the examination is open, except as otherwise provided by law.

(c) Except when permitted by the Merit System Board for good cause, such as a documented affirmative action basis, applicants for promotional examinations with open competitive requirements may not use experience gained as a result of out-of-title work to satisfy the requirements for admittance to the examination or for credit in the examination process. The Department of Personnel may recommend to the Board good cause situations where out-of-title work should be accepted.

(d) Employees who have accepted a voluntary demotion to or are appointed from a special reemployment list to a title to which the examination is open, may, in order to satisfy the requirement of (a)1 above, include continuous permanent service in any higher related or comparable title.

(e) An employee who has established eligibility for a promotional examination with a closing date earlier than the effective date of a layoff shall be permitted to take such examination.

(f) Employees who are [laid off] **separated or displaced as a result of layoff** and who subsequently return to a title **and unit scope** to

which a promotional examination is open between the filing deadline and the examination date, shall be allowed to file for the examination.

(g) The time requirements specified in (a) and (b) above may be reduced to completion of the working test period if:

1. There is currently an incomplete promotional list and/or the number of employees eligible for examination will result in an incomplete list;

2. It appears that vacancies to be filled within the duration of the promotional list will exceed the maximum number of eligibles that could result from examination; or

3. Other valid reason as determined by the Commissioner.

4A:4-2.7 Promotion upon waiver of competitive examination

(a) The Commissioner may authorize the promotion of a qualified permanent employee in the competitive division of the career service by regular appointment without competitive examination if:

1. The employee has been successfully tested in the basic skills required for the promotional title;

2. The employee has not failed, within one year prior to the announced closing date, a promotional examination for that title. However, an employee who subsequently passed an examination for that title shall be eligible for promotion;

3. The number of interested eligibles does not exceed the number of promotional appointments by more than two; and

4. Veterans preference rights are not [affected] **a factor.**

4A:4-2.8 Scheduling of examinations

(a) Examinations may be scheduled for one or more sessions on a Statewide, regional or local basis.

(b) Candidates will be notified in an appropriate manner of the time and place of the examination, and of any postponement or cancellation.

(c) Candidates shall be at the examination site at the designated time. Candidates arriving late shall only be admitted as follows:

1. [Candidates] **Unless the examination notice states otherwise, candidates** for written examinations or examinations containing written and performance parts shall be admitted to the examination if they arrive at the test room within [30] **15** minutes after the designated time.

[2. Candidates for a timed performance test shall be admitted to the examination if they arrive at the test room within five minutes of the designated time.]

[3.]**2.** Candidates for oral examinations or examinations containing oral and performance parts shall be admitted to the examination if they arrive at the test room within 30 minutes after the designated time, provided the last scheduled candidate has not started the examination.

(d) A candidate who arrives late and is admitted to the examination shall receive the full allotted time to complete the examination.

(e) Jurisdictions operating under Title 11A, New Jersey Statutes, shall furnish sufficient facilities for the conduct of examinations when requested by the Department of Personnel.

4A:4-2.9 Make-up examinations

(a) Make-up examinations, except for police and fire promotional examinations under (b) below, may be authorized for the following reasons:

1. Error by the Department of Personnel or appointing authority;

2. Serious illness or disability of the candidate on the test date, provided the candidate submits a doctor's certificate specifying that the candidate was not able to take the test on that day for medical reasons;

3. Documented serious illness or death in the candidate's immediate family;

4. Natural disaster;

5. Prior vacation or travel plans outside of New Jersey or any contiguous state, which cannot be reasonably changed, as evidenced by a sworn statement and relevant documentation; and

6. Other valid reasons.

(b) For police and fire promotional examinations, make-up examinations may be authorized only in cases of [documented job-related emergency or job-related medical disability, verified by the appointing authority.]:

1. Debilitating injury or illness requiring an extended convalescent period, provided the candidate submits a doctor's certification containing a diagnosis and a statement clearly showing that the candidate's physical condition precluded his or her participation in the examination;

2. Death in the candidate's immediate family as evidenced by a copy of the death certificate; or

3. A candidate's wedding which cannot be reasonably changed as evidenced by relevant documentation.

(c) Employees returning from military leave shall have an opportunity to take promotional examinations that have not yet been administered, or make-up examinations for active promotional lists for which they were eligible while on military leave. If the eligible passes the examination, his or her name will be placed on the eligible list based upon the score obtained, as if the examination had been taken when originally held.

(d) In situations involving illness, death or natural disasters, a candidate must request, in writing, a make-up examination, within five days after the examination date. In case of military leave or prior vacation plans, a written request for a make-up examination must be submitted prior to the examination date.

(e) Make-up examinations will be administered to the extent possible under the same conditions as the original examination[, except that:

1. Skilled trade performance examinations and physical performance examinations will be held with the next scheduled test and the eligibles will be added to the original list; and

2. For examinations which are held more than once a year and which may be scheduled again within six months, make-up examinations may be held with the next regularly scheduled examination and the eligibles will be added to the original list for the same title and jurisdiction].

(f) The name of any candidate passing a make-up examination will be added to the eligible list. Except for error by the Department of Personnel or appointing authority, prior appointments from the eligible list will not be affected by the addition of a name to the list.

(g) All candidates taking make-up examinations, except physical performance examinations [and those under (d) 2 above], shall, as a precondition to taking the make-up examination, be required to sign a statement that they have no knowledge of the content of the examination as a result of information gained from or furnished by other candidates who participated in the original examination.

(h) [When] **In extraordinary circumstances, such as** an examination **that** requires a multiple assessment of a candidate which results in a group consensus rating by a panel of experts, a make-up examination shall not be held. **In such cases, candidates will be so notified at least 45 days prior to the date of the examination.** The only exception [to this] will be documented error on the part of the Department of Personnel or appointing authority[. In this case], **in which case** a make-up may be granted if practicable.

4A:4-2.10 Conduct and security of examinations

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

(d) See N.J.A.C. 4A:4-2.6 on confidentiality of examination records.

4A:4-2.11 Residence standards

(a) Where residence requirements have been established, residence means a single legal residence. The following standards shall be used in determining legal residence:

1. Whether the locations in question are owned or rented;

2. Whether time actually spent in the claimed residence exceeds that of other locations;

3. Whether the relationship among those persons living in the claimed residence is closer than those with whom the individual lives elsewhere. If an individual claims a parent's residence because of separation from his or her spouse, a court order or other evidence of separation may be requested;

4. Whether, if the residence requirement of the anticipated or actual appointment was eliminated, the individual would be likely to remain in the claimed residence;

5. Whether the residence recorded on a driver's license, motor vehicle registration, or voter registration card and other documents is the same as the claimed legal residence. Post office box numbers shall not be acceptable; and

6. Whether the school district attended by child(ren) living with the individual is the same as the claimed residence.

(b) Unless otherwise specified, residency requirements shall be set by the announced closing date for the examination [and].

1. When an appointing authority requires residency as of the date of appointment, residency must be continuously maintained from [that] **the closing** date up to and including the date of appointment. **See N.J.A.C. 4A:4-4.7(a)7.**

(c) The Department of Personnel will review residence requirements for examination candidates. It is the responsibility of the appointing authority to review and enforce residence requirements relating to appointment and continued employment.

(d) When there is a requirement that an employee reside within a specific distance of the work site, a written request must be submitted by the appointing authority to the Department for approval of such a restriction.

1. A request must be received and approved prior to the announcement of the examination.

2. However, the Department may, in appropriate circumstances, add special residency limitations after an eligible list is promulgated.

(e) An applicant seeking to appeal a residency determination shall utilize the procedures contained in N.J.A.C. 4A:4-6.6. The applicant shall have the burden of proving his or her residence.

4A:4-2.14 Accommodation and waiver of examinations for disabled [or handicapped] persons

(a) Otherwise qualified applicants who have a disability [or handicap] may request accommodation in taking an examination by indicating their request for accommodation on the examination application.

1. Upon receipt of the request for accommodation, the Department shall make reasonable accommodation where appropriate and notify the candidate of the arrangements.

(b) The Commissioner may waive an examination for an otherwise qualified candidate or provisional who suffers from a physical, mental or emotional affliction, injury, dysfunction, impairment or disability which makes it physically or psychologically not practicable to undergo the testing procedure for a particular title, but does not prevent satisfactory performance of the title's responsibilities under conditions of actual service.

1. A request for waiver shall be in writing, filed with the Department and contain:

i. The examination's title and symbol number, or in the case of a provisional, his or her title and employer;

ii. A statement from an appointing authority utilizing the title that the individual can satisfactorily perform the duties of that title under actual conditions of service;

iii. A physician's statement with supporting medical documentation;

iv. Whether the individual has previously filed for or taken an examination for that title, the results, if any, and whether an accommodation has previously been made; and

v. Agreement to undergo any additional physical or psychological examinations that the Department deems appropriate.

(c) If reasonable accommodation can be made, the waiver request will be denied and arrangements made for such accommodation.

(d) If reasonable accommodation is not possible, the Commissioner will decide whether to grant a waiver, and if granted, whether the candidate will be employed or placed on an eligible list and in appropriate cases, granted seniority.

4A:4-2.15 Rating of examinations

(a) Ratings may be computed by a valid statistical method based on the use of scoring formulas and/or conversion tables.

1. When education and experience are to be rated as part of an examination, that which exceeds the minimum shall be graded through the use of scales prepared by the Department.

[2. Ties in final earned ratings shall not be broken.]

(b) Examinations consisting of more than one part may be rated independently.

1. Candidates failing to meet minimum standards on one part of the examination shall be ineligible for the remaining parts.

2. Candidates who do not receive a passing score on one part of an examination shall be deemed to have failed the entire examination.

(c) Candidates for State service promotional examinations shall receive credit for the final Performance Assessment Review (PAR) rating on file in the candidate's personnel office as of the announced closing date for the rating period immediately preceding the announced closing date.

1. Credit shall be awarded as follows:

i. Three points for Significantly Above Standards;

ii. Two points for Exceeds Standards; or

iii. One point for Meets Standards.

2. When there is no final rating on file for a candidate as of the announced closing date, the rating for that period shall be deemed Meets Standards and credit shall be given for that rating.

3. Performance ratings shall not be used as a scoring factor in promotions when the supervisor who completes a performance rating for a subordinate or acts as a reviewer for a subordinate's rating competes in the same promotional examination as the subordinate.

(d) [The Commissioner shall set procedures for the evaluation of seniority in promotional examinations.] **In calculating seniority for promotional examinations, the following types of leaves shall not be deducted from seniority:**

1. All leaves with pay including sick leave injury (SLI):

2. Military, educational, gubernatorial appointment, personal sick, disability, family and voluntary alternative to layoff leaves of absence without pay; and

3. In local service, leave without pay to fill elective office.

(e) Suspensions, other leaves of absence without pay not identified in (d) above, and any period an employee is laid off shall be deducted when calculating seniority.

1. In local service police and fire examinations, credit for record of service will be reduced by disciplinary suspensions received during the five year period immediately preceding the announced closing date.

(f) Employees reappointed from a special reemployment list shall be considered as having continuous service for seniority purposes. However, the elapsed time between the layoff or demotion in lieu of layoff and reappointment shall be deducted from the employee's seniority.

[(e)](g) When a municipality has a volunteer fire company and paid positions are created, any volunteer firefighter who has actively served for at least two years is entitled to service credits in addition to his or her earned examination score. The highest possible score for examination performance shall be 90 percent to which the service credit shall be added. Service credits shall be not less than three nor more than 10, and shall be added only to a passing score. The service credit shall be calculated by adding one point to the number of years of service: for example, add three points for two years of service, four points for three years of service, and so on. Any service time in excess of nine years shall be awarded the 10 point maximum.

(h) Ties in final earned ratings shall not be broken.

4A:4-2.17 Application processing fees

(a) A $5.00 processing fee shall be charged for each open competitive and promotional examination application.

(b) The fee shall be paid by check or money order, made payable to NJDOP, which shall be submitted with the application.

(c) Applications received without a fee shall not be processed unless the applicant submits, within the time required by written notice from the Department of Personnel, the required fee or, for open competitive applications, proof of exemption as described in (d) below.

(d) An applicant for an open competitive examination will be granted a waiver of the fee if the applicant provides documentation showing that, as of the closing date, he or she is receiving General Assistance benefits, Aid to Families with Dependent Children, or Supplemental Security Income. Proof must consist of one of the following:

1. General Assistance—a copy of the applicant's benefits identification card (if one was issued) or a letter from the applicant's local municipal welfare director.

2. Aid to Families with Dependent Children—a copy of the applicant's identification card which shows the case number.

3. Supplemental Security Income—a copy of the applicant's latest annual award letter or proof of the applicant's Medicaid identification number for S.S.I. benefits.

(e) The fee is for processing purposes only and does not guarantee admittance to an examination or appointment to a position. The fee shall not be refunded for any reason except untimely filing of the application or cancellation of the examination.

1. The fee shall not be refunded when the cancellation is due to the lack of eligible applicants ("no admits") or when no eligible applicant appears for testing ("no show").

2. When an examination is cancelled at the request of the appointing authority, the appointing authority shall reimburse the Department of Personnel for fees refunded to applicants.

4A:4-3.2 Order of names on eligible lists

(a) The order of names on an open competitive list shall be **as follows:**

1. When an announcement is open to more than one local jurisdiction, the resulting list of eligibles shall be separated into sub-lists by the residency requirements as provided by applicable law and ordinance.

2. Within each sub-list as provided in (a)1 above, the order of names shall be:

[1.]**i.** Eligibles entitled to disabled veterans preference in order of their scores;

[2.]**ii.** Eligibles entitled to veterans preference in order of their scores; and

[3.]**iii.** Non-veteran eligibles in order of their scores.

[4.]**3.** Eligibles who receive the same score shall have the same rank. See N.J.A.C. 4A:4-4.2(c).

[5.]**4.** See N.J.A.C. 4A:5-2.1 for examples on use of open competitive list.

(b) Eligibles on a promotional list shall appear in the order of their scores.

1. When scores are tied, veterans shall be listed first within each rank. See N.J.A.C. 4A:4-4.2(c).

2. See N.J.A.C. 4A:5-2.2 for examples on use of a promotional list.

(c) Eligibles on special reemployment lists shall be ranked in order of seniority in the permanent title from which they were displaced, with the name of the person with the greatest seniority in the highest class code/level title appearing first on the list.

(d) Eligibles on regular or police and fire reemployment lists shall be ranked in the order of seniority in the permanent title from which they resigned, retired or were voluntarily demoted, with the name of the person with the greatest seniority appearing first on the list.

(e) It shall be the responsibility of an eligible to keep a current address on file with the Department of Personnel.

4A:4-3.7 Priority of eligible lists

(a) When there is more than one current eligible list for a title, the priority of the lists shall be as follows:

1. Special reemployment, when the available position/title is in the department **or autonomous agency** from which the eligible was laid off, laterally displaced or demoted in lieu of layoff;

2. Promotional;

3. Special reemployment, when the available position/title is located in a department **or autonomous agency** other than that from which the eligible was laid off, laterally displaced or demoted in lieu of layoff;

4. Regular reemployment, police or fire reemployment; and

5. Open competitive.

(b) Reinstatement of a permanent employee following disability retirement shall have priority over appointment from any eligible list, except a special reemployment list. See N.J.A.C. 4A:4-7.12.

(c) For purposes of this section, an autonomous agency in local service is one which, by statute, is a body corporate and has the powers of an appointing authority. In State service, an autonomous agency is one which, by law, is in but not under the supervision of a principal department.

4A:4-4.7 Removal of names

(a) The name of an eligible may be removed from an eligible list for any of the following reasons:

1. The causes for disqualification listed in N.J.A.C. 4A:4-6.1;

2. Permanent appointment through certification to the title for which the list was promulgated or made appropriate, except that the appointment to a lower title will not be cause for removal;

3. Inability, unavailability or refusal of eligible to accept appointment. An eligible who has declined appointment may, upon written request, have his or her name withheld from future certifications until available for appointment. The Department of Personnel must be notified when the eligible wishes to be considered for certification;

4. The eligible has a criminal record which adversely relates to the employment sought.

i. The following factors may be considered in determining whether a criminal record adversely relates to employment:

(1) The nature and seriousness of the crime;

(2) The circumstances under which the crime occurred;

(3) The date of the crime and age of the eligible when the crime was committed;

(4) Whether the crime was an isolated event; and

(5) Evidence of rehabilitation.

ii. The presentation of a pardon or an expungement shall prohibit removal from a list, except for law enforcement, correction officer or firefighter titles and other titles as the Commissioner may determine.

5. Notice by the postal authorities that they are unable to locate or deliver mail to the eligible;

6. Non-compliance with the instructions listed on the notice of certification;

7. Discontinuance of an eligible's residence in the jurisdiction to which an examination was limited or for a title for which continuous residency is required;

8. Discontinuance of the eligible's employment in the unit scope to which a promotional examination was limited, **except when the eligible has accepted a temporary or interim appointment in another unit scope.** An employee who subsequently returns to the unit scope within current continuous service may request, in writing to the Department of Personnel, that his or her name be restored to the promotional list;

9. Employees who are involuntarily transferred shall be retained on a promotional list until they have had an opportunity to take a promotional examination in the new promotional unit scope or have been appointed from the list;

10. Failure to maintain interest in a geographical area or choice; and

11. Other valid reasons as determined by the Commissioner.

(b) An appointing authority that requests removal of an eligible's name from a list shall submit to the Department, no later than the date for disposition of the certification, all documents and arguments upon which it bases its request.

1. Unless otherwise provided, the appointing authority shall provide the eligible with copies of all materials sent to the Department.

2. If the appointing authority fails to provide either the Department or the eligible with copies of materials, the request for removal may be denied.

(c) The Department of Personnel shall determine if there are sufficient grounds for removal, notify the appointing authority and the eligible of its decision, and advise the eligible of his or her appeal rights.

(d) An eligible may appeal his or her removal from an eligible list utilizing the procedures in N.J.A.C. 4A:4-6.3.

(e) The removal of names from an eligible list will advance the rank order of all names below it. The Department may supplement a certification to provide the appointing authority with the number of names necessary for a complete certification.

(f) Acceptance or refusal of a temporary or interim appointment shall not be cause for removal from an eligible list.

4A:4-4.8 Disposition of a certification

(a) Upon receipt of a certification, an appointing authority shall take whichever of the following actions is appropriate when a permanent appointment is to be made:

1.-2. (No change.)

3. Appoint one of the top three interested eligibles (rule of three) from an open competitive or promotional list, provided that:

i.-ii. (No change.)

iii. See N.J.A.C. 4A:4-[2(c)2] **2.15(h)** for tie scores.

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

4A:4-5.2 Duration

(a) The working test period shall not include any time served by an employee under provisional, temporary, interim or emergency appointment. The working test period shall begin on the date of regular appointment. See N.J.A.C. 4A:1-1.3 for definition of regular appointment.

(b) The length of the working test period, except as provided in (c) through (e) below, shall be as follows:

1. In local service, a period of three months of active service, which may not be extended.

2. In State service, a period of four months of active service, which the Commissioner may extend on request of an appointing authority for an additional two months. Such request [must] **should** be submitted **to the Department of Personnel** at least five working days before the end of the four month period. The appointing authority shall notify the employee of the extension **in writing on or before the last day of the four month period**.

i. Regularly appointed employees serving in intermittent titles shall serve a working test period of 88 work days, which, upon the request of the appointing authority, may be extended by the Commissioner for an additional 44 work days. For purposes of this subsection, any part of a day shall constitute a work day.

ii. An employee serving in an intermittent title who is furloughed prior to completing the working test period, shall resume the working test period upon return from furlough.

(c) When notice of termination is served following the last day of the working test period pursuant to N.J.A.C. 4A:2-4.1(c), the working test period shall end on the date of service of the notice.

(d) Persons appointed to entry level law enforcement, correction officer and firefighter titles shall serve a 12-month working test period. A law enforcement title is one that encompasses use of full police powers.

1. In local service, law enforcement officers who are required by N.J.S.A. 52:17B-66 et seq. (Police Training Act) to complete a police training course shall not begin their working test period until notification is received by the appointing authority from the Police Training Commission of the successful completion of the police training course. However, major disciplinary procedures applicable to employees serving in a working test period (see N.J.A.C. 4A:2-2) shall also be applicable to such officers from the date of appointment until completion of police training. Upon successful completion of the working test period, the date of appointment from the eligible list shall be recorded as the date of regular appointment.

i. Law enforcement officers who have successfully completed the police training course prior to appointment shall begin their working test on the date of regular appointment.

2. Appeals from failure to successfully complete the police training course shall be in accordance with procedures established by the Police Training Commission. See N.J.A.C. 13:1-11.

(e) An approved leave of absence shall extend the completion of the working test period for a period of time equal to that leave.

1. A paid leave of absence for a correction officer or juvenile detention officer for the purpose of training required by N.J.S.A. 52:17B-68.1 shall not extend the length of the working test period unless the course in which the appointee is enrolled is scheduled to end after the one year period.

4A:4-5.3 Progress reports

(a) The appointing authority shall prepare a progress report on the employee at the end of two months and a final report at the conclusion of the working test period. If the Commissioner has extended the working test period in State service pursuant to N.J.A.C. 4A:4-5.2(b)2, the appointing authority shall also prepare a progress report at the end of five months and a final report at the conclusion of the extended working test period.

(b) For entry level law enforcement, correction officer and firefighter titles, the appointing authority shall prepare a progress report on the employee at the end of six months and a final report at the conclusion of the working test period.

(c) The appointing authority shall furnish the employee with a copy of all reports [and in State service furnish the Commissioner with a copy of the final report. In local service, such reports shall be furnished to the Commissioner upon request.]

(d) In State service, the appointing authority shall:

1. Retain all reports for an employee in his or her individual personnel file;

2. When an employee is being separated or returned to his or her permanent title due to unsatisfactory performance, submit to the Department of Personnel, within five days following the last day of the working test period, copies of all progress reports and the final report and the written notice of separation or return to his or her permanent title;

3. Retain all progress reports and related material for the length of an employee's service and for seven years following his or her separation from State service, if applicable; and

4. Retain for auditing any other records so identified by the Department of Personnel.

(e) In local service, the appointing authority shall furnish working test period progress reports to the Department of Personnel upon request.

4A:4-6.1 Examination and selection disqualification

(a) A person may be denied examination eligibility or appointment when he or she:

1. Lacks the job requirements;

2. Is ineligible, by law, for employment in the title;

3. Is physically or psychologically unifit to perform effectively the duties of the title. However, an injury incurred in the armed forces shall not be considered a disqualification unless the Commissioner considers the condition incapacitating;

4. Has failed to pass examination procedures;

5. Has been removed from the public service for disciplinary reasons after an opportunity for a hearing;

6. Has made a false statement of any material fact or attempted any deception or fraud in any part of the selection or appointment process;

7. Has a prior employment history which relates adversely to the title; [or]

8. **Has failed to pay the required application processing fee in a timely manner, or for open competitive examination, has failed to provide documentation of exemption from the application processing fee in a timely manner; or**

9. Other sufficient reasons.

(b) Except where precluded by law, a person who is disqualified pursuant to (a)5 and 7 above may for good cause, be admitted to an examination and, with the appointing authority's concurrence, certified for appointment.

(c) Any action specified in this section shall be effective upon receipt of written notice of disqualification.

4A:4-6.5 Medical and/or psychological disqualification appeals

(a) An appointing authority may request that an eligible's name be removed from an eligible list due to disqualification for medical

or psychological reasons which would preclude the eligible from effectively performing the duties of the title.

1. (No change.)

2. The appointing authority submission shall include a finding that the eligible is not qualified due to medical or psychological reasons for the title. A removal request may be denied where such professional report and recommendation is not provided. See [(e)] **(f)** below for report requirements.

3. (No change.)

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

(e) The appellant may submit to the Merit System Board a report from a New Jersey licensed physician, psychologist or psychiatrist of his or her own choosing. The appellant shall furnish the appointing authority with copies of all submissions to the Merit System Board. See [(e)] **(f)** below for report requirements.

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

4A:4-7.3 Relocation assistance: State service

(a) Subject to available appropriations, the Commissioner may allow relocations assistance for permanent employees who are transferred or reassigned on a permanent basis to a new work location due to [either] **a relocation of an office or unit, or** a closing or phasedown in anticipation of closing of a State operation.

1. In order to be eligible to participate in the program, an employee's new job site must be at least 25 miles from the prior job site.

2. Relocation assistance will be **requested,** paid and verified by the receiving appointing authority.

(b) Such assistance may consist of all or part of the following:

1. A commutation allowance applied to the round trip mileage between an employee's domicile and new job site, reduced by the normal commutation mileage between the domicile and the previous job site.

i. The allowance shall be equal to the standard State Mileage Allowance for operating a personal motor vehicle, and shall be limited to a period of six months from the effective date of the transfer.

ii. An employee who is offered fully paid car, van pooling or mass transit options shall not be eligible for a commutation allowance.

2. A one-time moving expense allowance which is to be set by the Commissioner not to exceed $1,000 for the shipment of household items from the employee's prior domicile to a domicile established as a result of the new work assignment.

i. The employee must demonstrate that the change in domicile was for the sole purpose of establishing a domicile closer to the job site.

ii. The move must be made within one year of the effective date of the transfer.

3. The relocation allowance which is to be set by the Commissioner not to exceed $1,000 for costs involved in terminating a lease, in rental situations, or costs involved in the sale and purchase of a home, including, but not limited to broker's fees and closing costs.

i. The employee must demonstrate that the change in domicile was for the sole purpose of establishing a domicile closer to the new job site.

ii. The move must be made within one year of the effective date of the transfer.

(c) Relocation assistance shall be limited at the employee's option to commutation allowance under (b)1 above or the moving expense allowance and the relocation allowance under (b)2 and 3 above.

4A:4-7.5 Transfer during a working test period

(a) An employee who is serving a working test period may only be transferred due to a transfer or combining of functions or operations, **or the exercise of lateral displacement rights in the course of layoff procedures.**

(b) An employee who is permanently transferred **during the working test period** due to a combining of functions or operations [during the working test period] **or the exercise of lateral displacement rights** shall be permitted to complete working test period in the new organizational unit.

4A:4-7.6 Lateral title change

(a) A lateral title change is the movement of a permanent employee from his or her permanent [competitive] title to an equivalent [competitive] title within the same organizational unit. Such procedures are also applicable to certain transfers under N.J.A.C. 4A:4-7.1.

1. In State service, a lateral title change may only be made if the titles are assigned the same class code.

2. Movement between variants of a title shall be considered a lateral title change.

3. In State service, a lateral title change from the noncompetitive to the competitive division is considered a promotion. See N.J.A.C. 4A:4-2.5(e).

(b) If the nature of the work, education and experience requirements of both titles are substantially similar, the employee shall retain his or her permanent status.

1. The employee shall retain accumulated seniority or service for purposes of determining promotional, layoff or demotional rights and sick and vacation entitlements.

2. In State service, the employee's rate of compensation on direct movement as adjusted for workweek, work year and the employee relations grouping, anniversary date and administrative leave entitlement shall be retained.

(c) If the nature of the work, education and experience qualifications of both titles are dissimilar, then the employee shall be appointed pending examination, **if the new title is in the competitive division,** and satisfactory completion of the working test period. An employee who fails the examination or is released at the end of the working test period shall be restored to his or her permanent title, unless disqualified for furhter employment.

1. Examination procedures [may] **shall** be waived [by the Commissioner of the Department of Personnel], **permanent status retained, and aggregate seniority granted,** if the employee has previously held the title on a permanent basis during current continuous service. **See N.J.A.C. 4A:8-2.4(e).**

2. The employee shall retain accumulated service for purposes of determining sick and vacation leave entitlements.

3. In State service, the employee's rate of compensation on direct movement as adjusted for workweek, work year and employee relations grouping, anniversary date and administrative leave entitlement shall be retained.

4. A lateral title change pending examination shall not be permitted [at the entry level of a title series, or] when either a special reemployment or complete promotional list exists or when the Department of Personnel has received a request to conduct a promotional examination.

(d) A lateral title change shall require the consent of the employee, the head of the organizational unit and the approval of the Department of Personnel except when the title change results from changes in the Department of Personnel Classification Plan, **reclassification of the employee's position, or a pre-layoff action agreed to by affected negotiations representatives and approved by the Commissioner.**

4A:4-7.8 Voluntary demotion

(a) A voluntary demotion is the voluntary movement of a permanent employee from his or her permanent title to a lower title in local service or, in State service, to another title with a lower class code, within the same organizational unit.

(b) Permanent status and seniority shall be retained when the demotion is to [any title previously held on a permanent basis during current continuous service or to] a lower related title. **See N.J.A.C. 4A:8-2.1(b) for criteria on determining related titles.**

1. When the demotion is to any title previously held on a permanent basis during current continuous service, permanent status shall be retained. All permanent continuous service in the previously held title shall be aggregated for seniority purposes.

(c) If the criteria set forth in (b) above are not met, the employee shall be appointed pending examination and satisfactory completion of the working test period. An employee who fails the examination or is released at the end of the working test period shall be restored

to his or her permanent title, unless disqualified for further employment.

1. An employee who seeks to return to his or her prior permanent title [at the end of] **during or upon successful completion of** the working test period in the lower title may request placement on a regular reemployment list.

(d) The employee shall retain accumulated service for the purpose of determining sick and vacation leave entitlements, and in State service, administrative leave entitlement.

(e) With the Commissioner's approval, this section may also apply to employees with permanent status in titles in the non-competitive division who take a voluntary demotion to a title in the competitive division of the career service.

4A:4-7.9 Resignation/new appointment

(a) A permanent employee who is appointed from an open competitive list to a title in a different organizational unit within the same governmental jurisdiction shall be considered to have resigned from the previous permanent title.

1. Accumulated service for purposes of determining sick and vacation leave, and in State service, administrative leave, entitlements shall be retained.

2. See N.J.A.C. 4A:3-4.4(b) for salary placement in State service.

(b) The employee may request placement on the regular reemployment list for the previous title.

(c) The new appointing authority shall inform the employee of his or her effective resignation of permanent status prior to the employee's new appointment.

EDUCATION

(a)

STATE BOARD OF EDUCATION

School Districts

Proposed Repeal and New Rules: N.J.A.C. 6:3
Proposed New Rules: N.J.A.C. 6:21-12 and 6:29-1.7, 9 and 10

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

Authority: N.J.S.A. 18A:4-10, 4-15, 6-10, 6-50, 6-7A-1, 7A-1.1, 10-6, 13-14, 16-1, 17-14 to 14.3, 17-15, 17-17, 17-20, 17-32, 17-42 to 45, 18A-4, 18A-6, 22-1, 22-2, 22-14, 22-19, 22-22, 24-11, 28-9 to 28-13, 29-6 to 26-16, 40-12.1, and 49-1 to 49-8.

Proposal Number: PRN 1993-140.

Submit written comments by April 14, 1993 to:
Elease E. Greene-Smith, Rules Analyst
New Jersey Department of Education
225 West State Street, CN 500
Trenton, New Jersey 08625-0500

The agency proposal follows:

Summary

Under the provisions of Executive Order No. 66(1978), the rules at N.J.A.C. 6:3 will expire on July 8, 1993. As required by the Executive Order, the Department of Education has reviewed these rules and determined them to be necessary, reasonable and proper for the purpose for which they were originally promulgated, except that N.J.A.C. 6:3-1.7 and 1.16 are recommended for repeal.

The State Board of Education is considering the readoption and recodification of the remainder of this chapter, with amendments, pursuant to N.J.S.A. 18A:4-10, 18A:4-15, 18A:6-10, 18A:6-50, 18A:7A-1, 18A:7A-1.1, 18A:10-6, 18A:13-14, 18A:16-1, 18A:17-14 to 14.3, 18A:17-15, 18A:18A-4, 18A:18A-6, 18A:22-1, 18A:22-2, 18A:22-14, 18A:22-19, 18A:22-22, 18A:24-11, 18A:28-9 to 28-13, 18A:29-6 to 29-16, 18A:40-12.1, and 18A:49-1 to 49-8.

Most of the rules contained in this chapter were originally adopted in 1955. Under the recodification of rules in 1969, N.J.A.C. 6:3 was established as a chapter of general provisions for the administration of school districts. This chapter is being readopted as a repeal and new rules because of the extent of both technical and substantive changes.

The most significant change is the expansion and recodification of rules contained in N.J.A.C. 6:3-6. These rules establish uniform policies and procedures for cooperating with law enforcement operations and activities on or near school grounds to ensure a safe and drug free school environment. The rules have been expanded to address the unlawful possession and distribution of firearms and other deadly weapons, as well as the commission of other offenses on school property. Additionally, since anabolic steroids have recently been classified by the Department of Health as Schedule III controlled dangerous substances (1991), they are included in the rules. These rules are supported by an amended Memorandum of Agreement approved by the Department of Law and Public Safety and the Department of Education.

A review of these and other proposed amendments follows:

Subchapter 1. General Provisions

This subchapter is being reorganized and renamed "Boards of Education" to reflect the content of its provisions. N.J.A.C. 6:3-1.2, Board of school estimate; 1.9, Special meetings of district boards of education; 1.5, Minimum bond requirements for treasurer of school moneys; 1.24, Local district responsibility for employment of staff; and 1.23, Support residencies for regularly certified, inexperienced first-year principals, are being recodified as N.J.A.C. 6:3-1.1 through 1.5, respectively.

These rules are being amended as new rules to continue to provide administrative direction for local boards of education in meeting statutory requirements regarding special meetings and the treasurer of school moneys, and the regulatory requirements of N.J.A.C. 6:11 to provide residency support programs for first-year principals who obtained their regular principal endorsement before September 1, 1989. New section N.J.A.C. 6:3-1.2, Special meetings of district boards of education, is being amended to include references to N.J.S.A. 18A:10-6, which governs the scheduling of board of education meetings, and N.J.S.A. 10:4-6 et seq., the Open Public Meetings Act, and to specify that public notice of such meetings must include the date, time, location and purpose of the meeting, as required by these statutes. Subsection (d) of new section N.J.A.C. 6:3-1.3, which requires the Commissioner to notify school districts of the minimum surety bond required for treasurers of school moneys, is being repealed; this is a long-standing requirement implemented by school districts and notification is no longer necessary.

The remaining sections of the current subchapter 1 are being recodified into other subchapters, as enumerated below, or repealed.

N.J.A.C. 6:3-1.3, Chief school administrator, and 1.22, Evaluation of tenured and nontenured chief school administrators, are being recodified as N.J.A.C. 6:3-2.1 and 2.2, respectively, in a new Subchapter 2, Chief School Administrator. The rules are being amended as new rules to maintain the definition of "chief school administrator," which is applicable throughout Title 6 of the New Jersey Administrative Code, as well as requirements for the evaluation of chief school administrators. Amendments to the new N.J.A.C. 6:3-2.2 establish a requirement that newly elected or appointed board of education members must complete a training program on the evaluation of the chief school administrator within six months of assuming office, pursuant to N.J.S.A. 18A:17-20.3. This requirement was enacted by P.L. 1991, c.267. In addition, the word "defined" is added to the end of the heading of the new N.J.A.C. 6:3-2.1 and the word "Annual" is inserted at the beginning of the heading of the new N.J.A.C. 6:3-2.2.

N.J.A.C. 6:3-1.13, Full-time employment of teachers, and 1.15, Duty-free lunch periods for teachers, are being recodified as N.J.A.C. 6:3-3.1 and 3.2, respectively, in a new Subchapter 3, Conditions of Employment for Teachers. There are no amendments proposed for these rules, which are being readopted as new rules in order to maintain requirements for the minimum number of hours per full-time school day and duty-free lunch periods for teachers.

N.J.A.C. 6:3-1.19 through 1.21 are being recodified as N.J.A.C. 6:3-4.1 through 4.3, respectively, to form a new Subchapter 4, Supervision, Observation and Evaluation. Readopting these rules as new rules, with minor amendments, will maintain procedures for the evaluation of nontenured and tenured teaching staff members. An amendment to subsection (d) in the new N.J.A.C. 6:3-4.1 will specify that the evaluation of nontenured teaching staff must be completed annually, as required by N.J.S.A. 18A:27-3.1. This statute also requires that a conference be conducted between the nontenured teaching staff member and the administrator or supervisor who has made the evaluation within a "reasonable" amount of time following the evaluation. In order to ensure

that a nontenured teaching staff member receives more immediate feedback regarding his or her evaluation, subsection (e) of the new N.J.A.C. 6:3-4.1 is being amended to permit 10 days, rather than 15 days, following each evaluation for this conference to occur. In addition, technical amendments to this subchapter will update and correct citations of other rules and statutes.

N.J.A.C. 6:3-1.10, Standards for determining seniority, is being recodified as N.J.A.C. 6:3-5.1, which will be the only section of a new Subchapter 5, Seniority. These rules are being readopted as new rules, with amendments, to ensure the continuation of conditions upon which teaching staff members can accrue seniority. In subsection (l), paragraphs 2 and 3 are being removed since county vocational districts are school districts and, therefore, must employ a chief school administrator, not a director. Modifications to paragraph 4 of the subsection (l) will require boards of education to adopt job descriptions for each assistant superintendent title and specification of endorsement; this provision is consistent with the current requirements for supervisors contained in paragraph 12 of this subsection and with proposed new requirements for directors. Paragraph 5 of this subsection is being deleted, and a new category of director is defined within paragraph 3; the new definition will categorize director as a separate position, consistent with the requirements for the assistant superintendent and supervisor positions. Finally, paragraph 12 of this subsection is being amended to delete the word "approved" as there is no specification of an approving authority, and supervisor is a recognized title for which approval by the county superintendent, pursuant to N.J.A.C. 6:11-3.3(b), is not necessary.

N.J.A.C. 6:3-1.14, Eye protection in public schools, is being recodified and shown as a new rule at N.J.A.C. 6:29-1.7. The readoption of this section is necessary to maintain standards of eye protection for students and school staff when working with substances or equipment that are potentially hazardous to their eyes. The chapter to which this section is being relocated includes other rules pertaining to safety.

Finally, N.J.A.C. 6:3-1.7, Purchase of food supplies in school cafeterias and home economics classes, and 1.16, Veterans, disabled or wounded, are being repealed. The rules in N.J.A.C. 6:3-1.7 are no longer necessary due to the inclusion of similar provisions in N.J.A.C. 6:20-2.6. The rules in N.J.A.C. 6:3-1.16 are being repealed because they were adopted pursuant to a statute (N.J.S.A. 17:22-6) which was repealed by the enactment of P.L. 1987, c.293.

Subchapter 2. Pupil Records

The rules contained in this subchapter are being recodified as subchapter 6; N.J.A.C. 6:3-2.1 through 2.8 are renumbered as N.J.A.C. 6:3-6.1 through 6.8, respectively. These rules govern the manner in which information related to an individual pupil is gathered and maintained, and who has rights of access to such pupil records. New provisions at N.J.A.C. 6:3-6.5(c) have been added to address access to pupil records by personnel employed in educational programs other than school district personnel and by officials of the U.S. Department of Education. With the exception of a new subsection (c) in N.J.A.C. 6:3-6.5, no additional changes are being made at this time. Other changes to these rules, to comply with Federal requirements were adopted at 24 N.J.R. 4362(a) in the December 7, 1992 New Jersey Register.

Subchapter 3. Withdrawal from Limited Purpose Regional Districts

The rules contained in this subchapter are being recodified as subchapter 7; N.J.A.C. 6:3-3.1 through 3.5 are renumbered as N.J.A.C. 6:3-7.1 through 7.5, respectively. These rules govern the manner by which a constituent district of a limited purpose regional school district may withdraw from the regional district pursuant to N.J.S.A. 18A:13-51 et seq. The readoption of these rules, as new rules with amendments, is necessary to provide guidance to school districts seeking to withdraw from a limited purpose regional district. Amendments throughout this subchapter will permit a municipality that is part of an all purpose regional school district to withdraw from that district according to procedures similar to those applicable to limited purpose regional districts. These amendments are being made pursuant to N.J.S.A. 18A:13-66 et seq., which was enacted as P.L. 1989, c.267, and established the process for withdrawal from an all purpose regional school district.

Subchapter 4. Senior Citizens' Transportation

The rules in this subchapter, which consists of N.J.A.C. 6:3-4.1, are being recodified as a new subchapter 12 in N.J.A.C. 6:21. The readoption of these rules, as new rules with amendments, will maintain provisions for school districts that choose to permit the use of their school buses by senior citizens' groups. Amendments also will permit the use of school buses for transporting handicapped citizens and children and adults participating in municipal recreation program, pursuant to N.J.S.A. 18A:39-22. In addition an amendment will make the minimum liability insurance requirements for senior citizen transportation consistent with the requirements in N.J.A.C. 6:21-17.1, which specifies minimum liability insurance levels for pupil transportation.

Subchapter 5. The Reporting of Allegations of Child Abuse

The rules in this subchapter are being eliminated from Chapter 3, School Districts, and recodified in Chapter 29, Health, Safety and Physical Education, as a new N.J.A.C. 6:29-9; N.J.A.C. 6:3-5.1 and 5.2 of the current subchapter 5 will become N.J.A.C. 6:3-9.1 and 9.2, respectively, of the new subchapter 9. No changes in rule language are proposed. These rules implement the legislative requirements of N.J.S.A. 9:6-1 et seq., enacted as P.L. 1987, c.341, which requires the Department of Education, in consultation with the Department of Human Services, to adopt rules concerning the relationship, rights, and responsibilities of local school districts, and the Department of Human Services in reporting and investigating allegations of child abuse.

Subchapter 6. Enforcement of Drug Free School Zones

The rules in this subchapter are being eliminated from Chapter 3, School Districts, and recodified in Chapter 29, Health, Safety and Physical Education, as a new N.J.A.C. 6:29-10; N.J.A.C. 6:3-6.1 through 6.4 of the current Chapter 3, subchapter 6, will become N.J.A.C. 6:29-10.1 and 10.4, respectively, of the new Chapter 29, subchapter 10, and the heading of the new subchapter will be "Safe and Drug Free Schools," reflecting the expanded scope of these rules.

The rules recodified in N.J.A.C. 6:29-10.1 set forth the purpose of the subchapter. It is the intent of these rules to establish uniform Statewide policies and procedures for cooperating with law enforcement operations and activities on or near school grounds to ensure a safe and drug free school environment.

N.J.A.C. 6:29-10.2 requires local district boards of education to adopt policies and procedures to ensure cooperation between school staff and law enforcement in matters relating to the unlawful possession, distribution and disposition of: steroids, drug paraphernalia, alcohol, firearms and other deadly weapons. Language regarding the use of controlled dangerous substances (as distinguished from possession or distribution) has been removed, since the Substance Abuse code (N.J.A.C. 6:29-9) already establishes reporting, notification and examination requirements for students suspected of being under the influence of a substance.

N.J.A.C. 6:29-10.3 sets forth the general requirements for local district policies governed by this subchapter. Language has been added to this subsection to reference the Substance Abuse code as noted above. Other changes in this subsection reflect the additional requirement of including firearms and other deadly weapons in the districts' procedures regarding interviews of pupils, responsibilities of staff concerning the safe and proper handling of seized substances and items, notification of parents, inservice training, and agreements of understanding.

N.J.A.C. 6:29-10.4, reporting procedures and N.J.A.C. 6:29-10.5, handling of substances, firearms and other items, set out the procedures for districts in reporting and handling controlled dangerous substances, drug paraphernalia and new requirements for firearms and other deadly weapons.

N.J.A.C. 6:29-10.6 protects from disclosure all information concerning a pupil's or staff member's involvement in a school intervention or treatment referral program. It has been amended to clarify that the only school intervention and treatment program which is protected by 42 CFR Part 2, the Federal confidentiality regulations, is the substance abuse intervention or treatment-referral program.

Subchapter 7. Provisions for the Education of Homeless Children and Youth

This subchapter is being recodified as subchapter 8; N.J.A.C. 6:3-7.1 through 7.10 are recodified as N.J.A.C. 6:3-8.1 through 8.10, respectively. The rules contained in the recodified subchapter 8 were originally developed to establish uniform Statewide policies and procedures for ensuring that homeless children and youth have access to a free and appropriate public education. The Department has reviewed its provisions for homeless children and youth (N.J.A.C. 6:3-8) and find that they continue to be necessary for implementing the requirements of N.J.S.A. 18A:38-1 and N.J.S.A. 18A:7B-12.

In the recodified N.J.A.C. 6:3-8.3(b), a new paragraph 5 has been added to ensure that all segments of the homeless population are

included in the rules. Current paragraphs 5 and 6 are being recodified as 6 and 7, respectively. Also, the word "who" has been removed and replaced with "which" in both paragraphs 6 and 7. This technical change has been made to avert confusion and to add clarity.

The recodified N.J.A.C. 6:3-8.3 has been amended to add a new subsection (c). This new subsection (c) now includes a process for resolution of disputes regarding determinations of homeless.

Social Impact

It is expected that the readoption of N.J.A.C. 6:3 through the repeal and new rule procedure, with the proposed amendments and recodifications, will have a positive social impact. Since adopted, these rules have provided for the implementation of various statutes governing the administration of school districts, as enumerated above. Proposed amendments to the rules will: expand efforts by local school districts to maintain safe and drug free schools; permit the use of school buses for transportation of handicapped citizens and those who participate in municipal recreational programs; and establish a process for the withdrawal of a constitutent municipality from an all purpose regional school district.

Specifically, the rules as amended pertaining to safe and drug free schools recognize that the commission of serious offenses on school property not only undermines the educational environment, but can directly endanger the safety and well-being of members of the school community. The goal of these rules is to safeguard the essential right of all students and school employees to enjoy the benefits of a school environment which is conducive to education, and free of the disruptive influence of crime, violence, intimidation and fear.

The proposed readoption and recodification of N.J.A.C. 6:3-1.14 will have a beneficial social impact in that eye protection will continue to be required in all regular school program areas when dangerous substances are used or in which certain activities could result in eye damage.

The proposed readoption and recodification of N.J.A.C. 6:3-2.1 through 2.8 will have a favorable impact upon the public in that the rules will ensure that local school districts establish procedures that comply with the amended code concerning pupil records.

Economic Impact

The proposed rules will have little economic impact on school districts. Provisions for boards of education, the chief school administrator, conditions of employment for teachers, supervision of instruction, seniority, and pupil records require procedures that are long-standing administrative functions of school districts and do not require new resources for implementation. Additional provisions for the use of school buses are permissive and boards of education choosing to make school buses available for such uses also may rquire those seeking the use of their vehicles to pay all or part of the costs incurred by the district. The amended rules pertaining to safe and drug free schools may require school districts to incur related costs associated with the development and distribution of district policy and procedures required pursuant to this rule. The proposed changes, which require school districts to revise existing policies to include provisions for dealing with firearms and other deadly weapons, may be expected to have nominal administrative costs attached to them.

Since the administrative framework for referring students and employees suspected of possessing and/or distributing controlled dangerous substances is already in place, costs will be reflected in increased administrative time at the building level dedicated to following through with potentially more referrals to local police.

Additionally, since all staff are required to be aware of procedures concerning the safe and proper handling of items seized pursuant to these rules, training, and associated costs therefor, will be necessary at the local level.

Amendments to the provision of education to homeless children and youth will have little economic impact on school districts as once a district of residence has been identified for a homeless child, the school district will continue to receive State aid for as long as the child is homeless. This aid will provide funds for the district of residence to carry out the requirements of the law. The continuing costs of in-service training for school district employees, resulting from the readoption of rules pertaining to the reporting of allegations of child abuse is necessary to protect the health and safety of students. Minimal expenditure may be associated with the staff time of the designated district liaison and with procedures undertaken in cooperation with the Department of Human Services, Division of Youth and Family Services. This would vary between districts, dependent upon the number of reported allegations of child abuse. However, minimal costs may be associated with maintaining and securing pupil records.

The proposed readoption and recodification of N.J.A.C. 6:3-3.1 through 3.5, concerning withdrawal from all purpose regional districts pose no ecnomic impact, except as constituent districts may determine through a feasibility study which voters must approve at a special election. Amendments proposed to sections of this subchapter serve to clarify the withdrawal process from all regional school districts.

Regulatory Flexibility Analysis

With the exception of N.J.A.C. 6:3-1.3(d), which requires the independent school auditor to verify the adequacy of the treasurer's surety bond and include appropriate comment in the annual school audit, the requirements of these rules impact solely upon New Jersey public school districts and upon schools operated by the New Jersey Department of Education.

Many independent public accounting firms are considered small businesses under the Regulatory Flexibility Act. However, the reporting requirement contained in N.J.A.C. 6:3-1.3(d) is consistent with audit requirements contained in N.J.S.A. 18A:23-2 and 9, and OMB Circular A-128 of the Federal Single Audit Act of 1984, and do not impose any additional burden on auditing firms. Therefore no differing requirement based on business size is offered.

Full text of the proposed repeal may be found in the New Jersey Administrative Code at N.J.A.C. 6:3.

Full text of the proposed new rules follows:

CHAPTER 3
SCHOOL DISTRICTS

SUBCHAPTER 1. BOARDS OF EDUCATION

6:3-1.1 Board of school estimate

In any district board of education operating under N.J.S.A. 18A:9-2, the mayor of the municipality comprising the school district shall be the presiding officer of the board of school estimate, and in the event of the absence of the mayor at any meeting of the board of school estimate, the members thereof present at such meeting shall proceed to elect a presiding officer pro tem.

6:3-1.2 Special meetings of district boards of education

In every school district of the State, it shall be the duty of the secretary of the board of education to call a special meeting of the board whenever requested by the president of the board to do so or whenever there shall be presented to such secretary a petition signed by a majority of the whole number of members of the district board of education requesting the special meeting. Public notice of such special meeting shall be made pursuant to law and regulation. In accordance with N.J.S.A. 18A:10-6 and N.J.S.A. 10:4-6 et seq., the public notice shall include the date, time, location, and purpose(s) of the special meeting.

6:3-1.3 Minimum bond requirements for treasurer of school moneys

(a) The minimum requirements for the surety bond for the treasurer of school moneys shall be such percentage of the current year's school budget as is required in the schedule set forth below:

Total School Budget	Minimum Bond Required
Up to $100,000.00	10 percent of budget (Minimum $5,000)
$100,000.01 to $250,000.00	$10,000 plus eight percent of all over $100,000
$250,000.01 to $500,000.00	$22,000 plus six percent of all over $250,000
$500,000.01 to $750,000.00	$37,000 plus four percent of all over $500,000
$750,000.01 to $1,000,000.00	$47,000 plus two percent of all over $750,000
$1,000,000.01 to $2,000,000.00	$52,000 plus one percent of all over $1,000,000
$2,000,000.01 to $5,000,000.00	$62,000 plus ½ percent of all over $2,000,000

$5,000,000.01 to $10,000,000.00	$77,000 plus ¼ percent of all over $5,000,000
$10,000,000.01 and upwards	$89,500 plus ⅛ percent of all over $10,000,000

(b) In fixing such minimum bond, the nearest even $1,000 shall be used.

(c) The independent school auditor shall verify the adequacy of the treasurer's surety bond which is required by N.J.S.A. 18A:17-32 and shall include appropriate comment, and a recommendation, if needed, in the annual school audit report.

6:3-1.4 Local district responsibility for employment of staff

(a) State certification requirements are those structured training and competency evaluation requirements that are prescribed by the State Board of Education in order to protect the public. In addition, the teaching and other background experiences of candidates for professional positions may often be important considerations in the local selection of specific staff for specific positions. Each district board of education shall determine the types of background experiences and personal qualities, if any, that the district requires or prefers successful candidates for specific positions to possess in addition to appropriate State certification. Such local requirements shall be based upon a careful review of the position in question, and the requirements shall emphasize the nature of experience and the quality of individual achievement desired, rather than only the amount of experience.

(b) No teaching staff member shall be employed in the public schools by any board of education unless he or she is the holder of a valid certificate (see N.J.S.A. 18A:26-2). In addition, district boards of education should exercise their right and responsibility to require job candidates to present other, more detailed documentation of their competency. Such documentation includes resumes, references, records of past experiences, college transcripts, certification test scores, assessment reports, internship evaluations, and other documentation of competency relevant to the specific position.

(c) District boards of education shall assign to administrative positions those functions which are consistent with the individual qualifications of the position occupant, and shall support the establishment of structures for making instructional decisions that take administrator qualifications into account.

6:3-1.5 Support residencies for regularly-certified, inexperienced first-year principals

(a) Regularly-certified, inexperienced first-year principals are individuals who:

1. Acquired regular New Jersey school principal endorsements pursuant to N.J.A.C. 6:11-9.5 prior to September 1, 1989;

2. Have not previously held full-time employment as principals, vice-principals, or in other positions for which the principal endorsement is required in New Jersey or elsewhere; and

3. Have been offered employment as principals or vice-principals in a New Jersey public school district.

(b) Each district employing a regularly-certified, inexperienced first-year principal shall enter into an agreement to provide a principal residency program pursuant to N.J.A.C. 6:11-9.5, including a pre-residency experience, except that:

1. Entry requirements in N.J.A.C. 6:11-9.5 shall not apply to regularly-certified, inexperienced first-year principals;

2. Special certification evaluations as described in N.J.A.C. 6:11-9.5(c)5iv shall not be conducted for regularly-certified, inexperienced first-year principals, and no evaluations or recommendations concerning their certification shall be presented to the State Department of Education; and

3. As part of the support residency, the district shall require the new principal to undergo an assessment of performance at a State-approved center during the pre-residency phase. The sole purpose of this assessment shall be to provide a diagnosis of strengths and weaknesses as a basis for designing continuing education and support exercises.

(c) The State Department of Education shall monitor local districts to determine compliance with this section.

SUBCHAPTER 2. CHIEF SCHOOL ADMINISTRATOR

6:3-2.1 Chief school administrator defined

Whenever the phrase "chief school administrator" is used throughout Title 6, it shall mean the superintendent of schools, or, if there is no superintendent, the administrative principal. The term "administrative principal" means the principal who works directly with the board of education in a district which has no position of superintendent of schools.

6:3-2.2 Annual evaluation of tenured and nontenured chief school administrators

(a) Every district board of education shall adopt a policy and implementation procedures requiring the annual evaluation of the chief school administrator by the district board of education.

(b) The purpose of the annual evaluation shall be to:

1. Promote professional excellence and improve the skills of the chief school administrator;

2. Improve the quality of the education received by the pupils served by the public schools; and

3. Provide a basis for the review of the performance of the chief school administrator.

(c) Such policy and procedures shall be developed by each district board of education after consultation with the chief school administrator and shall include, but not be limited to:

1. A determination of roles and responsibilities for the implementation of the policy and procedures;

2. Development of a job description and evaluation criteria, based upon the district's local goals, program objectives, policies, instructional priorities, State goals, statutory requirements, and the functions, duties and responsibilities of the chief school administrator;

3. Specification of methods of data collection and reporting appropriate to the job description;

4. Provision for the preparation of an individual plan for professional growth and development based in part upon any needs identified in the evaluation, which shall be mutually developed by the district board of education and the chief school administrator; and

5. Preparation of an annual written performance report by a majority of the full membership of the district board of education and an annual summary conference between the district board of education, with a majority of the total membership of the board and the chief school administrator present.

(d) Nothing shall preclude a district board of education, at its discretion, from hiring a qualified consultant to assist or advise in the evaluation process; however, the evaluation itself is the responsibility of the district board of education.

(e) Such policy shall be distributed to the chief school administrator upon adoption. Amendments to the policy shall be distributed within 10 working days after adoption.

(f) The annual summary conference between the district board of education, with a majority of the total membership of the board and the chief school administrator present, shall be held before the written performance report is filed. The conference shall be held in private, unless the chief school administrator requests that it be held in public. The conference shall include, but not be limited to:

1. Review of the performance of the chief school administrator based upon the job description;

2. Review of the chief school administrator's progress in achieving and/or implementing the district's goals, program objectives, policies, instructional priorities, State goals and statutory requirements; and

3. Review of available indicators of pupil progress and growth toward the program objectives.

(g) The annual written performance report shall be prepared by April 30 by a majority of the total membership of the district board of education and shall include, but not be limited to:

1. Performance areas of strength;

2. Performance areas needing improvement based upon the job description and evaluation criteria set forth in (c)2 above;

3. Recommendations for professional growth and development;

4. A summary of available indicators of pupil progress and growth and a statement of how these available indicators relate to the

effectiveness of the overall program and the performance of the chief school administrator; and

5. Provision for performance data which have not been included in the report prepared by the board of education to be entered into the record by the chief school administrator within 10 working days after the completion of the report.

(h) These provisions are the minimum requirements for the evaluation of chief school administrators.

(i) For purposes of this section:

1. "Chief school administrator" is defined in N.J.A.C. 6:3-2.1;

2. "Available indicators of pupil progress and growth" mean the results of formal and informal assessment of pupils as defined in N.J.A.C. 6:8-6.1; and

3. "Job description" means a written specification of the functions, duties and responsibilities of the chief school administrator and the relationship of such functions, duties and responsibilities to those of the district board of education.

(j) The evaluation procedure for a nontenured chief school administrator shall be completed by April 30 each year.

(k) Each new appointed or elected board of education member shall complete a New Jersey School Boards Association training program on the evaluation of the chief school administrator within six months of the commencement of his or her term of office pursuant to N.J.S.A. 18A:17-20.3b.

SUBCHAPTER 3. CONDITIONS OF EMPLOYMENT FOR TEACHERS

6:3-3.1 Full-time employment of teachers

The period of time in each day required for full-time employment shall be the number of hours prescribed by the district board of education but shall not be less than four clock hours.

6:3-3.2 Duty-free lunch periods for teachers

Any teacher employed in both a morning and an afternoon session shall be entitled to a duty-free lunch period during the hours normally used for lunch periods in the school. The duty-free lunch period shall not be less than 30 minutes except in a school where the lunch period for pupils is less than 30 minutes in which case the duty-free lunch period shall not be less than the lunch period time allowed pupils.

SUBCHAPTER 4. SUPERVISION, OBSERVATION AND EVALUATION

6:3-4.1 Supervision of instruction: observation and evaluation of nontenured teaching staff members

(a) For the purpose of this section, the term "observation" shall be construed to mean a visitation to an assigned work station by a certified supervisor of the local school district for the purpose of formally collecting data on the performance of a nontenured teaching staff member's assigned duties and responsibilities and of a duration appropriate to those duties and responsibilities.

1. Each of the three observations required pursuant to N.J.S.A. 18A:27-3.1 shall be conducted for a minimum duration of one class period in a secondary school, and in an elementary school for the duration of one complete subject lesson.

(b) The term "evaluation" shall be construed to mean a written evaluation prepared by the administrative or supervisory staff member who visits the work station for the purpose of observing a teaching staff member's performance of the instructional process.

(c) Each district board of education shall adopt a policy for the supervision of instruction, setting forth procedures for the observation and evaluation of all nontenured teaching staff members. Such policy shall be distributed to each teaching staff member at the beginning of his or her employment.

(d) Each policy for the supervision of instruction shall include, in addition to those observations and evaluations herein before described, an annual written evaluation of the nontenured teaching staff member's total performance as an employee of the district board of education, including, but not limited to:

1. Performance areas of strength;

2. Performance areas needing improvement based upon the job description;

3. An individual professional improvement plan developed by the supervisor and the teaching staff member; and

4. A summary of available indicators of pupil progress and growth, and a statement of how these indicators related to the effectiveness of the overall program and the performance of the individual teaching staff member.

(e) Each of the three observations required pursuant to N.J.S.A. 18A:27-3.1 shall be followed within a reasonable period of time, but in no instance more than 10 days, by a conference between the administrative or supervisory staff member who has made the observation and written evaluation, and the nontenured teaching staff member. Both parties to such a conference will sign the written evaluation report and retain a copy for his or her records. The nontenured teaching staff member shall have the right to submit his or her written disclaimer of such evaluation within 10 days following the conference and such disclaimer shall be attached to each party's copy of the evaluation report.

(f) The purposes of this procedure for the observation and evaluation of nontenured teaching staff members shall be to identify deficiencies, extend assistance for the correction of such deficiencies, improve professional competence, provide a basis for recommendations regarding reemployment, and improve the quality of instruction received by the pupils served by the public schools.

(g) "Teaching staff member" means a member of the professional staff of any district or regional board of education, or any board of education of a county vocational school, or any educational services commission, holding office, position or employment of such character that the qualifications for such office, position or employment require him or her to hold a valid and effective standard, provisional or emergency certificate, appropriate to his or her office, position or employment, issued by the State Board of Examiners and includes a school nurse. The district chief school administrator, however, will not be evaluated pursuant to this subchapter but shall instead be evaluated pursuant to N.J.A.C. 6:3-2.2.

6:3-4.2 Procedure for appearance of nontenured teaching staff members before a district board of education upon receipt of a notice of nonreemployment

(a) Whenever a nontenured teaching staff member has requested in writing and has received a written statement of reasons for nonreemployment pursuant to N.J.S.A. 18A:27-3.2, he or she may request in writing an informal appearance before the district board of education. Such written request must be submitted to the board within 10 calendar days of receipt of the board's statement of reasons.

(b) Such an informal appearance shall be scheduled within 30 calendar days from receipt of the board's statement of reasons.

(c) Under the circumstances described in this section, a nontenured teaching staff member's appearance before the board shall not be an adversary proceeding. The purpose of such an appearance shall be to permit the staff member to convince the members of the board to offer reemployment.

(d) Each district board shall exercise discretion in determining a reasonable length of time of the proceeding, depending upon the specific circumstances in each instance.

(e) Each district board shall provide adequate written notice to the employee regarding the date and time of the informal appearance.

(f) The nontenured teaching staff member may be represented by counsel or one individual of his or her own choosing.

(g) The staff member may present witnesses on his or her behalf. Such witnesses need not present testimony under oath and shall not be cross-examined by the board. Witnesses shall be called into the meeting to address the board one at a time and shall be excused from the meeting after making their statements.

(h) The proceeding of an informal appearance before the district board as described herein may be conducted pursuant to N.J.S.A. 10:4-12(b)(8).

(i) Within three days following the informal appearance, the board shall notify the affected teaching staff member, in writing, of

its final determination. Such notification may be delegated by the board to its superintendent or board secretary.

6:3-4.3 Evaluation of tenured teaching staff members

(a) Every district board of education shall adopt policies and procedures requiring the annual evaluation of all tenured teaching staff members by appropriately certified personnel (see N.J.S.A. 18A:1-1; N.J.A.C. 6:11-9.3).

(b) The purpose of the annual evaluation shall be to:

1. Promote professional excellence and improve the skills of teaching staff members;

2. Improve pupil learning and growth; and

3. Provide a basis for the review of performance of tenured teaching staff members.

(c) The policies and procedures shall be developed under the direction of the district's chief school administrator in consultation with tenured teaching staff members and shall include, but not be limited to:

1. Roles and responsibilities for implementation of the policies and procedures;

2. Development of job descriptions and evaluation criteria based upon district goals, program objectives and instructional priorities;

3. Methods of data collection and reporting appropriate to the job description including, but not limited to, observation of classroom instruction;

4. Observation conference(s) between the supervisor and the teaching staff member;

5. Provision for the use of additional appropriately certified personnel where it is deemed advisable;

6. Preparation of individual professional improvement plans; and

7. Preparation of an annual written performance report by the supervisor and an annual summary conference between the supervisor and the teaching staff member.

(d) These policies shall be distributed to reach tenured teaching staff members no later than October 1. Amendments to the policy shall be distributed within 10 working days after adoption.

(e) The annual summary conference between supervisors and teaching staff members shall be held before the written performance report is filed. The conference shall include, but not be limited to:

1. Review of the performance of the teaching staff member based upon the job description;

2. Review of the teaching staff member's progress toward the objectives of the individual professional improvement plan developed at the previous annual conference;

3. Review of available indicators of pupil progress and growth toward the program objectives; and

4. Review of the annual written performance report and the signing of said report within five working days of the review.

(f) The annual written performance report shall be prepared by a certified supervisor who has participated in the evaluation of the teaching staff member and shall include, but not be limited to:

1. Performance areas of strength;

2. Performance areas needing improvement based upon the job description;

3. An individual professional improvement plan developed by the supervisor and the teaching staff member;

4. A summary of available indicators of pupil progress and growth, and in statement of how these indicators relate to the effectiveness of the overall program and the performance of the individual teaching staff member; and

5. Provisions for performance data which have not been included in the report prepared by the supervisor to be entered into the record by the evaluatee within 10 working days after the signing of the report.

(g) These provisions are the minimum requirements for the evaluation of tenured teaching staff members.

(h) For the purposes of this section:

1. "Appropriately certified personnel" means personnel qualified to perform duties of supervision which includes the superintendent, assistant superintendent, principals, vice-principals, and supervisors of instruction who hold the appropriate certificate and who are designated by the board to supervise instruction;

2. "Indicators of pupil progress and growth" means the results of formal and informal assessment of pupils as defined in N.J.A.C. 6:8-6.1;

3. "Individual professional improvement plan" is a written statement of actions developed by the supervisor and the teaching staff member to correct deficiencies or to continue professional growth, timelines for their implementation, and the responsibilities of the individual teaching staff member and the district for implementing the plan;

4. "Job description" means a written specification of the function of the position, duties and responsibilities, the extent and limits of authority, and work relationships within and outside the school and district;

5. "Observation conference" means a discussion between supervisor and teaching staff member to review a written report of the performance data collected in a formal observation and its implications for the teaching staff member's annual evaluation;

6. "Observation" means a visitation to an assigned work station by a certified supervisor for the purpose of formally collecting data on the performance of a teaching staff member's assigned duties and responsibilities and of a duration appropriate to same;

7. "Performance report" means a written appraisal of the teaching staff member's performance prepared by an appropriately certified supervisor;

8. "Supervisor" means any appropriately certified individual assigned with the responsibility for the direction and guidance of the work of teaching staff members; and

9. "Teaching staff member" means a member of the professional staff of any district or regional board of education, or any board of education of a county vocational school, holding office, position or employment of such character that the qualifications, for such office, position or employment, require him or her to hold a valid and effective standard, provisional or emergency certificate, appropriate to his or her office, position or employment, issued by the State Board of Examiners and includes a school nurse. The district chief school administrator, however, will not be evaluated pursuant to this section, but shall instead be evaluated pursuant to N.J.A.C. 6:3-2.2.

SUBCHAPTER 5. SENIORITY

6:3-5.1 Standards for determining seniority

(a) The word "employment" for purposes of these standards shall also be held to include "office" and "position."

(b) Seniority, pursuant to N.J.S.A. 18A:29-9 et seq., shall be determined according to the number of academic or calendar years of employment, or fraction thereof, as the case may be, in the school district in specific categories as hereinafter provided. The periods of unpaid absences not exceeding 30 calendar days aggregate in one academic or calendar year, leaves of absence at full or partial pay and unpaid absences granted for study or research shall be credited toward seniority. All other unpaid absences or leaves of absence shall not receive seniority credit.

(c) In computing length of service for seniority purposes, full recognition shall be given to previous years of service within the district and the time of service in or with the military or naval forces of the United States or this State, pursuant to the provisions of N.J.S.A. 18A:28-12.

(d) Employment in the district prior to the adoption of these standards shall be counted in determining seniority.

(e) The holder of an emergency certificate shall not be entitled to seniority rights but, when he or she becomes the holder of a standard certificate, the years of employment under the emergency certificate shall count toward seniority under the standard certificate. Upon acquisition of a standard certificate, any periods of service under a provisional certificate shall also be counted toward seniority.

(f) Whenever a person shall hold employment simultaneously under two or more subject area endorsements or in two or more categories, seniority shall be counted in all subject area endorsements and categories in which he or she is or has been employed. For purposes of calculating seniority entitlement, there shall be no distinction between academic years and calendar years.

(g) Where the title of any employment is not properly descriptive of the duties performed, the holder thereof shall be placed in a category in accordance with the duties performed and not by title. Whenever the title of any employment shall not be found in the certification rules or in these rules, the holder of the employment shall be classified as nearly as may be according to the duties performed, pursuant to the provisions of N.J.A.C. 6:11-3.3.

(h) Whenever a person shall move from or revert to a category, all periods of employment shall be credited toward his or her seniority in any or all categories in which he or she previously held employment.

(i) Whenever any person's particular employment shall be abolished in a category, he or she shall be given that employment in the same category to which he or she is entitled by seniority. If he or she shall have insufficient seniority for employment in the same category, he or she shall revert to the category in which he or she held employment prior to his or her employment in the same category and shall be placed and remain upon the preferred eligible list of the category from which he or she reverted until a vacancy shall occur in such category to which his or her seniority entitles him or her.

(j) If he or she shall have insufficient seniority in the category to which he or she shall revert, he or she shall, in like manner, revert to the next category in which he or she held employment immediately prior to his or her employment in the category to which he or she shall have reverted, and shall be placed and remain upon the preferred eligible list of the next preceding category, and so forth, until he or she shall have been employed or placed upon all the preferred eligible lists of the categories in which he or she formerly held employment in the school district.

(k) In the event of his or her employment in some category to which he or she shall revert, he or she shall remain upon all the preferred eligible lists of the categories from which he or she shall have reverted, and shall be entitled to employment in any one or more such categories whenever a vacancy occurs to which his or her seniority entitles him or her.

(l) The following shall be deemed to be specific categories, not necessarily numbered in order of precedence:

1. Superintendent of schools;
2. Assistant superintendent;

i. Each assistant superintendency shall be a separate category; and

ii. District boards of education shall adopt a job description for each assistant superintendent position which shall set forth qualifications and endorsements for such position;

3. Director;

i. Each director position shall be a separate category; and

ii. District boards of education shall adopt job descriptions for each director position which sets forth the qualifications and endorsements for such position;

4. High school principal;
5. Adult high school principal;
6. Alternative school principal;
7. Vocational school principal;
8. Junior high school principal;
9. Elementary principal;
10. Supervisor;

i. Each supervisory title shall be a separate category; and

ii. District boards of education shall adopt a job description for each supervisory position which sets forth the qualifications and specific endorsements required for such position;

11. High school vice-principal or assistant principal;
12. Adult high school vice-principal or assistant principal;
13. Alternative school vice-principal or assistant principal;
14. Junior high school vice-principal or assistant principal;
15. Elementary school vice-principal or assistant principal;
16. Vocational school vice-principal or assistant principal;
17. Secondary. The word "secondary" shall include grades nine through 12 in all high schools, grades seven and eight in junior high schools and grades seven and eight in elementary schools having departmental instruction;

i. Any person holding an instructional certificate with subject area endorsements shall have seniority within the secondary category only in such subject area endorsement(s) under which he or she has actually served;

ii. Whenever a person shall be reassigned from one subject area endorsement to another, all periods of employment in his or her new assignment shall be credited toward his or her seniority in all subject area endorsements in which he or she previously held employment;

iii. Any person employed at the secondary level in a position requiring an educational services certificate or a special subject field endorsement shall acquire seniority only in the secondary category and only for the period of actual service under such educational services certificate or special subject field endorsement; and

iv. Persons employed and providing services on a district-wide basis under a special subject field endorsement or an educational services certificate shall acquire seniority on a district-wide basis;

18. Elementary. The word "elementary" shall include kindergarten, grades one through six and grades seven and eight without departmental instruction;

i. District boards of education who make a determination to reorganize instruction at grades seven and eight pursuant to these rules must do so by adoption of a formal resolution setting forth the reasons for such reorganization;

ii. Any person employed at the elementary level in a position requiring an educational services certificate or a special subject field endorsement shall acquire seniority only in the elementary category and only for the period of actual service under such educational services certificate or special subject field endorsement;

iii. Persons employed and providing services on a district-wide basis under a special field endorsement or an educational services certificate shall acquire seniority on a district-wide basis.

iv. Persons serving under elementary endorsements in departmentally organized grades seven and eight prior to September 1, 1983 shall continue to accrue seniority in the elementary category for all such service prior to and subsequent to September 1, 1983. In addition, such persons shall accrue seniority in the secondary category but limited to the district's departmentally organized grades seven and eight and the specific subject area actually taught in such departmentally organized grades, subsequent to September 1, 1983; and

19. Additional categories of specific educational service endorsements issued by the State Board of Examiners and listed in the State Board rules dealing with teacher certification (N.J.A.C. 6:11).

(m) In the event of a restructure of grade levels which results in the elimination of all junior high schools in the district and the creation of schools with a grade level organization which includes grades seven and eight the seniority rights of the junior high principals, vice principals and assistant principals displaced by such restructuring shall be transferable to the newly reorganized schools in the category as defined by (l)9 above.

SUBCHAPTER 6. PUPIL RECORDS

6:3-6.1 Definitions

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

"Access" means the right to view, to make notes, and/or to have a reproduction of the pupil record made.

"Adult pupil" means a person who is at least 18 years of age, or is attending an institution of postsecondary education, or is an emancipated minor.

"Parent" means the natural parent(s) or legal guardian(s), foster parent(s) or parent surrogate(s) of a pupil. Where parents are separated or divorced, "parent" means the person or agency who has legal custody of the pupil, as well as the natural or adoptive parents of the pupil, provided such parental rights have not been terminated by a court of appropriate jurisdiction.

"Parent surrogate(s)" means an individual or individuals approved by the district board of education in accordance with N.J.A.C.

6:28-2.2 to act on behalf of a pupil whose parents are not available to assure the pupil's educational rights.

"Pupil" means a person who is or was enrolled in a public school.

"Pupil record" means information related to an individual pupil gathered within or outside the school system and maintained within the school system, regardless of the physical form in which it is maintained. Essential in this definition is the idea that any information which is maintained for the purpose of second party review is considered a pupil record. Therefore, information recorded by any certified school personnel solely as a memory aid, not for the use of a second party, is excluded from this definition.

"Student information directory" means a publication of a district board of education which includes the following information relating to a pupil: the student's name, address, telephone number, grade level, date and place of birth, dates of attendance, major field of study, participation in officially recognized activities, weight and height relating to athletic team membership, degrees, awards, the most recent educational agency attended by the pupil and other similar information.

6:3-6.2 General considerations

(a) This subchapter applies to all district boards of education or private agencies which provide educational services by means of public funds. District boards of education shall include, but not be limited to, all county boards of special services school districts, county vocational boards of education, jointure commissions, educational services commissions, education programs operated by county residential facilities and State-operated special education programs.

(b) Each district board of education shall have the responsibility to compile and maintain pupil records and to regulate access, disclosure or communication of information from educational records in a manner that assures the security of such records in accordance with this subchapter.

(c) Pupil records shall contain only such information as is relevant to the education of the pupil and is objectively based on the personal observations or knowledge of the certified school personnel who originate(s) the record.

(d) The district board of education shall notify parents and adult pupils annually in writing of their rights in regard to pupil records and pupil participation in educational, occupational and military recruitment programs. Copies of the applicable State and Federal laws and local policies shall be made available upon request. District boards of education shall make every effort to notify parents and adult pupils in their dominant language.

(e) A nonadult pupil may assert rights of access only through his or her parents. However, nothing in these rules shall be construed to prohibit certified school personnel, in their discretion, from disclosing pupil records to nonadult pupils or to appropriate persons in connection with an emergency, if such knowledge is necessary to protect the health or safety of the pupil or other persons.

(f) The parent or adult pupil shall either have access to or be specifically informed about only that portion of another pupil's record that contains infomation about his or her own child or him or herself.

(g) Each district board of education shall establish written policies and procedures for pupil records which:

1. Guarantee access to persons authorized under this subchapter within 10 days of the request, but prior to any review or hearing conducted in accordance with the State Board of Education rules;

2. Assure security of the records;

3. Enumerate and describe the pupil records collected and maintained by the district board of education;

4. Provide for the inclusion of educationally relevant information in the pupil record by the parent or adult pupil;

5. Allow for the designation, release and public notice of directory information as defined herein;

6. Provide the parent or adult pupil a 10-day period to submit a written statement to the chief school administrator prohibiting the institution from including any or all types of information about the student in any student information directory before allowing access to such directory and school facilities to educational, occupational and military recruiters pursuant to N.J.S.A. 18A:36-19.1;

7. Assure limited access to pupil records by secretarial and clerical personnel pursuant to N.J.A.C. 6:3-6.5; and

8. Provide for the access and security of pupil records maintained in a computerized system.

(h) All anecdotal information and assessment reports collected on a pupil shall be dated and signed by the individual who originated the data.

(i) The chief school administrator or his or her designee shall require all permitted pupil records of currently enrolled pupils to be reviewed annually by certified school personnel to determine the education relevance of the material contained therein. The reviewer shall cause data no longer descriptive of the pupil or educational situation to be deleted from the records except that prior notice must be given for classified students in accordance with N.J.A.C. 6:28. Such information shall be destroyed and not be recorded elsewhere. No record of any such deletion shall be made.

(j) No liability shall be attached to any member, officer or employee of any district board of education permitting access or furnishing pupil records in accordance with these rules.

(k) When the parent's or adult pupil's dominant language is not English or the parent or adult pupil is deaf, the district board of education shall provide interpretation of the pupil record in the dominant language of the parents or adult pupil.

6:3-6.3 Mandated and permitted pupil records

(a) The district board of education shall not compile any other pupil records except mandated and permitted records as herein defined.

1. Mandated pupil records are those pupil records which the schools have been directed to compile by New Jersey statute, regulation or authorized administrative directive. Mandated pupil records shall include the following:

i. Personal data which identifies each pupil enrolled in the school district. These data shall include the pupil's name, address, date of birth, name of parent(s), citizenship and sex of the pupil. The district board of education is prohibited from recording the religious or political affiliation of the pupil and/or parent unless requested to do so in writing by the parent or adult pupil. The district is also prohibited from labeling the pupil illegitimate;

ii. Record of daily attendance;

iii. Descriptions of pupil progress according to the system of pupil evaluation used in the district. Grade level or other program assignments shall also be recorded;

iv. History and status of physical health compiled in accordance with State regulations, including results of any physical examinations given by qualified district employees;

v. Records pursuant to rules and regulations regarding the education of eduationally handicapped pupils; and

vi. All other records required by the State Board of Education.

2. Permitted pupil records are those which a district board of education has authorized by resolution adopted at a regular public meeting to be collected in order to promote the educational welfare of the pupil. The district board of education shall report annually at a public board meeting a description of the types of pupil records it has authorized certified school personnel to collect and maintain. The pupil records so authorized must also comply with this subchapter as to relevance and objectivity.

6:3-6.4 Maintenance and security of pupil records

(a) The chief school administrator or his or her designee shall be responsible for the security of pupil records maintained in the school district and shall devise procedures for assuring that access to such records is limited to authorized persons.

(b) Records for each individual pupil shall be maintained in a central file at the school attended by the pupil. When records are maintained in different locations, a notation in the central file as to where such other records may be found is required.

(c) When records are stored in a computerized system, computer programmed security blocks are required to protect against any security violations of the records stored therein. To guard against the loss of pupil records, school districts must maintain an updated duplicate copy of pupil records.

(d) Mandated or permitted records required as part of programs established through state administered entitlement or discretionary funds from the U.S. Department of Education must be maintained for a period of five years after completion of the program activities.

6:3-6.5 Access to pupil records

(a) Only authorized organizations, agencies or persons as defined herein shall have access to pupil records.

(b) The district board of education may charge a reasonable fee for reproduction, not to exceed the schedule of costs set forth in N.J.S.A. 47:1A-2, provided that the cost does not effectively prevent the parents or adult pupils from exercising their rights under this subchapter or under rules and regulations regarding educationally handicapped pupils.

(c) Authorized organizations, agencies and persons shall include only:

1. The parent of a pupil under the age of 18 and the pupil who has the written permission of such parent;

2. Pupils at least 16 years of age who are terminating their education in the district because they will graduate secondary school at the end of the term or no longer plan to continue their education;

3. The adult pupil and the pupil's parent who has the written permission of such pupil, except that the parent shall have access without consent of the pupil as long as the pupil is financially dependent on the parent and enrolled in the public school system or if the pupil has been declared legally incompetent by a court of appropriate jurisdiction. The parent of the financially dependent adult pupil may not disclose information contained in the adult pupil's record to a second or third party without the consent of the adult pupil;

4. Certified school district personnel who have assigned educational responsibility for the pupil;

5. Certified educational personnel who have assigned educational responsibility for the pupil and who are employed by:

i. An approved private school for the handicapped;

ii. A state facility;

iii. Accredited nonpublic schools in which pupils with educational disabilities have been placed according to N.J.S.A. 18A:46-14; or

iv. Clinics and agencies approved by the Department of Education;

6. A district board of education, in order to fulfill its legal responsibility as a board, has access through the chief school administrator or his or her designee to information contained in a pupil's record. Information shall be discussed in executive session unless otherwise requested by the parent or adult pupil;

7. Secretarial and clerical personnel under the direct supervision of certified school personnel shall be permitted access to those portions of the record to the extent that is necessary for the entry and recording of data and the conducting of routine clerical tasks. Access shall be limited only to those pupil files which such staff are directed to enter or record information and shall cease when the specific assigned task is completed;

8. Accrediting organizations in order to carry out their accrediting functions;

9. The Commissioner of Education and members of the New Jersey Department of Education staff who have assigned responsibility which necessitates the review of such records;

10. Officials of other district boards of education within the State of New Jersey in which the pupil is placed, registered or intends to enroll subject to the following conditions:

i. Mandated pupil records shall be forwarded to the receiving district with written notification to the parent or adult pupil;

ii. Permitted records shall be forwarded to the receiving district only with the written consent of the parent or adult pupil except where a formal sending-receiving relationship exists between the school districts;

iii. All records to be forwarded shall be sent to the chief school administrator or his or her designee of the school district to which the pupil has transferred within 10 days after the transfer has been verified by the requesting school district;

iv. The chief school administrator or his or her designee shall request all pupil records in writing from the school district of last attendance within two weeks from the date that the pupil enrolls in the new district;

v. The chief school administrator or his or her designee of the school district of last attendance shall upon request, provide a parent(s) or an adult pupil with a copy of the records disclosed to other educational agencies or institutions; and

vi. Proper identification, such as a certified copy of the pupil's birth certificate, shall be requested at the time of enrollment in a new school district;

11. Officials of the United States Department of Education who have assigned responsibilities which necessitate review of such records;

12. Officers and employees of a State agency who are responsible for protective and investigative services for pupils referred to that agency, pursuant to N.J.S.A 9:6-8.40. Wherever appropriate, district boards of education shall ask such State agency for its cooperation in sharing the findings of the investigation;

13. Organizations, agencies and persons from outside the school if they have the written consent of the parent or adult pupil, except that these organizations, agencies and persons shall not transfer pupil record information to a third party without the written consent of the parent or adult pupil;

14. Organizations, agencies and individuals outside the school, other than those specified in this section, upon the presentation of a court order; and

15. Bona fide researchers who explain in writing the nature of the research project and the relevance of the records sought and who satisfy the chief school administrator or his or her designee that the records will be used under strict conditions of anonymity and confidentiality. Such assurance must be received in writing by the chief school administrator prior to the release of information to the researcher.

6:3-6.6 Conditions for access to pupil records

(a) All authorized organizations, agencies and persons defined in this subchapter shall have access to the records of a pupil, subject to the following conditions:

1. No pupil record shall be altered or destroyed during the time period between a request to review the record and the actual review of the record.

2. Authorized organizations, agencies and persons from outside the school whose access requires the consent of parents or adult pupils must submit their request in writing together with any required authorization, to the chief school administrator or his or her designee.

3. The chief school administrator or his or her designee shall be present during the period of inspection to provide interpretation of the records where necessary and to prevent their alteration, damage or loss. In every instance of inspection of pupil records by persons other than parents, pupils or individuals who have assigned educational responsibility for the individual student, an entry shall be made in the pupil record of the names of persons granted access, the reason access was granted, the time and circumstances of inspection, the records studied and the purposes for which the data will be used.

4. Unless otherwise judicially instructed, the district board of education shall, prior to the disclosure of any pupil records to organizations, agencies or persons outside the school district pursuant to a court order, give the parent or adult pupil at least three days' notice of the name of the requesting agency and the specific records requested. Such notification shall be provided in writing if practicable. Only those records related to the specific purpose of the court order shall be disclosed.

5. A record may be withheld from a parent of a pupil under 18 or from an adult pupil only when the local education agency obtains a court order or is provided with evidence that there is a court order revoking the right to access. Only that portion of the record designated by the court may be withheld. When the local education agency has or obtains evidence of such court order the parent or adult pupil shall be notified in writing within five days of his or her request that access to the record has been denied and that the person has the right to appeal this decision to the court issuing the order.

6:3-6.7 Rights of appeal for parents and adult pupils

(a) Pupil records are subject to challenge by parents and adult pupils on grounds of inaccuracy, irrelevancy, impermissive disclosure, inclusion of improper information or denial of access to organizations, agencies and persons. The parent or adult pupil may seek to:

1. Expunge inaccurate, irrelevant or otherwise improper information from the pupil record;

2. Insert additional data as well as reasonable comments as to the meaning and/or accuracy of the records; and/or

3. Request an immediate stay of disclosure pending final determination of the challenge procedure as described in this subchapter.

(b) To appeal, a parent or adult pupil must notify the chief school administrator in writing of the specific issues relating to the pupil record. Within 10 days of notification, the chief school administrator or his or her designee shall meet with the parent or adult pupil to revise the issues set forth in the appeal. If the matter is not satisfactorily resolved, the parent or adult pupil may appeal this decision either to the district board of education or the Commissioner of Education within 10 days. If appeal is made to the district board of education, a decision shall be rendered within 20 days. The decision of the district board of education may be appealed to the Commissioner pursuant to N.J.S.A. 18A:6-9 and rules adopted in accordance with such statute. At all stages of the appeal process, the parent or adult pupil shall be afforded in a full and fair opportunity to present evidence relevant to the issue. A record of the appeal proceedings and outcome shall be made a part of the pupil record with copies made available to the parent or adult pupil.

(c) Appeals relating to the pupil records of educationally handicapped pupils shall be processed in accordance with the requirements of N.J.A.C. 6:28.

(d) Regardless of the outcome of any appeal, a parent or adult pupil shall be permitted to place a statement in the pupil record commenting upon the information in the pupil record or setting forth any reasons for disagreement with the decision of the agency. Such statements shall be maintained as part of the pupil record as long as the contested portion of the record is maintained. If the contested portion of the record is disclosed to any party, the statement commenting upon the information must also be disclosed to that party.

6:3-6.8 Retention and destruction of pupil records

(a) A pupil record is considered to be incomplete and not subject to the provisions of the Destruction of Public Records Law, N.J.S.A. 47:3-15 et seq., while the student is enrolled in the school district.

(b) Mandated pupil records of currently enrolled pupils, other than that described in (e) below, may be destroyed after the information is no longer necessary to provide educational services to a pupil. Such destruction shall be accomplished only after written parental or adult pupil notification and written parental or adult pupil permission has been granted or after reasonable attempts of such notification and reasonable attempts to secure parental or adult pupil permission have been unsuccessful.

(c) Upon graduation or permanent departure of a pupil from the school system:

1. The parent or adult pupil shall be notified in writing that a copy of the entire pupil record will be provided to them upon request.

2. Information in pupil records, other than that described in (e) below, may be destroyed but only in accordance with the Destruction of Public Records Law, N.J.S.A. 47:3-15 et seq. Such destruction shall be accomplished only after written parental or adult pupil notification and written parental or adult pupil permission has been granted, or after reasonable attempts at such notification and reasonable attempts to secure parental or adult pupil permission have been unsuccessful.

(d) No additions shall be made to the record after graduation or permanent departure without the prior written consent of the parent or adult pupil.

(e) The New Jersey public school district of last enrollment graduation or permanent departure of the pupil from the school district and shall keep in perpetuity a permanent record of a pupil's name, date of birth, sex, address, telephone number, grades, attendance record, classes attended, grade level completed, year completed, name of parent(s) and citizenship status.

SUBCHAPTER 7. WITHDRAWAL FROM REGIONAL SCHOOL DISTRICTS

6:3-7.1 Application and data for investigation of advisability of withdrawal

(a) Any district board of education constituting part of a limited purpose regional school district or the governing body of such local school district, or the governing body of any municipality constituting part of an all purpose regional school district may apply to the county superintendent of schools to make an investigation as to the feasibility of withdrawal of such constituent district or municipality from the regional district. Such body shall adopt a resolution by a recorded roll call vote of the majority of the full membership requesting that the county superintendent make such investigation. The resolution request submitted to the county superintendent shall include the following information:

1. A general description of the regional district and of the withdrawing constituent district, including but not limited to, the type of educational system, number of schools and grade levels served, community population, and geographical characteristics;

2. Enrollment data, including, but not limited to, the number of pupils enrolled as reported by grade on the Annual Application for State School Aid and estimated projected enrollments, by grade level, for the succeeding five school years for both the withdrawing district or municipality and the remaining regional district, based on growth factors using average percentages for the last three school years;

3. The racial composition of the pupil population enrolled in the regional district from the withdrawing district or municipality, and the effect of such withdrawal upon the racial composition of the remaining pupil population of the regional district;

4. Two appraisals of each school site which is part of the regional district prepared by qualified appraisers. If two or more constituent districts or municipalities request such a study, the selection of the appraisers and the cost of the required appraisals shall be made and shared jointly; and

5. The proposed educational plan for the pupils from the withdrawing district or municipality presently enrolled in the school or schools of the regional district.

(b) Within 21 days following adoption of such resolution, such body shall confer with the remaining constituent districts and/or the governing bodies of the constituent municipalities, and the regional board of education and the county superintendent to review the procedure required for withdrawal from a regional school district. Such conference may be called by the county superintendent at the request of a constituent district or municipality prior to its adoption of such resolution.

6:3-7.2 Investigation and report by county superintendent of schools

(a) Upon receipt of the resolution and accompanying data pursuant to N.J.A.C. 6:3-7.1, the county superintendent shall make an investigation and shall within 60 days after receipt of such request issue a report, in accordance with N.J.S.A. 18A:13-52 or 13-67, to governing bodies of the municipalities constituting the regional district and the board of education of the regional district. If the county superintendent's report addresses the withdrawal of a constituent district or districts from a limited purpose regional districts, the report shall also be issued to the boards of education of the constituent district. When the county superintendent has begun such investigation, no action shall be taken upon a subsequent request from another constituent district or municipality of the same regional district until the investigation, report and action thereon have been completed. This report shall be based on data supplied by the petitioning district(s) or municipality(ies) including, but not limited to, the following:

1. A general description of the regional district, including the number of constituent districts, schoolhouses, area of the total district, and area of the withdrawing district or municipality;

2. Enrollment data, including the number of pupils enrolled as reported by grade on the Annual Application for State School Aid and estimated projected enrollment, by grade level, for the succeeding five school years for both the withdrawing district or municipality and the remaining regional district, based on growth factors using average percentages for the last three school years;

3. Enrollment data, by grade level, showing the racial composition of the present regional pupil population and the resulting racial composition for both the withdrawing district or municipality and the remaining regional district if withdrawal is approved;

4. The operating expenses of the regional district for the present school year including the distribution of such current operating expenses among the constituent districts or municipalities;

5. The equalized valuation of each constituent district or municipality of the regional district as set forth in N.J.S.A. 18A:7D-1 et seq.;

6. The average equalized valuations of the real property of each constituent district or municipality of the regional district as set forth in N.J.S.A. 18A:24-1 et seq.;

7. The borrowing margin of each constituent district or municipality of the regional district as determined by N.J.S.A. 18A:24-1 et seq., and the revised borrowing margin of each constituent district or municipality and the withdrawing district or municipality, if approval is granted;

8. The apportionment of debt service for the current school year among all the constituent districts or municipalities of the regional district by dollar amounts and percentages;

9. The replacement costs of schoolhouses and additions, grounds, furnishings and equipment of the regional district, and the replacement cost of any schoolhouse, and additions of the regional district including grounds, furnishings, and equipment, situated in the withdrawing district or municipality. School building replacement costs will be calculated by the Bureau of Facility Planning Services as follows:

i. The current overall cost per square foot for school construction in New Jersey, updated annually in the fall of each year, will be multiplied by the gross area of the building;

ii. This figure will include construction costs, moveable and built-in furniture and equipment, and fees; and

iii. Site costs will be excluded since they are already included under N.J.A.C. 6:3-7.1(a)4;

10. The amount of indebtedness, if any, to be assumed by the withdrawing constituent district or municipality;

11. The distribution of assets and liabilities of the existing regional district and remaining regional district following withdrawal in the manner as provided by N.J.S.A. 18A:8-24;

12. A proposed educational plan for the withdrawing constituent district or municipality, if withdrawal is approved, including the effects of such withdrawal upon the educational program of the remaining regional district;

13. A summary of the advantages of withdrawal to both the withdrawing constituent district or municipality and the remaining regional district and the disadvantages to the withdrawing constituent district or municipality and the remaining regional district; and

14. A recommendation regarding the request for withdrawal from the regional school district by the county superintendent.

(b) Upon adoption of a resolution, in accordance with N.J.S.A 18A:13-51 or 13-66, the board of education of the regional school district shall not incur any additional indebtedness for capital projects, pending either the rejection of the proposal at a special school election or an effective date of withdrawal as determined by the Commissioner of Education.

6:3-7.3 Special school election

(a) If the application is granted upon completion of the procedures contained in N.J.S.A. 18A:13-54 to 56 or 18A:13-69 to 71, the county superintendent shall confer with the regional board and the boards of education of the constituent districts of a limited purpose regional district or the constituent municipal governing bodies of an all purpose regional district and fix a day and time for holding a special school election, in accordance with the provisions of N.J.S.A. 18A:13-57 or 18A:13-72.

(b) To be effective the proposal must be adopted by a majority of the legal votes cast within the withdrawing constituent district or municipality, and, in addition, a majority of the combined legal votes cast within the remainder of the regional district.

6:3-7.4 Final determination of board of review

The board of review, which shall consist of the Commissioner, who shall be chairperson, the State Treasurer or his or her designee, and the Director of the Division of Local Government of Community Affairs, shall include in its final determinations required by N.J.S.A. 18A:13-56 or 18A:13-71, any specific conditions under which its consent is granted in order to insure that a thorough and efficient system of public schools will be maintained in the withdrawing district(s) or municipality(ies) and the remaining regional district.

6:3-7.5 Effective date of withdrawal

If approved at said election, the withdrawal of the district or municipality shall become effective upon a date to be determined by the Commissioner of Education, pursuant to the provisions of N.J.S.A 18A:13-59 or 18A:13-74.

SUBCHAPTER 8. PROVISIONS FOR THE EDUCATION OF HOMELESS CHILDREN AND YOUTH

6:3-8.1 Purpose

The purpose of this subchapter is to establish uniform Statewide policies and procedures for ensuring that homeless children and youth have access to a free and appropriate public education. Specific rules have been established to determine the educational placement of these students and to respond to appeals made by parents or other parties. These rules will implement N.J.S.A. 18A:38-1 and 18A:7B-12.

6:3-8.2 Definitions

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

"District liaison for the education of homeless children" means the person identified in each school district who facilitates all of the activities needed to ensure the timely educational placement of homeless children and youth.

"District of residence" for a homeless child whose parent(s) or guardian(s) temporarily move from one school district to another as the result of being homeless pursuant to N.J.S.A. 18A:38-1, N.J.A.C. 6:20-5.3(g) and N.J.S.A 18A:7B-12 means the district in which the parent(s) or guardian(s) last resided prior to becoming homeless.

"Homeless" child or youth means one who lacks a fixed, regular, and adequate residence.

"Parent" means the natural parent(s) or legal guardian(s), foster parent(s), surrogate parent(s), person acting in the place of a parent such as the person with whom the pupil legally resides and/or a person legally responsible for the pupil's welfare. Unless parental rights have been terminated by a court of appropriate jurisdiction, the parent(s) retains all rights under this chapter.

6:3-8.3 Determination of homelessness

(a) A child or youth shall be considered homeless for purposes of this program if he or she resides in any of the following:

1. A supervised publicly or privately operated shelter designed to provide temporary living accommodations, including:

i. Welfare hotels;

ii. Congregate shelters;

iii. Transitional housing for families; and

iv. Transitional housing for the mentally ill;

2. An institution that provides a temporary residence for individuals intended to be institutionalized; or

3. A public or private place not designed for or ordinarily used as a regular sleeping accommodation for human beings.

(b) Additionally, a child or youth shall be considered homeless if he or she is:

1. Living with a parent in a domestic violence shelter;

2. A runaway living in a shelter;

3. A school-aged mother residing in a home for adolescent mothers;
4. Sick or abandoned and residing in a hospital and would otherwise be released if he or she had a permanent residence;
5. Abandoned and therefore has no permanent residence;
6. The child of a homeless family which is out of necessity living with relatives or friends; or
7. The child of a migrant family which lacks adequate housing.

(c) When a dispute occurs regarding the determination of homelessness, the involved districts shall immediately notify the county superintendent of schools, who shall decide the status of the child within 48 hours.

6:3-8.4 Responsibilities of the district of residence

(a) The district of residence for a homeless child shall be responsible for the education of the child, shall determine the educational placement after consulting with the parent(s) or guardian(s), shall pay the costs of tuition and transportation when the child attends school in another district, and shall provide transportation when a child attends school in the district of residence while residing in another district.

(b) The determination of a homeless child's district of residence shall be made by the school districts involved as described in N.J.A.C. 6:3-8.5 based upon information received from the Department of Human Services, shelter providers, school districts, involved agencies, case managers or parents.

(c) The school district which has been determined to be the district of residence for a homeless child shall be the district of residence for as long as the parent(s) or guardian(s) remains homeless.

(d) When a dispute occurs regarding the determination of the district of residence, the involved districts shall immediately notify the county superintendent of schools, who will resolve the dispute. When the dispute involves districts in different counties, the county superintendents will work collectively to resolve the dispute. If the county superintendent(s) is unable to resolve the dispute, an appeal may be made to the Assistant Commissioner, Division of Finance, pursuant to N.J.A.C. 6:20-5.3(d), (e), and (f).

(e) When the district of residence cannot be determined for a homeless child or if the district of residence is outside of the State, the State shall assume fiscal responsibility for the tuition of the child pursuant to N.J.S.A. 18A:7B-12(d). The Department of Education shall pay the amount to the school district in which the child is currently enrolled for as long as the parent(s) or guardian(s) remains homeless.

6:3-8.5 Responsibilities of the district liaison

(a) The superintendent of each school district shall identify a district liaison for the education of homeless children.

1. The liaison shall facilitate communication and cooperation between the district or residence and the district where the homeless child is temporarily residing.

2. The liaison shall develop a system to ensure that any homeless child residing in the district is enrolled and attending school according to the placement options described in N.J.A.C. 6:3-7.6(a).

(b) When a child becomes homeless and is living temporarily in a school district, the liaison of that district, upon receiving notification from the Department of Human Services, shelter directors, involved agencies, case managers, or parent(s) or guardian(s), shall notify the liaison of the district of residence within 24 hours. This procedure shall also apply to those children identified as homeless pursuant to N.J.A.C. 6:3-8.3 and who may not be receiving services through a social service agency.

(c) When the liaison in the district of residence of a homeless child receives notification of the need for educational placement, that person shall coordinate placement procedures immediately based on the best interest of the child and criteria set forth in N.J.A.C. 6:3-8.6(c).

6:3-8.6 Educational placement

(a) The district of residence shall decide the educational placement of the homeless child according to criteria described in this section. The options for placement are:

1. To continue the child's education in the school district of last attendance.
2. To enroll the child in the district of residence if the district of residence is not the district of last attendance; or
3. To enroll the child in the school district where the child is temporarily living.

(b) When the district of residence for a homeless child cannot be determined, the district in which the child is temporarily residing or the district of last attendance shall enroll the child immediately.

(c) The decision regarding educational placement of a homeless child shall be based on what is in the best interest of the child. The district of residence shall consider the following in the placement decision process:

1. The preference of the parent(s) or guardian(s) as to where the child should attend school;
2. The continuity of the child's educational program with consideration given to the child continuing in the same school, the length of time the child attended a particular school, the time remaining in the school year, graduation requirements and district policies regarding the number of credits needed for graduation, and geographical location where the family plans to seek permanent housing;
3. The eligibility of the child for special instructional programs, such as bilingual, compensatory, gifted and talented, special education and vocational programs; and
4. The distance, travel time, and safety factors in coordinating transportation services from the temporary residence to the school.

(d) When a decision is made to enroll an educationally handicapped homeless child in a district other than the district of residence and an immediate review of the placement options available to implement the pupil's current individualized educational program cannot be conducted, the child shall be placed in a program consistent with the goals and objectives of the current individualized educational program for a period not to exceed 30 calendar days. Within this 30 day period, the district of residence must assure that the individualized educational program is reviewed and revised pursuant to N.J.A.C. 6:28.

(e) The district of residence shall determine the educational placement in a timely manner and only after consultation with the parent(s) or guardian(s) as described below:

1. Placement decisions shall be made by the superintendent of the district of residence or his or her designee within three school days of notification of the need for educational placement. Once the decision is made, the child shall be placed immediately.
2. Consultation with the parent(s) or guardian(s) regarding the placement decision and their right to appeal that decision shall be documented by the superintendent or his or her designee in writing.
3. When there is a dispute regarding the placement decision, the child will be enrolled when the county superintendent determines the educational placement pursuant to N.J.A.C. 6:3-8.7.

(f) When a decision is made to enroll the child in a district other than the district of residence, the district where the child last attended school shall forward to the new district all relevant school and health records. When the parent(s) or guardian(s) is homeless due to conditions of domestic violence, the transfer of pupil records shall be subject to the provisions of N.J.A.C. 6:3-6.

6:3-8.7 Disputes and appeals

(a) If the parent(s) or guardian(s), involved school district officials, involved agencies, case managers, or shelter providers object to the educational placement decision made by the district of residence, the superintendent or designee of the district of residence shall immediately notify the county superintendent of schools. The county superintendent shall determine the placement of the child within 48 hours based on the child's best interest and the criteria set forth in N.J.A.C. 6:3-8.6(c).

(b) If the parent(s) or guardian(s) or any of the above parties object to the decision of the county superintendent, mediation shall be available through the Department of Education's Office of Education for Homeless Children and Youth. Mediation shall be provided as follows:

1. A request for mediation shall be made to the Office of Education for Homeless Children and Youth either verbally or in written

form. The mediation request shall cite the issues in dispute and the relief sought;

2. A mediation conference with all parties present, including representation from the county superintendent's office, shall be conducted within five school days after the request is made at which time:

i. Issues shall be determined; and

ii. Options explored.

3. The role of the mediator is not judgmental;

4. The mediation conference shall be:

i. Informal; and

ii. Held at a time and place reasonably convenient to the parties in the dispute.

5. If the mediation results in agreement, conclusions shall be incorporated into a written agreement, signed by each party, and forwarded to the county superintendent for appropriate action. If the mediation does not result in agreement, the Office of Education for Homeless Children and Youth shall assist the parent(s) or guardian(s) in filing an appeal to the Commissioner of Education pursuant to N.J.S.A. 18A:6-9 and N.J.A.C. 6:24.

(c) Any dispute or appeal from any party at any stage of the process shall not delay the homeless child's immediate entrance into school. The homeless child shall be placed in the district designated by the county superintendent pending resolution of the dispute or appeal.

(d) Any disputes and appeals involving an educationally handicapped homeless child shall be pursuant to N.J.A.C. 6:28.

6:3-8.8 Tuition

(a) When the homeless child is enrolled in a district other than the district of residence, the district of residence shall pay the costs of tuition for the child to that district pursuant to N.J.S.A. 18A:38-19 and N.J.A.C. 6:20-3.1.

(b) The district of residence shall also include the child on its annual Application for State School Aid (ASSA) for as long as the parent(s) or guardian(s) remains homeless and the child is enrolled in another school district.

(c) When the State assumes fiscal responsibility for the tuition of a homeless child, the State shall pay the district in which the child is enrolled the State foundation amount plus the appropriate special education aid, if any.

6:3-8.9 Transportation

(a) When the homeless child is enrolled in a district other than the district of residence, the district in which the child is enrolled shall provide transportation services and the district of residence shall pay for any transportation costs incurred by that district pursuant to N.J.S.A. 18A:39-1 et seq. and N.J.A.C. 6:21.

(b) When the homeless child attends school in the district of residence while temporarily residing in another district, the district of residence shall provide for transportation to and from school pursuant to the provisions of N.J.A.C. 6:21.

(c) When a district of residence cannot be determined and the State has assumed fiscal responsibility for the payment of tuition, the district where the homeless child is enrolled shall provide transportation pursuant to N.J.A.C. 6:21.

(d) In implementing the transportation services required for a homeless child, school districts shall explore alternatives and provide the most economical and safest mode of transportation pursuant to N.J.A.C. 6:21.

6:3-8.10 Evaluation procedures for compliance

(a) The Department of Education shall monitor school districts responsible for implementing the requirements set forth in this subchapter, including:

1. Placement decisions made according to rules and within specified timelines; and

2. Provision of appropriate educational services and transportation.

SUBCHAPTER 12. USE OF SCHOOL BUSES OTHER THAN TO AND FROM SCHOOL AND SCHOOL RELATED ACTIVITIES

6:21-12.1 Definitions

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

"Contiguous district" means a district adjoining and adjacent to another district and sharing in some part a common boundary within the State of New Jersey. For a regional school district a contiguous school district shall be an adjoining and adjacent district which shares in some part a common boundary with the total regional district.

"Group" means 10 or more persons.

"Senior citizens" means those people of the State of New Jersey who are 60 years of age or older. Spouses of senior citizens may be less than 60 years of age.

6:21-12.2 General provisions

(a) The board of education of any district may permit the use of school buses, owned or leased by the school district, for the purpose of transporting senior citizens' groups to and from events within the districts or in any contiguous district, for transporting handicapped citizens in any district, and for transporting children and adults participating in a recreation or other program operated by the municipality or municipalities in which the district is located or the municipality in which any constituent district of a regional school district is located. Such events shall include, but not be limited to, civic, social, cultural, educational, recreational, nutritional and health programs and activities.

(b) The board of education shall adopt a policy addressing the transportation of these groups. The policy shall require groups seeking the use of school buses to pay all or part of any costs incurred by the district in permitting such use. The costs shall include, but not be limited to, the costs of fuel, driver salaries, insurance, and depreciation.

(c) The use of school buses by these groups requires the approval of the board of education and shall not interfere with the transportation of school pupils.

(d) Buses shall be operated only by a person having a valid school bus driver's license approved by the New Jersey Division of Motor Vehicles.

(e) School bus warning lamps shall not be used when transporting these groups.

(f) School buses, when used to transport these groups, shall load and unload off the public roadway so as not to interfere with traffic.

(g) Boards of education using buses for the transportation of these groups shall file proof of insurance coverage for such transportation with their county superintendents of schools. Insurance coverage shall include liability for bodily injury and property damage in the amount of $1,000,000 combined single limit per occurrence.

6:29-1.7 Eye protection in public schools

(a) Each district board of education shall require each pupil, teacher and visitor in the public schools of the district, including evening adult schools programs, to wear appropriate eye protective devices while participating in any regular school program as defined in N.J.A.C. 6:8-1.1 in which caustic or explosive chemicals or materials, hot liquids or solids, molten materials, welding operations of any type, repairing or servicing of vehicles, heat treatment or tempering of metals, the shaping of solid materials and laser device operation and experimentation or any similar process or activity is engaged in, exposure to which might have a tendency to cause damage to the eyes.

(b) The term "appropriate eye protective device" shall include plain or prescription lenses provided the lenses and other portions of the device meet or exceed the prescribed specifications for the device. Specifications for appropriate eye protection for various activities shall meet or exceed standards described in (b)1 and 2 below. The standards, with all subsequent amendments and supplements, are hereby adopted as rules and incorporated herein by reference.

1. American National Standard Practice for Occupational and Educational Eye and Face Protection, ANSI Z87.1-1979.

2. American National Standard Practice for the Safe Use of Lasers, ANSI Z136.1-1986 and eye protective procedures recommended by the manufacturer of the laser device.

(c) The documents in (b)1 and 2 above are available for review at the Administrative Code Office, Department of Education, 225 West State Street, CN 500, Trenton, New Jersey 08625-0500. These documents may be purchased from the American National Standards Institute, Inc., 1430 Broadway, New York, New York 10018.

(d) Emergency eye wash fountains or similar devices, capable of a minimum 15 minutes continuous flow of eye wash solution shall be provided in classrooms, shops, laboratories or other area where pupils or instructors are exposed to caustic materials that can cause damage to the eyes.

(e) The following types of eye protective devices shall be used to fit the designated activities or processes:

Potential Eye Hazard—Eye Protective Device(s)

1. Caustic or explosive—Goggles, flexible fitting, hooded ventilation; add plastic window face shield for severe exposure;

2. Dust producing operations—Goggles, flexible fitting, hooded ventilation;

3. Electric arc welding—Welding helmet in combination with spectacles with eye cup or semi or flat-fold side shields;

4. Oxy-acetylene welding—Welding goggles, eye cup type with tinted lenses; welding goggle, coverspec type with tinted lenses or tinted plate lense;

5. Hot liquids and gases—Goggles, flexible fitting, hooded ventilation; add plastic window face shield for severe exposure;

6. Hot solids—Clear or tinted goggles or spectacles with side shields;

7. Molten materials—Clear or tinted goggles and plastic or mesh window face shield;

8. Heat treatment or tempering—Clear or tinted goggles or clear or tinted spectacles with side shields;

9. Glare operations—Tinted goggles; tinted spectacles with side shields or welding goggles, eye cup or coverspec type with tinted lenses or tinted plate lenses;

10. Shaping solid materials—Clear goggles, flexible or rigid body; clear spectacles with side shields; add plastic window face shield for severe exposure;

11. Laser device operation or experimentation—Appropriate for specific hazard;

12. Repair or servicing of vehicles—Clear goggles, flexible or rigid body; clear spectacles with side shields;

13. Other potentially eye hazardous processes or activities—Appropriate for specific hazard.

(f) Each district board of education shall establish and implement a specific eye protective policy and program to assure that:

1. No teacher, pupil or visitor shall be subjected to any hazardous environmental condition without appropriate eye protection;

2. The detection of eye hazardous conditions shall be continuous;

3. Eye protection devices shall be inspected regularly and adequately maintained;

4. Shared eye protective devices shall be disinfected between uses by a method prescribed by the local school medical inspector;

5. All eye protective devices shall meet or exceed the appropriate specifications for the various types of devices and suppliers of eye protective devices shall certify, in writing, that the devices meet or exceed said specifications;

6. Specific policy and procedures shall be established to deal with individuals who refuse to abide by established eye safety practices and procedures;

7. The use of contact lenses shall be restricted in learning environments which entail exposure to chemical fumes, vapors or splashes, intense heat, molten metals, or highly particulate atmospheres. Contact lenses, when permitted, shall only be worn in conjunction with appropriate eye protective devices and the lens wearer shall be identified for appropriate emergency care in eye hazardous learning environments;

8. All spectacle type eye protective device shall have side shields of the eye cup, semi or flat-fold type;

9. Pupils, teachers or visitors wearing personal corrective eyewear shall be required to wear cover goggles or similar devices unless it can be certified, by competent authority, that the personal eyewear meets or exceeds standards identified in (b) above.

SUBCHAPTER 9. THE REPORTING OF ALLEGATIONS OF CHILD ABUSE

6:29-9.1 Purpose

The purpose of this subchapter is to establish uniform Statewide policies and procedures for public school personnel to report allegations of child abuse to the Division of Youth and Family Services (DYFS) and to cooperate with the investigation of such allegations.

6:29-9.2 Adoption of policies and procedures

(a) District boards of education shall adopt and implement policies and procedures for the reporting and the cooperation with the Division of Youth and Family Services (DYFS) in investigations of child abuse. District policies and procedures developed pursuant to this subchapter shall be reviewed and approved by the county superintendent. These policies and procedures shall not be limited to the following, but shall:

1. Include provisions requiring school personnel, compensated and uncompensated (volunteer), to immediately report to the DYFS incidents of child abuse. The person reporting the alleged child abuse shall inform the school principal or his or her designee of the report after the DYFS referral has been made. However, notice to the principal or his or her designee need not be given when the person believes that such notice would be likely to endanger the referrer or child(ren) involved or when the person believes that such disclosure would be likely to result in retaliation against the child or in discrimination against the referrer with respect to his or her employment.

i. School personnel having reasonable cause to believe that a child has been subjected to child abuse or acts of child abuse as defined under N.J.S.A. 9:6-8.9 shall immediately report to the DYFS (see N.J.S.A. 9:6-8.10). When referring cases to the DYFS, the school referrer shall provide, when possible, the following information:

(1) The name of the child;

(2) The age and grade of the child;

(3) The name and address of the child's parent or guardian or other person having custody and control (for example, foster parent);

(4) A description of the child's condition, including any available information concerning current or previous injuries, abuse, or maltreatment and including any evidence of previous injuries;

(5) The nature and possible extent of the child's injuries, abuse, or maltreatment; and

(6) Any other pertinent information that the referrer believes may be relevant with respect to the child abuse and/or to the identity of the alleged perpetrator;

2. Include a statement indicating the importance of early identification of child abuse;

3. Provide assurances that no school personnel will be discharged from employment or in any manner discriminated against as a result of making in good faith a report or causing to be reported an allegation of child abuse (see N.J.S.A. 9:6-8.13);

4. Require procedures for the following:

i. District cooperation with the DYFS in investigations of child abuse that has occurred at any time outside or within the confines of the school or during a school-related function;

ii. District action as defined in N.J.S.A. 9:6-3.1 in response to the findings at each stage of the investigation process as it affects the child(ren) and the school personnel;

iii. Release of the child(ren) from the school; and

iv. Transfer of the child(ren) between schools;

5. Provide for the establishment of a liaison to the DYFS from the district board of education.

i. The function of the liaison is to:

(1) Facilitate communication and cooperation between the district and the DYFS; and

(2) Act as the primary contact person between the schools and the DYFS with regard to general information sharing and the development of mutual training and other cooperative efforts;

6. Include provisions for the annual delivery of information and in-service training programs to school personnel concerning child abuse, instructional methods and techniques relative to issues of child abuse in the local curriculum, and personnel responsibilities pursuant to N.J.S.A. 9:6-8.10 et seq.;

i. All new school district employees, both paid and voluntary, shall receive the required information and training as part of their orientation;

7. Detail the responsibilities of the district board of education as follows:

i. Permit the DYFS investigator to interview the child(ren) in the presence of the school principal or his or her designee. If the child(ren) is intimidated by the presence of that school representative, the child(ren) shall name a staff member, whom he or she feels will be supportive, who will be allowed to accompany the child during the interview. The purpose of including a school representative is to provide comfort and support to the child, not to participate in the investigation;

ii. Cooperate with the DYFS in scheduling interviews with any school personnel who may have information relevant to the investigation;

iii. Release, in accordance with N.J.S.A. 18A:36-19 and N.J.A.C. 6:3-6, all pupil records of the child(ren) under investigation that are deemed to be relevant to the assessment or treatment of child abuse (see N.J.S.A. 9:6-8.40);

iv. Maintain and secure all confidential information about child abuse cases in accordance with N.J.S.A. 18A:36-19, N.J.S.A. 9:6-8.10a, and N.J.A.C. 6:3-6;

v. Permit the DYFS to physically remove pupils from school during the course of a school day when it is necessary to protect the child or take the child to a service provider. Such removal shall take place once the principal or his or her designee has been provided, either in advance or at the time removal is sought, with appropriate authorization as specified in N.J.S.A. 9:6-8.27 through 8.30;

vi. Cooperate with the DYFS when it is necessary to remove the child(ren) from his or her home for proper care and protection and when such removal results in the transfer of the child to a school other than the one in which he or she is enrolled; and

vii. Provide due process rights to school personnel who have been reassigned or suspended in accordance with N.J.S.A. 18A:6-10 et seq., 18A:25-1, 18A:25-6, and N.J.S.A. 9:6-3.1. Temporary reassignment or suspension of school personnel alleged to have committed an act of child abuse shall occur if there is reasonable cause to believe that the life or health of the alleged victim or other children is in imminent danger due to continued contact between the school personnel and a child (see N.J.S.A. 18A:6-10 et seq. and N.J.S.A. 9:6-3.1).

SUBCHAPTER 10. SAFE AND DRUG FREE SCHOOLS

6:29-10.1 Purpose

The purpose of this subchapter is to establish uniform Statewide policies and procedures for cooperating with law enforcement operations and activities on or near school grounds to ensure a safe school environment, and to identify the circumstances under which school officials shall refer violations to the police for handling, as authorized by the Attorney General's Executive Directive 1988-1. Such policies and procedures shall be consistent with and complementary to the State Memorandum of Agreement approved by the Department of Law and Public Safety and the Department of Education.

6:29-10.2 Adoption of policies and procedures

(a) District boards of education shall adopt and implement policies and procedures to ensure cooperation between school staff and law enforcement authorities in all matters relating to:

1. The unlawful possession, distribution and disposition of the following:

i. Controlled dangerous substances, including anabolic steroids;

ii. Drug paraphernalia;

iii. Alcohol;

iv. Firearms, as defined in N.J.S.A. 2C:39-1f; and

v. Other deadly weapons, as defined in N.J.S.A. 2C:39-1r; and

2. The planning and conduct of law enforcement activities and operations occurring on school property, including arrest procedures and undercover school operations.

6:29-10.3 General requirements

(a) District policies and procedures developed pursuant to this section shall:

1. Be developed, implemented, and revised, as necessary, through consultation with the county prosecutor and such other law enforcement officials as may be designated by the county prosecutor;

2. Be reviewed and approved by the county superintendent;

3. Be made available annually to all school staff, pupils, and parents or guardians; and

4. Be consistent with reporting, notification and examination procedures of students suspected of being under the influence of alcohol and other substances in accordance with N.J.A.C. 6:29-6.

(b) District policies and procedures shall include, but not be limited to, the following components:

1. The designation of liaisons to law enforcement agencies and the prescription of their roles and responsibilities by the district chief school administrator;

2. Specific procedures for and responsibilities of staff in summoning appropriate law enforcement authorities onto school property for the purpose of conducting law enforcement investigations, searches, seizures, and arrests;

3. Specific procedures for and responsibilities of staff in cooperating with arrests made by law enforcement authorities on school property;

4. Specific procedures for and responsibilities of staff in initiating or conducting searches and seizures of pupils, their property, and personal effects. All searches and seizures conducted by school staff shall comply with the standards prescribed by the United States Supreme Court in *New Jersey* v. *T.L.O.*, 469 *U.S.* 325 (1985), as set forth in the "Attorney General's Guidelines Regarding School Searches," issued in 1985;

i. Any question concerning searches conducted by school officials shall be directed to the appropriate county prosecutor.

ii. School officials may request that law enforcement authorities assume responsibility for conducting any search or seizure.

iii. No school staff member shall impede any law enforcement officer engaged in a lawful search, seizure, or arrest whether pursuant to a warrant or otherwise.

iv. School staff shall permit law enforcement authorities upon their arrival to assume responsibility for conducting any search or seizure.

v. Any questions concerning the legality of any contemplated or ongoing search, seizure, or arrest conducted by a law enforcement officer on school property shall be directed to the county prosecutor or, in the case of a search, seizure or arrest undertaken by the Division of Criminal Justice in the Department of Law and Public Safety, to the Assistant Attorney General in charge;

5. The procedures for and responsibilities of staff, with regard to interviews of pupils suspected of possessing, or distributing a controlled dangerous substance, drug paraphernalia, or a firearm or other deadly weapon;

6. Procedures for planning, approving, and conducting undercover school operations;

i. The chief school administrator and school principal shall cooperate with law enforcement authorities in the planning and conduct of undercover school operations. The chief school administrator shall approve such undercover operations without prior notification to the district board of education.

ii. All information concerning requests to undertake any undercover school operation, information supplied by law enforcement authorities to justify or explain the need for and of a proposed undercover school operation, and all other information concerning an ongoing undercover school operation, including the identity of any undercover officer placed in a school, shall be kept strictly confidential by the chief school administrator and school principal.

The chief school administrator and principal shall not divulge information concerning any undercover school operation to any person without the prior express approval of the county prosecutor or designee. In the event that the chief school administrator, principal or any other school staff or district board member who may have been informed as to the existence of the undercover school operation subsequently learns of any information which suggests that the true identity of the undercover officer has been revealed, or that any person has questioned the identity or status of the undercover officer as a bona fide member of the school community, or that the integrity of the undercover school operation has been in any other way compromised, such information shall be immediately communicated to the county prosecutor or designee;

7. The procedures for and responsibilities of staff concerning the safe and proper handling of any seized controlled dangerous substance, drug paraphernalia, or a firearm or other deadly weapon, and the prompt delivery of such items to appropriate law enforcement authorities in accordance with the provisions of this subchapter;

8. The procedures for and responsibilities of staff in notifying authorities of any suspected violation of any laws prohibiting the possession, sale or other distribution of any controlled dangerous substance, drug paraphernalia, or a firearm or other deadly weapon;

9. Provisions for requesting uniformed police attendance at extracurricular school events;

10. Provisions for notifying parents or guardians as soon as possible whenever a pupil is arrested for violating any laws prohibiting the possession, sale or other distribution of any controlled dangerous substance, drug paraphernalia, or a firearm or other deadly weapon;

11. Provisions for the inservice training of school staff concerning policies and procedures established in this subchapter, and the exchange of information regarding the practices of the education and law enforcement agencies; and

12. An agreement or memorandum of understanding with appropriate law enforcement authorities. Such agreements or memoranda of understanding shall be consistent with the policies established in this subchapter and in the State Memorandum of Agreement. These agreements or memoranda of understanding shall define the reciprocal rights and obligations of pupils, parents or guardians, school staff, and law enforcement officials with respect to the possession, distribution and disposition of controlled dangerous substances, drug paraphernalia, and firearms and other deadly weapons; with respect to the planning and conduct of law enforcement activities and operations, occurring on school property, including arrests and undercover school operations; and with respect to law enforcement's participation in substance abuse prevention programs;

i. Copies of all agreements or memoranda of understanding entered into with law enforcement authorities shall be approved by the district board of education and shall be submitted to and approved by the county prosecutor and county superintendent of schools;

13. Provisions for resolving disputes concerning law enforcement activities occurring on school property; and

14. An annual process for the local chief school administrator and appropriate law enforcement officials to discuss the implementation and need for revising the agreement or memorandum of understanding, and to review the effectiveness of policies and procedures implemented pursuant to the provisions of this subchapter. This annual review shall include input from the county superintendent, community and meeting(s) with the county prosecutor and such other law enforcement officials designated by the county prosecutor.

6:29-10.4 Reporting pupils or staff members to law enforcement authorities

(a) Subject to the provisions of N.J.A.C. 6:29-10.6 below, any teaching staff member having reason to believe that a pupil or staff member has unlawfully possessed or in any way been involved in the distribution of a controlled dangerous substance, including anabolic steroids, or drug paraphernalia, on or near school property, shall report the matter as soon as possible to the principal or, in the absence of the principal, to the staff member responsible at the time of the alleged violation. Either the principal or the responsible staff member shall notify the chief school administrator, who in turn shall notify as soon as possible the appropriate county prosecutor or other law enforcement official designated by the county prosecutor to receive such information.

1. The chief school administrator or designee shall provide to the county prosecutor or designee all known information concerning the matter, including the identity of the pupil or staff member involved. The chief school administrator or designee shall not disclose, however, the identity of any pupil or staff member who has voluntarily sought treatment or counseling for a substance abuse problem provided the pupil or staff member is not currently involved or implicated in drug distribution activities.

i. For the purpose of this section, an admission by a pupil or staff member in response to questioning initiated by the principal or teaching staff member, or following the discovery of a controlled dangerous substance, including anabolic steroids, or drug paraphernalia by the principal or teaching staff member, shall not constitute a voluntary, self-initiated request for counseling and treatment.

(b) Whenever any school employee develops reason to believe that a firearm or other deadly weapon has unlawfully been brought onto school property, or that any student or other person is in unlawful possession of a firearm or other deadly weapon, whether on or off school property, or that any student or other person has committed an offense with or while in possession of a firearm, whether or not such offense was committed on school property or during school operating hours, the matter shall be reported as soon as possible to the principal, or in the absence of the principal, to the staff member responsible at the time of the alleged violation. Either the principal or the responsible staff member shall notify the chief school administrator, who in turn shall notify, as soon as possible, the county prosecutor or other law enforcement official designated by the county prosecutor to receive such information. The chief school administrator or designee shall provide to the county prosecutor or designee all known information concerning the matter, including the identity of the pupil or staff member involved.

6:29-10.5 Handling of substances, firearms and other items

(a) Any school employee who seizes or discovers any substance or item believed to be a controlled dangerous substance, including anabolic steroids, or drug paraphernalia, shall immediately notify and turn over the substance or item to the principal or designee. Either the principal or designee shall then immediately notify the chief school administrator or designee who in turn shall notify the appropriate county prosecutor or other law enforcement official designated by the county prosecutor to receive such information. The school employee, principal or designee, shall safeguard the substance or paraphernalia against further use or destruction and shall secure the substance or paraphernalia until such time as the substance or paraphernalia can be turned over to the county prosecutor or designee.

1. The principal or designee shall provide to the county prosecutor or designee all information concerning the manner in which the substance or paraphernalia was discovered or seized, the identity of all persons who had custody of the substance or paraphernalia following its discovery or seizure, and the identity of any pupil or staff member believed to have been in possession of the substance or paraphernalia. However, the principal or designee shall not disclose the identity of any pupil or staff member who voluntarily and on his or her own initiative turned over the substance or paraphernalia to a school employee, provided that there is reason to believe that the pupil or staff member was involved with the substance or paraphernalia for the purpose of personal use, not distribution activities, and further provided that the pupil or staff member agrees to participate in an appropriate treatment or counseling program.

i. For the purposes of this section, an admission by a pupil or staff member in response to questioning initiated by the principal or teaching staff member, or following the discovery of a controlled dangerous substance, including anabolic steroids, or drug paraphernalia by the principal or teaching staff member shall not

constitute a voluntary self-initiated request for counseling and treatment.

(b) Whenever a school employee seizes or comes upon any firearm or dangerous weapon, school officials should in the case of a dangerous weapon other than a firearm, and shall in the case of a firearm, immediately advise the county prosecutor or appropriate law enforcement official, and secure the firearm or weapon pending the response by law enforcement to retrieve and take custody of the firearm or dangerous weapon. School employees having custody of a firearm or dangerous weapon will take reasonable precautions, as per local board of education procedures, to prevent its theft, destruction or unlawful use by any person.

6:29-10.6 Confidentiality of pupil or staff member involvement in substance abuse intervention and treatment programs

(a) All information concerning a pupil's or staff member's involvement in a school intervention or treatment program for substance abuse shall be kept strictly confidential in accordance with applicable Federal regulations (42 C.F.R. Part 2).

(b) Nothing in this subchapter shall be construed in any way to authorize or require the transmittal of any information or records which are in the possession of a substance abuse counseling or treatment program.

(c) The principal or designee shall not disclose to law enforcement officials or to any person other than a member of the local district's substance abuse program that a pupil or staff member has received or is receiving evaluation or treatment services from the local district's substance abuse program; nor shall the principal or designee disclose any information, including the pupil's or staff member's identity or information about illegal activity, where such information was learned in the course of or as a result of evaluation or treatment services provided by the local district's substance abuse program.

(d) Nothing in the section shall be construed to preclude the disclosure of information about illegal activity which was learned by any school employee outside of the local district's substance abuse program, and any such information about illegal activity shall be reported in accordance with N.J.A.C. 6:3-6.4 and 10.5.

(a)

STATE BOARD OF EDUCATION

Certification Fees

Proposed Amendment: N.J.A.C. 6:11-3.2

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

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

Proposal Number: PRN 1993-123.

Submit written comments by April 14, 1993 to:

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

The agency proposal follows:

Summary

Operations of the Division of Professional Licensure and Standards are funded by application processing fees paid by certification applicants. N.J.S.A. 18A:26-7 requires the payment of such fees and authorizes the State Board of Education to establish fee rates.

As a matter of practice, rates have been increased approximately every five years to fund inflated costs and/or increased workload. Excess revenues collected early in each five-year period are carried forward to offset increased costs in the final years of that period.

In 1983, the basic fee rate was increased by 50 percent from $20.00 to $30.00. In 1988, the basic rate was raised by 33 percent from $30.00 to $40.00. The proposed amendment would increase rates by 25 percent. These increases will enable the Division of Professional Licensure and Standards to maintain staffing levels by filling three allocated positions that currently are vacant due to a projected shortfall in revenues.

The proposed change in title of Chapter 11 reflects the new administrative organizational chart adopted at the State Board of Education meeting on February 2, 1993.

The proposed amendment at N.J.A.C. 6:11-3.3(b)6 would also provide for a reduced fee of $25.00 for second certificates in cases where a single application results in the sequential issuance of a provisional and standard certificate. As a result of regulatory amendments adopted over the past several years, applicants for most instructional and administrative endorsements are now required to serve their first year working under a provisional certificate. Upon completing that year successfully, the candidate earns a standard certificate. In such cases, the expense of processing the standard certificate is less than usual because most of the candidate's credentials are reviewed when the provisional certificate is issued. The proposed amendment would establish a fee rate for second certificates that is commensurate with the work associated with issuing such certificates in a two-step sequence.

Social Impact

The proposed amendment will enable the Division of Professional Licensure and Standards to process the applications of certification candidates. Therefore, it will provide school districts with teaching candidates in a more timely manner.

Economic Impact

The proposed amendment will require teaching candidates to pay increased fees for the processing of their certificates. However, the proportion of increase is well below the rate of increase in teacher salaries of the past five years.

Regulatory Flexibility Statement

The proposed amendment will have no reporting, recording or compliance requirements for small businesses as that term is defined by the Regulatory Flexibility Act, N.J.S.A. 52:14B-1 et seq. All requirements of the amendment affect only individual certification applicants and the State Department of Education.

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

CHAPTER 11
[TEACHER PREPARATION AND CERTIFICATION]
PROFESSIONAL LICENSURE AND STANDARDS

6:11-3.2 Fees

(a) The State Board of Education may make and enforce rules for the granting of appropriate certificates or licenses to teach or to administer, direct, or supervise the teaching, instruction or educational guidance of pupils in public schools operated by district boards of education.

(b) Rules for certification fees include the following:

1. For each standard, provisional or emergency certificate, a fee of [$40.00] **$50.00** shall be charged.

2. For each county substitute certificate, a fee of [$30.00] **$38.00** shall be charged.

3. For each renewal of an emergency or provisional certificate, a fee of [$25.00] **$30.00** shall be charged.

4. For each request for a duplicate copy of a certificate or change of holder's name, a fee of [$20.00] **$25.00** shall be charged.

5. For each request for evaluation of credentials to determine eligibility to take a particular State licensing examination or to obtain information concerning qualification for certification, a fee of [$25.00] **$30.00** shall be charged.

6. In cases where a single application results in the sequential issuance of both a provisional and standard certificate in the same endorsement field, a fee of $25.00 shall be charged for the standard certificate.

[6.]**7.** Fees and refunds for obtaining a qualifying academic certificate as defined in N.J.S.A. 18A:6-40 are provided in N.J.S.A. 18A:6-41.

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

(a)

STATE BOARD OF EDUCATION

Adult Education Programs

Proposed Readoption with Amendments: N.J.A.C. 6:30

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

Authority: N.J.S.A. 18A:1-1, 4-15, 7C-1 et seq., 48-1, 49-1 through 8, 50-12, 13 and 14, and the Adult Education Act, U.S.C. 1201 et seq.

Proposal Number: PRN 1993-122.

Submit written comments by April 14, 1993 to:
Elease E. Greene-Smith, Rules Analyst
New Jersey Department of Education
225 West State Street, CN 500
Trenton, New Jersey 08625-0500

The agency proposal follows:

Summary

Under the provisions of Executive Order No. 66(1978), the rules at N.J.A.C. 6:30, Adult Education Programs, will expire on July 5, 1993. Adoption of the current proposal would extend the rules for one year from the time their readoption is effective.

As required by the Executive Order, the Department of Education has reviewed these rules and determined them to be necessary, reasonable and proper for the purpose for which they were originally promulgated. The rules at N.J.A.C. 6:30 provide for the administration and operation of adult education programs and outline specific monitoring elements and indicators used to evaluate these programs.

Proposed amendments to the rules would update titles of the divisions and staff of the Department of Education under a reorganization plan adopted on February 2, 1993.

The following is a review of the proposed rules for readoption:

Subchapter 1. Administration of Adult Education Programs

Subchapter 1 provides administrative and general rules which apply to subchapters 2 through 6, and outlines the overall purpose and functions of adult education.

The age and out-of-school requirements for 16- and 17-year-old persons seeking participation in adult education activities are stipulated in N.J.A.C. 6:30-1.2. The process for underage candidates requires that the student and parent or guardian be counseled prior to withdrawal from high school and that a Certificate of Non-Enrollment be required for participation in an adult program. Underage persons must present a referral form before taking the General Educational Development (GED) examination. The referral form requires contact with an adult education program for the purpose of academic assessment prior to taking the GED examination.

The rules for certification for a State-issued high school diploma are outlined in N.J.A.C. 6:30-1.3. Passing scores for the GED are set by the State Board by resolution. Certification through the evaluation of college credits requires the evaluation of five academic areas as part of the academic spread. The total credit requirement equals 30 credits.

In N.J.A.C. 6:30-1.4, fees for taking the GED examination remain $20.00. Fees for duplicate diplomas are $5.00 and there is no charge for duplicate reports of scores.

A school and community planning process is outlined in N.J.A.C. 6:30-1.5. In the rule, "community" is defined and a process for public review and comment on adult education programs is referenced to the requirements in the New Jersey State Plan for Adult Education. Throughout subchapters 2 and 6, references are made to public review and comment in the development of goals and policies for adult programs. This rule requires the creation of adult education advisory committees at the district level.

An evaluation requirement for all adult education programs is outlined in N.J.A.C. 6:30-1.6. N.J.A.C. 6:30-1.7 establishes rules for monitoring. This process, with modifications, is the process established in 1986 for adult high schools. Throughout this section, notification to county superintendents regarding monitoring results has been formalized. Monitoring is essentially a three-level process allowing for program improvement and review by external review teams. The process differentiates other adult programs from adult high schools which still require State Board action for final approval.

Subchapter 2. Adult Basic Skills Programs

Subchapter 2 focuses on adult basic skills programs, which are defined as programs for the least educated, programs for persons preparing to take the GED examination, and programs for persons with limited English language ability. Much of the language of this subchapter reflects the current Federal regulations which are part of P.L. 102-73 (Adult Education Act).

N.J.A.C. 6:30-2.5 explicitly prohibits the charging of any fee, tuition, or other charges related to books and materials to persons participating in an adult basic skills program supported in total or in part with State or Federal funds. N.J.A.C. 6:30-2.6 outlines 23 indicators in 10 monitoring elements for the evaluation of an adult basic skills program.

Subchapter 3. General Educational Development (GED) Testing Centers

Subchapter 3 outlines the purpose, eligibility for participation, application for participation, and the monitoring elements and indicators associated with the evaluation of GED Testing Centers. The 10 indicators and seven monitoring elements in N.J.A.C. 6:30-3.4 are similar to those used for past inspections.

Subchapter 4. Adult High Schools

Subchapter 4 regulates the operation of adult high schools and reflects the language of the rules promulgated in 1986. Seventeen indicators in 10 monitoring elements have been delineated.

N.J.A.C. 6:30-4.5 provides for an exception to the age and out-of-school requirements for high school seniors. The proposed rule allows a senior who may be lacking coursework for graduation to enroll in an adult high school. The rules require the concurrence of both the sending and receiving district superintendents.

Graduation requirements in N.J.A.C. 6:30-4.8 reflect the current State minimum requirements for high school graduation.

N.J.A.C. 6:30-4.9(a)6 requires the annual announcement of eligible apprenticeship titles with the amount of credit to be awarded for each. Similarly, in N.J.A.C. 6:30-4.9(a)7, provision is made for the awarding of credit for selected occupational licenses.

N.J.A.C. 6:30-4.10 provides for the evaluation of credit for foreign studies at the secondary level. This rule provides for assessment of foreign transcripts for the purpose of awarding credits to persons enrolled in adult high schools. A fee of $25.00 is charged for each evaluation to cover translation expenses and other associated costs. Evaluations of foreign transcripts are made only for bonafide adult high school enrollees with requests accompanied with verification by the adult high school principal.

Additionally, throughout the text, the term "handicapped" adult has been changed to "disabled" adult. This change was made to more appropriately describe the intended population.

Subchapter 5. Evening Schools for Foreign Born Residents

Subchapter 5 provides for the operation of evening schools for foreign born residents. This program is regulated by N.J.S.A. 18A:49. Rules in this subchapter are related to eligibility and application for funding. In N.J.A.C. 6:30-5.6, a total of 18 evaluation indicators have been established in nine monitoring elements for the assessment of this program.

Subchapter 6. Supervisors of Adult Education Program

Subchapter 6 delineates rules regarding the reimbursement of up to $12,000 to districts which employ supervisors for adult education programs. N.J.S.A. 18A:50-7 provides the legal authority for this program. Under these rules, a district wishing to apply for supervisor's reimbursement may sponsor a vocational program and a recreational/avocational program but, in order to meet the requirements for reimbursement, the district will also have to sponsor at least one program aimed at improving the academic abilities of persons in the community (for example, adult basic skills, GED preparation, etc.). A total of 13 monitoring indicators are outlined in eight evaluation elements.

Social Impact

According to the 1990 census, over 1.2 million adults and out-of-school youth in New Jersey 25 years of age and older do not have high school diplomas. This number represents about 23 percent of the adult population of the State. While these adults have not achieved this goal for numerous reasons, many elect to return to programs which offer an

opportunity to improve their academic skills. Others seek to earn a high school diploma.

These rules provide several options for adults to improve their academic skills. The options include attending adult basic skills classes, the English as a Second Language program, GED preparatory classes, Evening Schools for Foreign Born Residents, and classes in adult high schools to earn a locally issued high school diploma.

The social impact of these programs is manifold. With improved academic skills, adults increase their potential in the labor market and raise their self-esteem. In the last school year, approximately 60,000 adults enrolled in the programs proposed for readoption in these rules. Approximately 8,600 adults earned state high school diplomas by passing the GED examination while another 1,800 earned locally issued high school diplomas by attending adult high schools.

Economic Impact

Adults with high school diplomas benefit significantly from higher than average earnings over their lifetime. A 1984 study found that based on a sampling of 250 adults who had recently received a high school diploma, 58 percent of those who were unemployed had obtained employment. Of those already employed, 45 percent had obtained a better job and 29 percent had received a promotion. Seven to eight percent believed that their employment security had been improved.

Most of the funding for these programs is derived from Federal and State sources, with augmentation in some instances from local school districts and program participants.

Regulatory Flexibility Statement

The readoption of these rules will have no reporting, recording or compliance requirements for small businesses as defined by the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. Requirements of the proposed rules impact on public school, public institution, privately sponsored, and volunteer-based adult education programs and their participating students.

Full text of the proposed readoption may be found in the New Jersey Administrative Code at N.J.A.C. 6:30.

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

6:30-1.1 Purpose and functions

(a) (No change.)

(b) The Division of [Adult Education] **Academic Programs and Standards** is responsible for:

1.-7. (No change.)

6:30-1.5 School and community planning process

(a) Each district or agency sponsoring an adult education program shall adopt a school and community planning process for State and Federal funding for adult education programs received through the Division of [Adult Education] **Academic Programs and Standards** to operate these programs.

1. (No change.)

(b) (No change.)

6:30-1.6 Evaluation requirements

(a) (No change.)

(b) Based upon the evaluation, the [Director] **Assistant Commissioner**, Division of [Adult Education] **Academic Programs and Standards**, shall determine approval or non-approval of all programs except for an adult high school, in which case, the [Director] **Assistant Commissioner** shall make a recommendation to the Commissioner regarding the status of the adult high school.

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

6:30-1.7 Monitoring process

(a) The [Director] **Assistant Commissioner**, Division of [Adult Education] **Academic Programs and Standards** shall establish evaluation worksheets for the monitoring of adult education programs.

1. Monitoring teams shall be composed of representatives of the Division of [Adult Education] **Academic Programs and Standards** and may include a representative from the county office of education in which the program is located.

2. The [Director] **Assistant Commissioner**, Division of [Adult Education] **Academic Programs and Standards** shall establish annually a monitoring schedule. Each program scheduled for monitoring shall be notified in advance by the [Director] **Assistant Commissioner**, Division of [Adult Education] **Academic Programs and Standards**, and dates for such monitoring visits shall be established with the concurrence of the chief school administrator of the district or agency director with notification to the appropriate county office of education. For the purpose of this section, "agency, institution and organization" shall be referred to as "agency".

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

(f) Approval of adult programs shall be based on acceptable ratings on all of the essential elements applicable to each given program. The [Director] **Assistant Commissioner**, Division of [Adult Education] **Academic Programs and Standards** shall send formal notification of the findings to the chief school administrator and the appropriate county superintendent of schools or agency director within 30 days after the completion of the monitoring visit.

1. (No change.)

2. For each adult high school that receives an acceptable rating, the [Director] **Assistant Commissioner**, Division of [Adult Education] **Academic Programs and Standards**, in addition to (f)1 above, shall submit a report of findings and recommendations to the Commissioner for final action by the State Board.

i. (No change.)

(g) For any adult program not approved, the district board of education or a sponsoring agency board may, within 30 days following receipt of notification, petition the Assistant Commissioner, [Educational Programs] **Division of Academic Programs and Standards** to rescind the rating by presenting written documentation of performance on elements rated as unacceptable in any given program.

1. The Assistant Commissioner, [Educational Programs] **Division of Academic Programs and Standards**, shall rule on such petitions.

(h) A school district or agency with any adult program rated as not approved shall implement the following program improvement process for each program so rated:

1.-2. (No change.)

3. The plan shall be submitted to the [Director] **Assistant Commissioner**, Division of [Adult Education] **Academic Programs and Standards** who shall approve or disapprove the plan within 14 days of receipt.

i. Failure to submit a plan shall be cause for the [Director] **Assistant Commissioner**, Division of [Adult Education] **Academic Programs and Standards** to judge the unacceptably rated adult program as being in non-compliance with law and rule and to determine the continuance or discontinuance of the program at a time established by the [Director] **Assistant Commissioner**.

ii. For an adult high school, failure to submit a plan shall be cause for the [Director], Division of [Adult Education] **Academic Programs and Standards** to notify the Commissioner of the non-compliance of the adult high school with law and rule and recommend to the Commissioner the continuance or discontinuance of the adult high school program at a time to be established by the Commissioner.

4. (No change.)

5. Unacceptable plans shall be referred to the chief school administrator or agency director with recommendations for improvement.

i. The chief school administrator or agency director shall have 30 days to make the necessary revisions and resubmit the plan to the [Director] **Assistant Commissioner**, Division of [Adult Education] **Academic Programs and Standards**.

ii. Failure to resubmit a plan or resubmitting a plan which continues to be unacceptable shall be cause for the [Director] **Assistant Commissioner**, Division of [Adult Education] **Academic Programs and Standards** to judge the non-approved adult program as being in non-compliance with law and rule and to determine the continuance or discontinuance of the program at a time established by the [Director] **Assistant Commissioner**.

iii. For an adult high school, failure to resubmit a plan or resubmitting a plan which continues to be unacceptable shall be cause for the [Director] **Assistant Commissioner,** Division of [Adult Education] **Academic Programs and Standards** to notify the Commissioner of the non-compliance of the adult high school with law

and rule and recommend to the Commissioner the continuance or discontinuance of the adult high school program at a time to be established by the Commissioner.

6. The district or agency shall have 90 days from the date of improvement plan approval to fully implement the plan. The [Director] **Assistant Commissioner,** Division of [Adult Education] **Academic Programs and Standards** may determine a longer time period for full implementation which shall be explicitly stated at the time of plan approval.

7. (No change.)

8. Following the remonitoring, the [Director] **Assistant Commissioner,** Division of [Adult Education] **Academic Programs and Standards** shall send formal notification of the findings to the chief school administrator and appropriate county superintendent of schools or agency director. The approval process shall be completed pursuant to (f) above.

(i) For adult programs that are not approved following the implementation of a program improvement plan, the [Director] **Assistant Commissioner,** Division of [Adult Education] **Academic Programs and Standards** shall convene an external team consisting of three adult program administrators and two nonadministrative professional adult program staff members from programs outside of the county of the program which has failed to receive approval.

1. The members of the external team shall review reports and events leading to non-approval and may schedule visits to the program site in order to render an advisory report to the [Director] **Assistant Commissioner,** Division of [Adult Education] **Academic Programs and Standards** regarding the program's rating.

2. Following the receipt of the advisory report from the external team, the [Director] **Assistant Commissioner,** Division of [Adult Education] **Academic Programs and Standards** may determine the continuance or discontinuance of the adult program at a time established by the [Director] **Assistant Commissioner** and explicitly stated in a formal notification to the chief school administrator and appropriate county superintendent of schools or agency director at the time of this action.

3. Following the receipt of the advisory report from the external team for an adult high school, the [Director] **Assistant Commissioner,** Division of [Adult Education] **Academic Programs and Standards** shall make a recommendation to the Commissioner regarding the status of the adult high school. The Commissioner will recommend to the State Board of Education the continuance or discontinuance of the adult high school program.

6:30-2.3 Application for funding

(a) Eligible agencies entitled to program support shall submit a statement of anticipated funding needs for the succeeding fiscal year to the Division of [Adult Education] **Academic Programs and Standards** by July 1 of the pre-budget year. For the purpose of this section, "agency, institution and organization" shall be referred to as "agency." In this section, the phrase "pre-budget year" shall mean the school year prior to the school year to which a statement of anticipated funding needs, a tentative allocation, an application for funds, or a notification of funding makes reference.

1. The [Director] **Assistant Commissioner,** Division of [Adult Education] **Academic Programs and Standards** shall forward a notice of tentative allocation by September 1 of the pre-budget year to each agency which submitted a statement of anticipated funding needs.

(b) Eligible agencies shall submit an application for funds in accordance with procedures established by the Division of [Adult Education] **Academic Programs and Standards** by November 1 of the pre-budget year. All applications will be reviewed and approved or disapproved for funding in accordance with eligibility criteria established in the State Plan for Adult Education pursuant to P.L. 91-230.

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

6:30-2.6 Monitoring 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 which follow. For the purpose of this section, "agency, institution and organization" shall be referred to as "agency."

1.-2. (No change.)

3. The curriculum and instruction element shall be rated acceptable upon documentation of performance in four indicators as follows:

i. (No change.)

ii. An educational plan shall be developed for each adult student except for persons enrolled in ESL classes. The plan shall be developed jointly by a professional staff member and the adult and shall reflect the adult's interests, experiences, goals and objectives and those educational skills identified as requiring remediation. A diagnosis of academic needs shall be completed within 10 instructional hours of a student's enrollment using a standardized test approved by the [Director] **Assistant Commissioner,** Division of [Adult Education] **Academic Programs and Standards.** Effective September 1, 1989, the educational plan shall also include a record of the adult's progress, as measured by the standardized test used above, administered 50 instructional hours following the initial diagnostic testing. Effective September 1, 1989, the plan shall also include a dated review of the degree to which a student's goals and objectives are being achieved. Documentation shall be copies of educational plans.

(1) For persons enrolled in ESL programs, a placement test approved by the [Director] **Assistant Commissioner,** Division of [Adult Education] **Academic Programs and Standards,** consisting minimally of an oral interview, shall be administered within 10 instructional hours of enrollment.

iii.-iv. (No change.)

4.-7. (No change.)

8. The mandated assessment testing elements shall be rated as acceptable upon documentation of performance in the indicator as follows:

i. Adults enrolled in a program shall be tested within 10 instructional hours of enrollment. Effective September 1, 1989, students shall also be tested at 50 instructional hours following the initial testing, using standardized tests approved by the [Director] **Assistant Commissioner,** Division of [Adult Education] **Academic Programs and Standards.** The 50 hour test requirement shall not apply to ESL students. Documentation shall be a dated record of test results.

9.-10. (No change.)

6:30-3.3 Application for participation

Eligible agencies shall submit an application in accordance with procedures established by the Division of [Adult Education] **Academic Programs and Standards** which may include, but not be limited to, documentation related to location, target population, facilities, marketing strategies, institutional commitment, and hours of operation. Contracts shall be approved by the State Department of Education based on an agency's certification that contractual terms and conditions will be met.

6:30-3.4 Monitoring 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.-5. (No change.)

6. The staff element for the testing center shall be rated acceptable upon documentation of performance in three indicators as follows:

i. The testing center shall be staffed by persons with appropriate qualifications for administering the tests and for ensuring separation of GED instructional activities and testing functions. Staff administering or having access to the test shall be trained and approved by the Division of [Adult Education] **Academic Programs and Standards.** The testing center shall have a State-approved chief examiner who shall have access to all test center materials and records at all times. Documentation shall include the identification of the chief examiner and copies of valid approvals issued by the Division of [Adult Education] **Academic Programs and Standards.**

ii.-iii. (No change.)

7.-9. (No change.)

10. The financial element for the testing center shall be rated acceptable upon documentation of performance in the indicator as follows:

i. Fees shall be charged in accordance with N.J.A.C. 6:30-1.4, shall be recorded on cash control sheets, and shall be forwarded to the Division of [Adult Education] **Academic Programs and Standards.** Documentation shall include copies of properly completed cash control sheets and evidence from the Department of Education that all monies are forwarded in a timely manner.

6:30-4.2 Definitions

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

...

"Disabled adult" means any adult who has any physiological, mental or psychological disorder or condition which substantially limits one or more major life activities, has a record of such an impairment or is regarded as having such an impairment.

...

["Handicapped adult" means any adult who has any physiological, mental or psychological disorder or condition which substantially limits one or more major life activities, has a record of such an impairment or is regarded as having such an impairment.]

...

6:30-4.3 Permission to establish, expand or relocate an adult high school

(a) To establish an adult high school, the district board of education shall file a request with the Division of [Adult Education] **Academic Programs and Standards** prior to December 31 preceding the year of anticipated operation. The request shall include:

1.-7. (No change.)

(b) The Division of [Adult Education] **Academic Programs and Standards** shall evaluate the application of the district board of education and visit the proposed site before the [Director] **Assistant Commissioner** shall grant or deny provisional approval to establish an adult high school.

1.-2. (No change.)

(c) To expand or to relocate an existing program to another site, the district board of education shall file a request with the Division of [Adult Education] **Academic Programs and Standards** three months prior to the anticipated change. The request shall include elements (a)2, 3 and 4 listed above.

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.-3. (No change.)

4. The attendance and register maintenance element will be rated as acceptable upon documentation of performance in the indicator as follows:

i. The adult high school administrator shall maintain a New Jersey Adult High School Register and be responsible for the security of said Register for a period of six years following the close of the school year. Documentation of this shall be a correctly maintained Register which follows the instructions for Register maintenance which are printed in the document. The Register is available from the Division of [Adult Education] **Academic Programs and Standards.** Attendance of students recorded in the Register shall be verifiable through backup data maintained by teachers. Certification of Non-Enrollment in School forms for students 16 and 17 years of age shall be filed with the student's educational plan.

5.-10. (No change.)

6:30-4.6 Adults with special needs

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

(d) [Handicapped] **Disabled** adults without previous experience in a special education program or those individuals with IEP's that have been issued more than three years prior to their application to the adult high school shall be counseled regarding educational options which would lead to high school graduation and shall be served to the maximum extent appropriate to the needs of the [handicapped] **disabled** adult within the capability of the program to provide such services.

6:30-4.9 Award of credit

(a) The district board of education of each adult high school shall annually adopt policies at a public meeting which provide for the awarding of credit.

1.-5. (No change.)

6. Credits may be awarded for completion of apprentice training with the following limitations:

i.-iii. (No change.)

iv. The [Director] **Assistant Commissioner,** Division of [Adult Education] **Academic Programs and Standards**, shall announce annually the apprenticeship titles eligible for the award of credit and determine the amount of credit to be awarded.

7. Credit may be awarded for possession of a current occupational license, issued by an agency of the State of New Jersey, with the following limitations:

i. (No change.)

ii. The [Director] **Assistant Commissioner,** Division of [Adult Education] **Academic Programs and Standards**, shall announce annually those occupational titles eligible for the award of credit;

iii.-iv. (No change.)

8.-12. (No change.)

6:30-4.10 Awarding credit for foreign studies

(a) Credit for the equivalent of American secondary school studies experienced in a foreign country may only be awarded as determined by the [Director] **Assistant Commissioner,** Division of [Adult Education] **Academic Programs and Standards** following an evaluation of transcript(s) presented by the adult.

(b) Transcript evaluation shall be for the purpose of participating in an adult high school program and shall be transmitted to the Division of [Adult Education] **Academic Programs and Standards** with a request for such an evaluation by the principal of the adult high school.

1. (No change.)

6:30-5.3 Application for funding

(a) To receive funding under this program, school districts shall make application annually to the Division of [Adult Education] **Academic Programs and Standards.**

1.-3. (No change.)

4. Upon receipt of a notice of allocation from the Division of [Adult Education] **Academic Programs and Standards**, districts shall submit an application for approval by the Division. The annual allocation and application shall be distributed to school districts by June 30 of the school year preceding funding.

5.-6. (No change.)

6:30-5.6 Monitoring 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.-2. (No change.)

3. The curriculum and instruction element shall be rated acceptable upon documentation of performance in four indicators as follows:

i. (No change.)

ii. Effective September 1, 1989, a placement test approved by the Director, Division of [Adult Education] **Academic Programs and Standards** consisting minimally of an oral interview shall be administered within 10 instructional hours of enrollment. Documentation shall be copies of test results.

iii.-iv. (No change.)

4.-10. (No change.)

HEALTH

(a)

DIVISION OF HEALTH FACILITIES EVALUATION

Maternal and Child Health Consortia
Licensing Standards
Fiscal Management and Staffing

Proposed Amendments: N.J.A.C. 8:35A-1.2, 3.4, 3.6, 4.1 and 5.3

Authorized by: Bruce Siegel, 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., specifically 26:2H-5.

Proposal Number: PRN 1993-158.

Submit comments by April 14, 1993 to:

Robert J. Fogg, Esq.
Director, Licensing, Certification and Standards
New Jersey Department of Health
CN 367
Trenton, NJ 08625

The agency proposal follows:

Summary

The Department is proposing to amend the Maternal and Child Health Consortia (MCHC) Licensing Standards to assure that these newly-established entities will have sufficient resources to accomplish the complex yet vital functions that are called for within the body of the licensing rules as well as in the designation criteria within N.J.A.C. 8:33H. The proposed amendments address two specific areas: fiscal management and staffing. The Department is also concurrently proposing elsewhere in this issue of the New Jersey Register amendments to the hospital licensing standards at N.J.A.C. 8:43G-19, Obstetrics, to incorporate provisions of N.J.A.C. 8:33C that the Department believes should be delineated in both planning and hospital licensing regulations.

In the absence of a hospital rate-setting system, the Department's ability to ensure the on-going financial viability of MCHCs has been markedly diminished. As funding for MCHC activities will be dependent on the member hospitals of each consortium, the Department believes it is important to establish a uniform collection and budgeting process to be followed by all MCHCs in New Jersey. The proposed amendments authorize the governing authority of the MCHC to develop an allocation and collection system to ensure that member hospitals provide sufficient funds to cover the operating expenses of the MCHC. The operating expenses projected by the MCHC are to be reviewed and approved by the Department of Health on an annual basis. Approval of the MCHC's budget by the Department will be contingent upon the ability of the MCHC to link all projected salary and nonsalary costs to the regional perinatal plan and functions and to demonstrate that the benefits achieved will justify the costs incurred. The proposed process also includes a provision whereby the Department will be notified if a member hospital lapses in meeting its financial commitment to support the operating expenses of the MCHC. In such a situation, the hospital would no longer hold the status of a "member in good standing" and could consequently be in violation of the hospital licensure standards.

With respect to staffing, the Department has identified two additional mandatory staff positions necessary to accomplish the tasks set forth for regional maternal and child health consortia. Subsequent to adoption of N.J.A.C. 8:35A-5.3, the Department was advised that N.J.A.C. 8:43A-5.3, Staff qualifications, was being interpreted by a number of MCHC member agencies to represent a limit on the staffing permitted at MCHCs, rather than a minimum. In proposing the rules, the Department singled out the positions designated at N.J.A.C. 8:43A-5.3(a)1 and 2 because of the specific qualifications required of each position. The Department anticipated that the expansive scope of responsibilities required of MCHCs would indicate that additional staff would be necessary. The amendments being proposed at this time specify the need for a research/data specialist and a community outreach coordinator meeting certain minimum qualifications. The functions to be performed by these staff are already enumerated within the rules.

Social Impact

Maternal Child Health Consortia (MCHC) are integral to the regionalized system of perinatal services in New Jersey. These agencies are responsible for overseeing and coordinating the delivery of perinatal and pediatric services in their respective maternal and child health region. These newly established entities need assurance that sufficient resources will be available to accomplish the important functions they are licensed to perform. The Department strongly believes MCHCs will be instrumental in achieving reductions in the infant mortality rate and promoting improved maternal and child health care in New Jersey.

Maternal and child health is of vital concern to the State of New Jersey, particularly the health status of infants and young children. During the period of 1980 to 1989, infant mortality dropped from 12.5 deaths per 1,000 live births to 9.3 deaths per 1,000 live births. However, much remains to be done. In 1989, at 19.4 deaths per 1,000 live births, the Black infant death rate was more than double that of White infants. As a result, New Jersey has yet to reach the targets for total infant mortality set in the Surgeon General's *1990 Objectives for the Nation*. In *Healthy New Jersey 2000,* targets for total infant mortality and Black infant mortality are set at 7.0 and 11.0 deaths per 1,000 live births respectively.

Economic Impact

The Department anticipates that the services provided by regional maternal and child health consortia and the system-wide emphasis on prevention of low birth weights will have a significant impact on lowering health care expenditures in the area of maternal and child health. The average cost of hospital care in New Jersey for a high risk, very low birth weight infant was more than $124,000 in 1989 and total expenditures exceed $105 million that year. Only with the prevention of low birth weight through adequate and timely prenatal care can saving in this area of health care expenditure be realized. The estimated contribution of the hospitals in 1993 is $4.8 million, which has been added to their 1993 revised cap for perinatal costs, in accordance with P.L. 1992, c.160. The savings that can be anticipated from the prevention of low birth weight infants and maternal and neonatal morbidity are expected to offset the operational costs of Maternal and Child Health Consortia.

Regulatory Flexibility Statement

As defined at N.J.A.C. 8:35A, Maternal and Child Health Consortia are voluntarily formed non-profit organizations which consist of all inpatient, ambulatory perinatal and pediatric care providers, and related community organizations in a maternal and child health service region. The on-going financial support of these organizations is addressed in N.J.A.C. 8:43G and is applicable to only those hospitals with licensed obstetric and/or pediatric beds. The hospitals in New Jersey which are regulated by N.J.A.C. 8:43G all employ more than 100 people. Businesses other than hospitals would not be affected. Therefore, a regulatory flexibility analysis is not required.

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

8:35A-1.2 Definitions

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

...

"Member in good standing" means that a health care provider member agency has made timely payment of MCHC financial assessments in accordance with the MCHC by-laws, which are based on a budget approved by the Department of Health pursuant to N.J.A.C. 8:35A-3.4(c).

...

8:35A-3.4 Submission of documents and data

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

(c) The MCHC shall submit an annual budget plan for its next calendar year to the Department by October 1 for the Department's review and approval. The budget plan may be approved if the MCHC identifies all projected salary and non-salary costs necessary to implement both the regional perinatal plan and functions listed in N.J.A.C. 8:35A-3.1, and revenue sources that include assessments of all member health care facilities that are adequate to support the expenses submitted in the budget plan.

8:35A-3.6 Reportable events

(a) The MCHC shall report to the Department of Health the termination of employment of the administrator/executive director, and the name and qualifications of the administrator's replacement, within seven days of the termination.

(b) The MCHC shall report to the Department of Health whenever a hospital is not a member in good standing, within 15 days of the delinquency.

8:35A-4.1 Responsibility of the governing authority

(a) The MCHC shall have a governing authority appointed in accordance with N.J.A.C. 8:33C, which shall assume legal responsibility for the management, operation, and financial viability of the MCHC. The governing authority shall be responsible for, but not limited to, the following:

1.-4. (No change.)

5. Delineation of the duties of the officers of any committees, or equivalent, of the governing authority. When the governing authority establishes committees, their purpose, structure, responsibilities, and authority, and the relationship of the committee to other entities within the MCHC, shall be documented; [and]

6. Establishment of the qualifications of members and officers of the governing authority, the procedures for electing and appointing officers, and the terms of service for members, officers, and committee chairpersons or equivalent[.]; **and**

7. Development of an allocation and collection system to ensure adequate revenue from the health care provider members of the MCHC who have been assessed dues in accordance with the bylaws necessary to fund the budget approved by the Department of Health.

8:35A-5.3 Staff qualifications

(a) Each MCHC shall have:

1. An administrator/executive director who has a master's degree and at least three years of administrative or supervisory experience in health care planning of administration or financing, at least one year of which shall have been in maternal and child health services; [and]

2. A registered professional nurse with a master's degree in nursing, public health or administration from an accredited college or university and certification by the National Certification Corporation for the Obstetric, Gynecologic and Neonatal Specialties or the American Nurses Association, and two years of experience in clinical maternal and child nursing[.]; **and**

3. Staff adequate to perform the functions of N.J.A.C. 8:35A-3.1 and the regional perinatal plan, including, but not limited to:

i. A research/data specialist with training in research methods and experience in data analysis; and

ii. A community outreach coordinator with a bachelor's degree from an accredited college or university with one year's experience in community outreach.

(a)

DIVISION OF HEALTH FACILITIES EVALUATION

Hospital Licensing Standards

Funding for Regionalized Services; Obstetric Services Structural Organization

Proposed New Rule: N.J.A.C. 8:43G-5.10

Proposed Amendments: N.J.A.C. 8:43G-19.1 and 19.20

Authorized By: Bruce Siegel, 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., specifically 26:2H-5.

Proposal Number: PRN 1993-157.

Submit comments by April 14, 1993 to:

Robert J. Fogg, Esq.
Director, Licensing, Certification and Standards
New Jersey Department of Health
CN 367
Trenton, NJ 08625

The agency proposal follows:

Summary

The Department of Health is proposing amendments to the hospital licensing standards for obstetrics and hospital and administrative services for the purpose of enhancing the effectiveness of New Jersey's system of regionalized perinatal services. The proposed amendments serve three functions: to incorporate provisions of N.J.A.C. 8:33C, Certificate of Need: Regionalized Perinatal Services into the Hospital Licensing Standards; to provide more flexibility with regard to service restrictions for those hospitals designated as Community Perinatal Center(s) Intermediate and Intensive; and to support the allocation and collection system being proposed elsewhere in this issue of the New Jersey Register at N.J.A.C. 8:35A-4.1(a)7 for development by Maternal and Child Health Consortia.

The rules at N.J.A.C. 8:33C establish a system of regional perinatal services in New Jersey built upon a network of maternal and child health regions, the designation of all hospitals with a licensed obstetric and/or pediatric service, and formation of regional Maternal and Child Health Consortia. Coinciding with the adoption of N.J.A.C. 8:33C, in August 1992, was adoption of amendments to the obstetric hospital licensing standards. The amendments established licensing regulations consistent with the designation criteria and addressed such areas as staff qualifications, newborn patient services, and service restrictions based upon the hospital's designation status.

Subsequent to adoption, the Department became aware that there were requirements within N.J.A.C. 8:33C which were not supported by counterparts within the licensure standards. In order to maintain consistency between these two bodies of rules, the Department believes amendments to the obstetric licensing standards are necessary. The proposed amendments assure that all hospitals with obstetric and/or pediatric services participate in the regionalized perinatal system and promote a coordinated and prevention-oriented approach to perinatal services. Proposed N.J.A.C. 8:43G-19.1(b) requires each hospital to be designated as either a Community Perinatal Center or a Regional Perinatal Center and to maintain membership in the Regional Maternal Child Health Consortium. The importance of preventive prenatal care is demonstrated at proposed N.J.A.C. 8:43G-19.1(c) through (e) by requiring all hospitals to provide ambulatory prenatal and pediatric services in accordance with HealthStart Standards. Regional Perinatal Centers are additionally required to provide distinct prenatal clinic services for high risk patients and high risk infant follow-up services in accordance with N.J.A.C. 8:33C-8.2(e).

During the public comment period for the amendments to the obstetric hospital licensing rules, the Department was requested to incorporate more flexible language with respect to the service restrictions in place for Community Perinatal Centers. Although the Department agreed with the need for more flexible language than that being proposed, it was precluded from making any substantive or extensive changes to the rules at that stage of the rulemaking process. The amendments being proposed at N.J.A.C. 8:43G-19.20, Newborn care patient care services, have been developed to be responsive to the requests for flexibility. Language has been added to provide Community Perinatal Centers—Intensive with the same flexibility recognized for Community Perinatal Centers—Basic and Intermediate in the event an infant is born at the facility in excess of the designated weight and gestational age criteria. Additionally, language has been proposed to permit Community Perinatal Centers—Intermediate to provide total parenteral nutrition if daily authorization is received from the neonatologist on call at the Regional Perinatal Center.

Lastly, the Department is proposing N.J.A.C. 8:43G-5.10(b), requiring that hospitals maintain the status of "members in good standing" of their respective Maternal and Child Health Consortia. The Department believes it is important that hospitals maintain such status in order to assure that MCHCs have sufficient resources to accomplish their regional coordinating and planning responsibilities. The addition of this proposed text is related to text proposed at N.J.A.C. 8:43G-5.10(a), at 25 N.J.R. 792(a), in the March 1, 1993 issue of the New Jersey Register.

Social Impact

Maternal and child health is of vital concern to the State of New Jersey, particularly the health status of infants and young children. Although infant mortality has dropped from 12.5 deaths per 1,000 live births in 1981 to 9.3 in 1989, much remains to be done. In 1989, at 19.4 deaths per 1,000 live births, the Black infant death rate was more than double that of White infants. As a result, New Jersey has yet to reach the 1990 target set in *Objectives for the Nation.* In *Healthy New Jersey 2000* targets for total infant mortality and Black infant mortality are set at 7.0 and 11.0 deaths per 1,000 live births respectively.

There is widespread recognition that further substantial gains cannot be accomplished through further emphasis on costly technological improvements. In order to achieve additional progress towards reducing the infant mortality rate, the focus must shift to prevention of low birth weight. This can best be achieved through a network of services and interventions which provide outreach, identification of high risk populations, and specialized levels of care and services for the management of high risk pregnancies and deliveries. The proposed amendments are intended to promote the goals of reducing the infant mortality rate and promoting improved maternal and child health care in New Jersey.

Economic Impact

The average cost of hospital care in New Jersey for a high risk, very low birth weight infant exceeded $124,000 in 1989 and total expenditures exceeded $105 million that year. Only with the prevention of low birth weight through adequate and timely prenatal care can savings in this area of health care expenditures be realized. The savings that are anticipated from the prevention of low birth weight infants and maternal and neonatal morbidity are expected to offset the anticipated costs of developing and staffing the designated appropriate levels of perinatal care and the development and staffing of Maternal and Child Health Consortia. The estimated hospital contribution for 1993 is $4.8 million.

Regulatory Flexibility Statement

The proposed amendments to the hospital licensing standards would not affect small businesses, as the term is defined in the Regulatory Flexibility Act, 52:14B-16 et seq. The hospitals in New Jersey which are regulated by N.J.A.C. 8:43G all employ more than 100 people. Businesses other than hospitals would not be affected. Therefore, a regulatory flexibility analysis is not required.

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

8:43G-5.10 [Department education programs; Advisory (Reserved)] **Funding for regionalized services**

(a) (Reserved)

(b) All hospitals with licensed obstetric or pediatric beds or designated as a Community or Regional Perinatal Center pursuant to N.J.A.C. 8:33C shall be a member in good standing of a Maternal and Child Health Consortium as defined in N.J.A.C. 8:35.

8:43G-19.1 Scope of obstetrical standards; definitions; **structural organization**

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

(c) All hospitals with obstetric services shall, in accordance with N.J.A.C. 8:33C, satisfy the following conditions:

1. The hospital shall be designated as a Community Perinatal Center or a Regional Perinatal Center; and

2. The hospital shall be a member of a Regional Maternal and Child Health Consortium.

(d) All Community Perinatal Centers and Regional Perinatal Centers shall provide services in accordance with a letter of agreement approved by the Maternal Child Health Consortium for its region. Such services shall include:

1. Prenatal and pediatric services in accordance with the HealthStart Standards, N.J.A.C. 10:49-3; and

2. Routine prenatal care which incorporates use of a comprehensive standardized perinatal record.

(e) All Community Perinatal Centers shall have a written protocol which addresses the management of patients assessed to be at risk during the prenatal period. This protocol shall assure referral of the patient to a provider with advanced capabilities in maternal-fetal medicine for initial consultation and, if appropriate, treatment.

(f) All Regional Perinatal Centers shall have a distinct prenatal clinic service devoted to women identified as high risk.

(g) All Regional Perinatal Centers shall provide high risk infant follow-up services in accordance with N.J.A.C. 8:33C-8.2(c).

8:43G-19.20 Newborn care patient services

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

(c) A Community Perinatal Center—Intermediate may provide care to neonates greater than 1,499 grams and 32 weeks gestation. A Community Perinatal Center—Intermediate may provide care to infants born in the facility who are below the specified weight and age criteria only if the infant does not require a higher level of care than otherwise specified for Community Perinatal Center(s)—Intermediate and if it has been documented in the medical record that the birth was expected to meet the weight and age criteria. Service restrictions placed on Community Perinatal Center(s)—Intermediate include:

1. (No change.)

2. A Community Perinatal Center—Intermediate shall not provide total parenteral nutrition[.], **except in cases where authorization has been received from the neonatologist on-call at the Regional Perinatal Center. Authorization from the neonatologist on-call at the Regional Perinatal Center shall be obtained on a daily basis and shall be documented in the medical record.**

3. (No change.)

(d) A Community Perinatal Center—Intensive may provide care to neonates greater than 999 grams and 28 weeks gestation. **A Community Perinatal Center—Intensive may provide care to infants born in the facility who are below the specified weight and age criteria only if the infant does not require a higher level of care than otherwise specified for Community Perinatal Center(s)—Intensive and if it has been documented in the medical record that the birth was expected to meet the weight and age criteria.** A Community Perinatal Center—Intensive may provide long term ventilatory support and total parenteral nutrition.

(e)-(i) (No change.)

COMMUNITY AFFAIRS

(a)

NEW JERSEY COUNCIL ON AFFORDABLE HOUSING

Procedural and Substantive Rules

Proposed Repeal and New Rules: N.J.A.C. 5:91-14
Proposed Amendments: N.J.A.C. 5:92-1.1
Proposed New Rules: N.J.A.C. 5:93

Authorized By: New Jersey Council on Affordable Housing, Christiana Foglio, Acting Chairperson.

Authority: N.J.S.A. 52:27D-301 et seq., specifically 52:27D-307.

Proposal Number: PRN 1993-131.

Public hearings will be held from 3:00 P.M. to 5:00 P.M. and from 7:00 P.M. to 9:00 P.M. on the following dates at the following locations:

Wednesday, April 14, 1993
Galloway Township Municipal Building
300 East Jimmie Leeds Road
Galloway, New Jersey

Thursday, April 15, 1993
North Brunswick Municipal Building
710 Herman Road
North Brunswick, New Jersey

Thursday, April 22, 1993
Morristown Court House
Administrative Wing of the Courthouse
Ann Street
Morristown, New Jersey

Submit written comments by May 14, 1993 to:
Art Bernard, Acting Executive Director
Council on Affordable Housing
CN 813
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The agency proposal follows:

Summary

The Fair Housing Act, N.J.S.A. 52:27D-301 et seq., enacted by the New Jersey Legislature in response to the New Jersey Supreme Court's decisions in the *Mt. Laurel* cases (*Burlington County N.A.A.C.P. v. Township of Mount Laurel,* 67 *N.J.* 151 (1975), (*Mt. Laurel I*) and *Southern Burlington County N.A.A.C.P. v. Mount Laurel*, 92 *N.J.* 158 (1983) (*Mt. Laurel II*), established a nine-member Council on Affordable Housing.

The Council is directed to prepare a comprehensive planning and implementation response to the constitutional obligation to provide, through municipal land use regulations, a realistic opportunity for a fair share of regional present and prospective needs for housing low and moderate income households. The Act directs the Council to estimate State and regional fair share and establish guidelines and criteria to be used by municipalities in addressing the constitutional obligation.

The Fair Housing Act permits officials at the municipal level to prepare a housing element and fair share plan that addresses the municipal fair share for low and moderate income housing. The Council is directed to review the municipal housing element and fair share plan and is empowered to grant the municipality substantive certification.

The proposal is a result of a comprehensive review of the Council's prior rules and the Council's experience in administering those rules. The review process began with a staff analysis of the rules which resulted in a series of issue papers that were distributed to the public in January, 1991. Three public hearings were conducted to solicit input on the issue papers and on any suggestions for changes to the Council's rules. The results of the public hearings and all the other input the Council received were organized into an agenda for a working group of parties interested in the Council's administrative process.

The working group consisted of representatives from: The League of Municipalities; The Federation of Municipal Planning Officials; The Alliance on Affordable Housing; The Consulting Planner's Association; The New Jersey Builder's Association; The Society of Court Appointed Masters; The New Jersey Housing Mortgage Finance Agency; The Department of Community Affairs; The Civic League of Greater New Brunswick; The State Planning Commission; The Affordable Housing Network of New Jersey; The Association of New Jersey Environmental Commissions; and The Rutgers Center for Urban Policy Research. Individuals with expertise in specific areas joined the working group on various issues and enhanced the quality of input. The recommendations that emanated from these group meetings were presented to the Council. The Council used this substantial input to render decisions on their proposed rules.

The proposal implements the intent of the legislature to provide for timely achievement of an appropriate fair share of the regional need for low and moderate income housing. Proposed N.J.A.C. 5:93 is designed to serve, for 1993 and following years, the purpose served by the substantive rules in N.J.A.C. 5:92. The rules at N.J.A.C. 5:92 will be retained in the New Jersey Administrative Code for various purposes pertinent to the Council's award of substantive certification under the new rules at N.J.A.C. 5:93, particularly the assignment of credit for past action taken by municipalities to provide affordable housing. Amendments have been made at N.J.A.C. 5:92-1.1 to clarify the use of the chapter.

The rules at N.J.A.C. 5:91-14 are being repealed and replaced by new rules establishing procedures for receiving interim substantive certification and substantive certification. This has been done to address those municipalities that have periods of repose or have substantive certification due to expire or have already expired; municipalities that have petitioned for, but have not yet received, substantive certification prior to the effective date of the new rules; and other municipalities which may be affected by the proposed comprehensive changes in the Council's rules. The rules clarify that a municipality that has filed a housing element and fair share plan and has not petitioned for substantive certification within the two years permitted by the Fair Housing Act must petition for substantive certification in order to re-enter the Council's administrative process.

The proposed new chapter, N.J.A.C. 5:93, contains rules which cover the following areas:

N.J.A.C. 5:93-1 provides the purpose, scope and definitions for the chapter.

N.J.A.C. 5:93-2 outlines the methodology for estimating housing need (determining calculated need). The methodology may be viewed as a continuation of the Council's 1987-1993 methodology. The court, in *Mt. Laurel II,* stated that every municipality in New Jersey is responsible for at least some portion of its substandard housing stock which is occupied by low and moderate income households in every municipality. As delineated more specifically in Appendix A, the Council has estimated, using United States Census data, the number of deteriorated units occupied by low and moderate income households in every municipality. The court also said, in *Mt. Laurel II,* that some communities have accepted a disproportionate number of low and moderate income households. Therefore, the court limited the responsibility of municipalities that had high levels of substandard units occupied by the poor. The regional standard was determined by dividing the number of substandard units occupied by the poor by the total occupied housing stock within a given region. The same ratio was calculated for each municipality within the housing region. If a municipality had an excess of substandard housing occupied by the poor, the excess went into a regional pool for distribution to other municipalities within the housing region.

The portion of substandard units occupied by the poor that remains the municipal obligation is called the indigenous need. The portion above the regional standard that is distributed to other municipalities within the housing region is called reallocated present need. It should be clear that both are a function of census estimates of substandard housing.

The third basic component of need is called prospective need. It is a projection of low and moderate income households. Population projections are converted into projections of households. Approximately 40 percent of the projected households qualify as low or moderate income households and are included in the prospective need.

In developing its 1987-1993 projections of need, the Council employed the concepts of indigenous need, reallocated present need and prospective need. These components of need were quantified as follows:

Indigenous Need	85,134
Reallocated Present Need	34,411
Prospective Need	80,421
Total Need	199,966

In accepting these basic concepts, the Council's methodology was similar to the one employed by the courts in the Mt. Laurel decisions. However, the Council recognized that the private market would probably respond to some of this need. In using the census, the Council recognized that sound market units change hands and become available to low and moderate income households (filtering). Conversions take place and result in a new unit in an existing structure. These also benefit the poor. Also, to a limited extent, substandard units occupied by the poor are "brought up to code" (spontaneous rehabilitation).

After projecting the ability of the private sector to respond to the need and the impact of demolitions, the Council limited the municipal responsibility to 145,707 units. (The 145,707 units were divided into indigenous need, reallocated present need and prospective need.) The indigenous and reallocated present need were a function of the 1980 census. The Council has reasoned that if municipalities are going to be responsible for estimates of substandard housing, those estimates should reflect the best and the most recent data available. Therefore, the estimates based on the 1990 census have replaced the estimates that resulted from the 1980 census.

Between 1980 and 1990, the United States Census Bureau decided to collect different information on housing. Thus, not all the census surrogates for substandard housing that were available in 1980 are available in 1990. Specifically, the lack of an elevator in a residential structure of at least four stories and the lack of private access variables were not collected by the Census Bureau in 1990. These variables were replaced by other variables that have been demonstrated to be surrogates for substandard housing. In addition, the variable measuring the source of heat was modified by the Census Bureau. Perhaps due to the changes wrought by the U.S. Census Bureau; and/or rehabilitation activity during the 1980s; and/or demolition activity during the 1980s, the resulting estimates of substandard units occupied by low and moderate income households are lower than those adopted by the Council for the 1987-1993 period.

The third basic component of need is prospective need, which is a function of growth projections. In 1986, when the Council projected

need, even the most conservative projections available forecast tremendous growth in New Jersey. It did not happen.

As the Council deliberated on the relationship between the previous and future estimates of need, it did not make sense for municipalities to be responsible for projected growth that did not occur. So, with the advantage of being almost through the 1987-1993 projection period, the Council has adjusted the 1987-1993 prospective need based on the best estimates of growth that actually occurred. Therefore, under the approach considered by the Council, 1987-1993 prospective housing need will be reduced.

To the reduced 1987-1993 prospective need, the Council will add a projection of 1993-1999 prospective need that reflects the best projections available at this point in time. The projection is the same projection used by the State Planning Commission in developing the State Plan and by the Department of Community Affairs in developing the Comprehensive Housing Assistance Strategy.

Therefore, the Council's methodology results in 1987-1999 estimates of housing need. These estimates are again mitigated by estimates of the private sector's ability to respond to the need. The resulting individual municipal obligations (precredited need) may be reduced based on the realistic opportunity created by the municipality in addressing its 1987-1993 fair share obligation and any eligible new construction credits awarded for activity between April 1, 1980 and December 15, 1986.

Although the housing regions are very similar to those employed previously, there have been some changes. Sussex County has been added to the housing region that also includes Bergen, Passaic, and Hudson Counties. Warren County has been added to the Morris, Essex and Union County region; and Mercer County has been added to the Monmouth and Ocean County region. These changes are consistent with the direction provided by the Fair Housing Act in that they consist of no less than two and no more than four contiguous counties and they conform to a great extent to the primary metropolitan statistical areas, as defined by the United States Census Bureau. In reconfiguring the housing regions, the Council was guided by the criteria within the Fair Housing Act and the following considerations:

1. There should be a strong link between counties within the same region with regard to commuter patterns;

2. The housing regions, to the extent practicable given the restraints imposed by the Fair Housing Act, should consist of enough undeveloped land to address the regional need; and

3. Each region should include a center city to facilitate regional contribution agreements.

The goal of redefining housing regions to develop a better relationship between housing need and the capacity to address the regional need is consistent with the direction provided by the Supreme Court in *Mt. Laurel II.* For this reason, Sussex County was included in the Bergen, Hudson, Passaic region and Warren County was included with Morris, Union and Essex Counties. The inclusion of Mercer County with Monmouth and Ocean provides another major urban center to that region while conforming to the Council's other criteria for a housing region. The Council believes that the addition of Mercer County to this region will foster regional contribution agreements and the goals of the Fair Housing Act.

After determining the Statewide 1993-1999 prospective need, the prospective need was assigned to housing regions. Prospective households headed by people younger than 65 were assigned to housing regions based on a proportional share of nonresidential ratable growth. This assignment of prospective need is designed to maintain the relationship between jobs and the housing obligation. The projected households headed by people over 65 or more remained in their housing region of origin.

The Council has allocated regional need to municipalities based on regional shares of equalized assessed value on non-residential ratables, undeveloped land and median income. The equalized assessed value factor replaces covered employment. Over the past six years, there have been numerous instances where covered employment was found to be assigned to the wrong community. This error in data often resulted in disputes that prolonged the Council's administrative process and similar proceedings in court. The Council has determined that a very strong relationship exists between jobs and non-residential ratables. Therefore, the Council believes that it is fostering the principle that housing should be located in close proximity to jobs by replacing the covered employment data base with non-residential ratables. In addition, the Council believes the change will result in a more reliable data source, less disputes over data and a more expeditious process.

The use of an undeveloped land factor is an attempt to develop a better relationship between the need for housing and the municipal capacity to respond to that need. The Council believes that this relationship is important in fostering as much low and moderate income housing as possible.

In 1986, when the Council last allocated need, there was no data base of undeveloped land for the entire State. As a result, there was no undeveloped land factor and large allocations were made to municipalities with little vacant land.

To remedy this problem, the Council attempted to develop its own data base of undeveloped land. In developing this data base, the Council considered: the collection of municipal existing land use maps; interpretation of aerial photographs; the use of tax records; and the use of existing geographic information systems. Each alternative proved not to be practical for various reasons. As a result, the Council decided to develop a data base using land satellite imagery.

The land satellite has been used for various agricultural uses. It is capable of differentiating corn from soybean crops and conifers from deciduous trees. It has been used to map the spread of gypsy moth defoliation in forests. The Council found that it could also differentiate between developed and undeveloped land, as is explained in Appendix B.

The satellite's interpretation of ground cover is not viewed as a precise accounting of undeveloped land for each municipality. However, the satellite's interpretation is consistent throughout the State. Therefore, the data that result yield the most reliable available regional shares of undeveloped land by municipality.

The undeveloped land estimates are further refined by State Planning Commission Planning Areas. These estimates are then weighted to reflect the goals of the State Planning Commission. As a result of the weighting system, the most housing need is allocated to Planning Areas 1 and 2, where infrastructure currently exists, and the least housing need is allocated to Planning Areas 4 and 5, where there is no existing infrastructure. (See N.J.A.C. 17:32.)

The Council has replaced a factor based on municipal aggregate income with a factor based on the differences in municipal median household incomes. The previous aggregate income factor tended to allocate more housing need to well-populated middle class municipalities that may have accepted a diversity of housing types. The logic underlying the factor based on income differences is that wealthier municipalities have a greater responsibility and capacity to address the need for low and moderate income housing.

Before arriving at the municipal calculated need, the municipal obligation may be limited in two ways. The municipal obligation may be limited by the Council's estimate of undeveloped residential land in the municipality. This limit or cap is proposed to develop a closer relationship between the calculated need and the municipality's capacity to address the need. This cap and the data used to calculate the cap are not viewed by the Council as a substitute for the adjustment process (N.J.A.C. 5:92-4). A municipality shall utilize the adjustment process whenever it believes it lacks the land capacity to address the calculated need. In addition, municipal need for new construction shall not exceed 20 percent of the 1993 occupied housing stock. Since a municipality may rely on inclusionary zoning to address the need for additional low and moderate income units and since such zoning often requires four market units to support each low or moderate income unit, the 20 percent limitation prevents a municipality's housing stock from increasing by more than 100 percent as a result of a low and moderate income obligation.

Subchapter 3 provides a one-to-one credit for every low and moderate income unit constructed since April 1, 1980. Since the Council did not adopt criteria for eligible low and moderate income units prior to December 15, 1986, the criteria for credit are somewhat more liberal for low and moderate income units constructed between April 1, 1980 and December 15, 1986. In addition, the rule provides credit for rehabilitation activity subsequent to the 1990 census. All of these credits are designed to encourage municipalities to create and maintain low and moderate income housing.

Subchapters 2 and 3 describe a process designed to quantify the municipal obligation for low and moderate income housing. It is possible that the municipality lacks the resources, as measured in land and infrastructure, to address the entire obligation. Therefore, subchapter 4 outlines a process through which a municipality may achieve an adjustment to its housing obligation. These procedures may not be used to

adjust the rehabilitation component, since the rehabilitation component deals with units existing in the community.

Subchapter 4 introduces the concept of realistic development potential. Through this concept, the Council will make site-by-site determinations regarding which sites could realistically develop for low and moderate income housing during the period of substantive certification, if appropriately zoned. Only the sites determined by the Council to be realistic would be included in calculating the municipal realistic development potential. Where the municipal development potential is less than the housing need, the Council is empowered to require the municipality to capture a contribution towards the housing need as development or redevelopment takes place. A municipality that has already received a vacant land adjustment in addressing its 1987-1993 need shall have a realistic development potential of zero.

The Council believes that the changes in its adjustment process will provide more flexibility to municipalities and developers. The Council also believes that the changes will result in more housing for low and moderate income people, because municipalities seeking an adjustment will be required to "capture" a contribution toward the housing obligation as development and redevelopment occur in the municipality. Such a contribution may be in the form of new units and/or a development fee.

Subchapter 5 outlines the Council's criteria for reviewing various approaches for addressing the municipal fair share. The menu of acceptable approaches is not necessarily all inclusive. The Council believes that the detailed criteria provided will help demystify the process of preparing a housing element and fair share plan and enhance the municipal ability to respond.

Subchapter 6 provides rules relating to regional contribution agreements. These rules are very similar to N.J.A.C. 5:92. The modifications clarify that the Council will not review a regional contribution agreement until there is a contract between the sending and receiving municipalities. The rules also create a minimum contribution for a regional contribution agreement of $20,000. This threshold has been proposed based on the Council's experience in implementing the Fair Housing Act, having considered various factors in N.J.A.C. 5:92-6.4.

Subchapter 7 amends the Council's rules pertaining to inclusionary developments. The proposed rules provide a greater emphasis on rental housing for families. The rules also require sales and rental units to be priced at more affordable levels for low and moderate income households. In addition, the Council's nine-tiered stratification system for pricing sales housing has been replaced by an optional system restricted only by some basic criteria designed to ensure affordability. The Council believes these changes will benefit its target population and will provide more flexibility for municipalities and developers in delivering affordable housing.

Within Subchapter 7, the Council is proposing a change in the method of pricing low and moderate income housing units and qualifying low and moderate households. In the past, pricing and income qualification have been based on the Section 8 uncapped income limits for each Primary Metropolitan Statistical Area (PMSA), as annually determined by the United States Department of Housing and Urban Development (HUD). Unfortunately, the PMSA areas do not always correspond to the regions established by the Council for the purpose of calculating housing needs. This results in a difference in pricing and qualifications within the same housing region. This difference in pricing and income qualification conflicts with the regional nature of the housing obligation and the Council's method of determining the need for low and moderate income housing. Consequently, the same housing unit in the same housing region designed to address the same need can be priced very differently. As a result, individual households that were included in the need calculation cannot afford housing constructed in individual counties within the same housing region.

The Council believes that the standards set for pricing and income qualification in a region should be the same as that used to determine need. Therefore, the Council is proposing regional income standards, to eliminate such inequities, based on New Jersey income data.

Subchapter 8 includes standards relating to the collection and use of development fees, and is the same as the text which became effective January 21, 1992 as N.J.A.C. 5:92-18. (See 23 N.J.R. 2813(b) and 24 N.J.R. 235(a).)

Subchapter 9 contains the standards which control affordability, and is designed to provide assurances that low and moderate income units remain affordable over time. The subchapter contains requirements for household eligibility standards at N.J.A.C. 5:93-9.1(b); specification of the length of controls; measures restricting deeds and options on sales and rental units; standards on foreclosure; a provision for annual indexed increases for sales and rental units while controls are in place; and procedures for sales, resale and rentals prior to the expiration of controls. Copies of the uniform deed restriction referenced in Subchapter 9 and included in the chapter as Appendix E are available from the Council.

Subchapter 10, Cost Generation, Relief and Revocation, provides standards, as required by *Mt. Laurel II* and the Fair Housing Act, for the evaluation of costs, in order to eliminate unnecessary cost generating factors. In order to receive and to retain substantive certification, municipalities will be required to eliminate development standards that are not essential to protect the public welfare and to expedite municipal approvals/denials of inclusionary development applications. Provisions for relief subsequent to substantive certification are included at N.J.A.C. 5:93-10.4, allowing developers to file a motion to expedite the review process. A Council determination that a municipality has delayed action, required unnecessary cost-generating standards, or obstructed the construction of an inclusionary development may result in the revocation of a municipality's substantive certification.

Subchapter 11 contains standards for affirmative marketing of low and moderate income housing, including initial sales and rentals, monitoring and reporting of marketing activities, and standards for residency preference, should a municipality choose to exercise such preference. The subchapter also provides an exemption for urban aid municipalities from residency preference limitations.

Subchapter 12 provides for Council action in the case of municipalities which have not submitted monitoring forms by August 30 of each year, including revocation of substantive certification, of certification to collect development fees, or any other action the Council may determine to be necessary.

Subchapter 13 provides standards for site-specific relief in State Planning Commission Areas 1, 2, 3, 4, and 5. These standards have been developed in concert with the State Planning Commission and are the subject of a memorandum of understanding between the Council and the Commission.

Appendix A, developed by the Center for Urban Policy Research at Rutgers University, provides background information regarding the calculation of need for low and moderate income housing in New Jersey. It includes an explanation of the methods and a copy of the base data used.

Appendix B provides a background for the estimation of undeveloped land in New Jersey, through the use of Thematic Mapper Satellite data, 1990 United States Census data, and the TIGER files.

Appendix C provides the description of a structural conditions survey developed by the Council for the use of any party in the Council's process to present data to the Council to alter the census-generated indigenous need estimates.

Appendix D contains background data regarding the cost of providing infrastructure. The material in this appendix is expected to be of use to municipalities in providing data to the Council so that an assessment of the cost of infrastructure may be performed.

Appendix E provides the form of the deed restriction and lien to be used with new sales units.

Appendix F contains the State Planning Commission—Council on Affordable Housing memorandum of understanding discussed earlier in the Summary, and provides a flow chart of the activities regulated in Subchapter 13.

Appendix G contains a checklist for the county review of a Regional Contribution Agreement.

Social Impact

The repeal, amendments and new rules contained in this proposal could have an impact on all of the 567 municipalities in the State of New Jersey, and the population in those municipalities. The 1987 to 1999 calculated need, after credits and reductions, totals 83,313. The changes presented in this proposal have been developed after careful study of the application of the current rules, as well as factors which have an impact on housing issues, such as the State Development and Redevelopment Plan and available infrastructure. There are a number of benefits to be expected from the application of these new standards.

The public will benefit since the rules will be the basis for the creation of additional housing affordable to low and moderate income households. The existence of a variety of housing types in all municipalities will increase consumer choice. Hardship conditions due to high housing costs or housing unavailability in some areas will be lessened.

The public will also benefit because the Council's housing allocations are based on the availability of infrastructure. Thus, consistent with the policies of the State Planning Commission, the housing need is targeted to areas of the State that have the capacity to respond to the housing need.

In those areas where infrastructure does not yet exist, housing need will be addressed in centers, again in conformance with the State Development and Redevelopment Plan (SDRP). The concentration of housing opportunities into centers that can be serviced by infrastructure will foster low and moderate income opportunities in New Jersey's exurban and rural areas. This will minimize the negative traffic, environmental and scenic impacts of developing New Jersey's farmland and environmentally sensitive areas.

The rules pertaining to regional contribution agreements will help generate money that will be used to foster the revitalization of New Jersey's urban centers. Thus, the public will benefit by an improved housing stock and quality of life in the cities.

The proposed rules should benefit low and moderate income households in a number of ways. The rules have been revised to price low and moderate income units in a more affordable fashion. The affirmative marketing rules (subchapter 11) have been revised to delineate a clear orderly process designed to place low and moderate income households into the appropriate housing units as quickly as possible. In addition, the rules pertaining to cost generation (subchapter 10) are designed to minimize the time between zoning land for low and moderate income housing and the delivery of the ultimate product.

Economic Impact

This proposal can be expected to have a significant economic impact in the municipalities within the jurisdiction of the Council, as delineated in the Summary and in Appendix A.

Creation of housing units affordable to low and moderate income households will provide them access to sound shelter within their means. Such housing opportunities will enable New Jersey workers to live closer to their jobs and make it easier for potential employers to attract a labor force. This combination should enhance New Jersey's ability to retain and attract ratables that are vital in stimulating the economy. In-fill housing and rehabilitation may reduce expenditures on sewer and water extensions by utilizing existing systems with excess capacity.

The transfer of money from suburban to urban areas via regional contribution agreements should help revitalize the housing stock in New Jersey's cities. This infusion of money should help stabilize the tax base and the economy of the cities.

The specific costs will vary from municipality to municipality, and will be based upon what was done in the past to provide affordable housing, the choices made by an individual municipality in the application of the rules.

Approximately forty percent of the population of New Jersey reside in what can be considered low or moderate income households. The benefit to these individuals, and to their communities, can be significant. While the municipalities involved may incur costs associated with the application of these rules, such costs can be defrayed through the collection of development fees. Costs may also include those required to comply with Subchapter 5, Preparing a Housing Element.

The economic impact of participation in the Council's process, however, is significantly less than the impact created by involvement in a lawsuit. This fact is a major reason for the development of these standards, which allow a community to make economic choices to its advantage.

Regulatory Flexibility Statement

The primary purpose of the substantive and procedural rules is to regulate and facilitate the preparation of a municipal housing element and fair share plan, in accordance with the Fair Housing Act. The regulated public consists of the municipalities within the Council's jurisdiction. While small businesses may become involved as objectors to a particular municipality's plan, they are not directly regulated by these rules. Therefore, a Regulatory Flexibility Analysis is not required.

Full text of the repealed rules may be found in the New Jersey Administrative Code at N.J.A.C. 5:91-14.

Full text of the proposal follows:

SUBCHAPTER 14. INTERIM PROCEDURES

5:91-14.1 Interim substantive certification

(a) A municipality that has received substantive certification from the Council for a housing element and fair share plan addressing the municipality's affordable housing obligation for 1987-1993 may move for an interim substantive certification if its certification expires prior to or within nine months after the effective date of this rule. If a municipality's judgment of repose has expired, the municipality may, within four months of the effective date of this rule, also file such a motion, provided no exclusionary zoning lawsuit has been filed against the municipality. The motion seeking interim certification must:

1. Comply with the requirements of N.J.A.C. 5:91-12;

2. Be served upon all objectors and/or litigants that participated in the substantive certification or court settlement process; and

3. Be accompanied by:

i. The municipality's current housing element and fair share plan;

ii. A resolution of the governing body of the municipality expressing the intention to submit to the Council, within nine months following the effective date of this rule, a housing element and fair share plan addressing the municipality's fair share housing obligation;

iii. A proposed schedule for this submission;

iv. A statement as to the progress of the municipality's compliance with the terms of substantive certification; and

v. Any additional information the Council may require.

(b) The Council will issue interim substantive certification for a period of time not to exceed nine months following the effective date of this rule that responds to the submitted municipal schedule for filing its housing element and fair share plan if no objection is filed to the municipality's motion for interim substantive certification. The Council will condition its grant of substantive certification with any conditions it deems necessary or appropriate in order to insure continued compliance with the terms of substantive certification and the satisfaction of the municipal fair share obligation.

(c) Objections filed to a municipality's motion for interim substantive certification shall set out how the municipality has failed to comply with the terms of substantive certification or otherwise failed to satisfy its fair share obligation and also articulate what relief is requested of the Council.

(d) When interim substantive certification is granted, a municipality shall leave all ordinances implementing its original substantive certification in effect for the interim substantive certification period, unless the municipality can demonstrate good cause why the ordinances should not remain in effect.

(e) If a municipality received a judgment of repose that expires up to nine months after the effective date of this rule, the municipality should apply to the Court that issued the judgment for relief prior to the expiration of its judgment of repose. The Council will consider a motion for interim certification if the Court transfers the request to the Council. In such cases, the procedures and criteria set forth above shall apply.

5:91-14.2 Municipalities that have not received substantive certification

(a) A municipality that has petitioned for substantive certification of a housing element and fair share plan designed to address its 1987-1993 obligation, but has not received a final determination of the Council on its plan by the effective date of this rule, may either:

1. Move to amend its housing element and fair share plan to address its 1987-1999 obligation pursuant to N.J.A.C. 5:92 and repetition for certification of the amended plan; or

2. Choose to continue to seek substantive certification of its 1987-1993 obligation.

(b) A municipal motion to amend its housing element and fair share plan to address its 1987-1999 obligation pursuant to N.J.A.C. 5:92 shall be accompanied by a resolution of the governing body of the municipality expressing the intention to submit to the Council, within nine months following the effective date of this rule, an amended housing element and fair share plan addressing the municipality's 1987-1999 obligation pursuant to N.J.A.C. 5:92; a

proposed schedule for this submission; and the intention to repetition for substantive certification within the nine month period.

(c) When granting such motion, the Council will set out a schedule for the municipal submission of its housing element and fair share plan and will require the municipality to repetition for substantive certification of the new housing element and fair share plan upon this filing.

(d) The Council will condition any grant of substantive certification for a municipal housing element and fair share plan that addresses only the 1987-1993 fair share obligation by a requirement that the municipality file a housing element and fair share plan addressing its 1987-1999 obligation pursuant to N.J.A.C. 5:92 and petition for the substantive certification of that housing element and plan within two years of the date of the granting of substantive certification of the 1987-1993 plan.

5:91-14.3 Other municipalities

(a) A municipality that filed its housing element and fair share plan with the Council more than two years prior to the effective date of this rule, but did not petition for substantive certification prior to the effective date of this rule, must file a new housing element and fair share plan addressing its 1987-1999 obligation pursuant to N.J.A.C. 5:92 and petition for substantive certification prior to an exclusionary lawsuit to re-enter the Council's process.

(b) A municipality that has filed a housing element and fair share plan less than two years prior to the effective date of this rule may seek to extend the period of protection afforded by N.J.S.A. 52:27D-313 for up to nine months following the effective date of this rule in order to address its 1987-1999 obligation pursuant to N.J.A.C. 5:92. To seek such an extension, the municipality shall file a resolution of the governing body within whichever of the following dates occurs earlier: two years of the initial filing of the municipal housing element and fair share plan; or four months of the effective date of this rule. In addition to a schedule for submitting a housing element and fair share plan, the governing body's resolution shall state an intent to petition for substantive certification upon filing the housing element and fair share plan.

(c) The Council shall review the municipality's resolution of intent and grant a schedule for the municipal submission of the housing element and fair share plan conditioned on the municipality's petitioning for substantive certification upon filing its submission. The schedule for submitting the housing element and fair share plan shall require the filing and petition to occur within nine months of the effective date of this rule.

CHAPTER 92

SUBSTANTIVE RULES OF THE NEW JERSEY COUNCIL ON AFFORDABLE HOUSING **FOR THE PERIOD AUGUST 4, 1986 THROUGH (THE EFFECTIVE DATE OF N.J.A.C. 5:93)**

5:92-1.1 Short title; **purpose; scope**

(a) The provisions of this chapter [will be known as "the substantive rules and regulations of the New Jersey Council on Affordable Housing."] **shall be known as the "Substantive Rules of the New Jersey Council on Affordable Housing for the Period August 4, 1986 through the effective date of N.J.A.C. 5:93."**

(b) The purpose of this chapter will be the crediting of past actions taken by municipalities in addressing their obligations to house low and moderate income households.

(c) These rules can be applied to all municipalities within the Council's jurisdiction.

CHAPTER 93

SUBSTANTIVE RULES OF THE NEW JERSEY COUNCIL ON AFFORDABLE HOUSING FOR THE PERIOD BEGINNING (THE EFFECTIVE DATE OF THESE RULES)

SUBCHAPTER 1. GENERAL PROVISIONS

5:93-1.1 Short title; purpose; scope

(a) The provisions of this chapter shall be known as the "Substantive Rules of the New Jersey Council an Affordable Housing for the Period Beginning on (the effective date of these rules)."

(b) The purpose of this chapter will be the provision of criteria to be used by municipalities in addressing their constitutional obligation to provide a fair share of affordable housing for moderate and low income households.

(c) All municipalities within the jurisdiction of the Council are subject to evaluation, in accordance with the provisions of this chapter, for the period beginning on the (effective date of these rules).

5:93-1.2 Severability clause

If any part of this chapter shall be held invalid, the holding shall not affect the validity of remaining parts of these rules. If a part of these rules is held invalid in one or more of their applications, the rules shall remain in effect in all valid applications that are severable from the invalid application.

5:93-1.3 Definitions

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

"Accessory apartment" means a self-contained residential dwelling unit with a kitchen, sanitary facilities, sleeping quarters, and a private entrance, which is created within an existing home, or through the conversion of an existing attached accessory structure on the same site, or by an addition to an existing home or accessory building.

"Act" means the Fair Housing Act of 1985, P.L.1985, c.222 (N.J.S.A. 52:27D-301 et seq).

"Adjustment" means a modification and/or deferral of the municipal low and moderate income housing obligation, pursuant to N.J.S.A. 52:27D-307(c)(2) and N.J.A.C. 5:93-4.

"Agency" means the New Jersey Housing and Mortgage Finance Agency established by P.L.1983, c.530 (N.J.S.A. 55:14K-1 et seq.).

"Affordable" means a sales price or rent within the means of a low or moderate income household as defined in N.J.A.C. 5:93-7.4.

"Alternative living arrangement" means a structure in which households maintain private rooms, yet share kitchen and plumbing facilities, central heat and common areas. Alternative living arrangement includes, but is not limited to: Class A,B,C,D, and E boarding homes as regulated by the New Jersey Department of Community Affairs; residential health care facilities as regulated by the New Jersey Department of Health; group homes for the developmentally disabled and mentally ill as licensed and/or regulated by the New Jersey Department of Human Services; and congregate living arrangements.

"Approvable site" means a site that may be developed for low and moderate income housing in a manner consistent with the rules or regulations of all agencies with jurisdiction over the site. A site may be approvable although not currently zoned for low and moderate income housing.

"Authority" means the entity designated by the municipality for the purpose of monitoring the occupancy, resale and rental restrictions of low and moderate income housing units.

"Available site" means a site with clear title, free of encumbrances which preclude development for low and moderate income housing.

"Calculated need" means the low and moderate income housing obligation resulting from the procedures in N.J.A.C. 5:93-2. It is the result of subtracting reductions, pre-1987 credits, the undeveloped land cap and the 20 percent cap from the precredited need. To the extent that the Council has knowledge of pre-1987 credits and eligible reductions, these credits and reductions have been applied to the municipal housing obligation.

"Census subregion" means a geographic subdivision of the State as determined by the United States Bureau of the Census.

"Center" means a compact form of development with a core or node (focus of residential, commercial and service development) and a community development area that ranges in scale from an urban center to a regional center, town, village, and hamlet. This definition is in accord with and derived from the State Development and Redevelopment Plan.

"Certified applicants" means a household determined to be eligible for low and moderate income housing by a municipal

authority after the authority has verified the household's gross annual income.

"Community capacity" means an estimate based on 20 percent of a municipality's existing 1993 housing stock, pursuant to N.J.A.C. 5:93-2.17.

"Conversion" means the conversion of existing commercial, industrial or residential structures for low and moderate income housing purposes.

"Council" means the New Jersey Council on Affordable Housing established under the Act and which has primary jurisdiction for the administration of housing obligations in accordance with sound regional planning considerations in the State.

"DCA" means the New Jersey Department of Community Affairs.

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

"Developable site" means a site that has access to appropriate water and sewer infrastructure, and has received water consistency approvals from the DEPE or its designated agent authorized by law to issue such approvals.

"Development fees" means money paid by an individual, person, partnership, association, company or corporation for the improvement of property as permitted in N.J.A.C. 5:93-8.

"DOT" means the New Jersey Department of Transportation.

"Environ" means that area of a municipality outside the development boundaries of a center. This definition is in accord with and derived from the State Development and Redevelopment Plan.

"Equalized assessed value" means the value of a property determined by the municipal tax assessor through a process designed to ensure that all property in the municipality is assessed at the same assessment ratio or ratios required by law. Estimates at the time of building permit may be obtained by the tax assessor utilizing estimates for construction cost. Final equalized assessed value will be determined at project completion by the municipal assessor.

"Exempt sales" means and shall include the transfer of ownership between husband and wife; the transfer of ownership between former spouses ordered as a result of a judicial decree of divorce or judicial separation, but not including sales to third parties; the transfer of ownership between family members as a result of inheritance; the transfer of ownership through an executor's deed to a class A beneficiary; and the transfer of ownership by court order.

"Fair market value" means the unrestricted price of a low or moderate income housing unit if sold at a current real estate market rate.

"Fair Share Plan" means that plan or proposal, which is in a form that may readily be converted into an ordinance, by which a municipality proposed to satisfy its obligation to create a realistic opportunity to meet its fair share of low and moderate income housing needs of its region and which details the affirmative measures the municipality proposes to undertake to achieve its fair share of low and moderate income housing, as provided in sections 9 and 14 of the Act.

"Gross density" means the total number of dwelling units existing or permitted on a housing site divided by the total area of the tract. The result is expressed as dwelling units per acre.

"Household" means the person or persons occupying a housing unit.

"Housing element" means that portion of a municipality's master plan consisting of reports, statements, proposals, maps, diagrams and text designed to meet the municipality's fair share of its region's present and prospective housing needs, particularly with regard to low and moderate income housing and which contains at least those items identified in section 10 of the Act.

"Housing market area" means the geographic region from which it is likely that buyers or renters would be drawn for inclusionary development. The housing market area is the "housing region" as determined by the Council, in which an inclusionary development is located.

"Housing Region" means a geographic area, determined by the Council, of no less than two nor more than four contiguous, whole counties, which exhibit significant social, economic and income similarities and which constitute, to the greatest extent practicable, the Primary Metropolitan Statistical Areas (PMSA) as last defined by the United States Census Bureau.

"Inclusionary component" means the result of subtracting the rehabilitation component from the calculated need, provided the result shall not be less than zero. For a municipality that receives a vacant land adjustment pursuant to N.J.A.C. 5:93-4, the inclusionary component shall be initially synonymous with the realistic development potential.

"Inclusionary development" means a development containing low and moderate income units.

"Indigenous need" means deficient housing units occupied by low and moderate income households within a municipality and is a component of present need. Municipal indigenous need, as a percentage of the total 1993 occupied housing stock, shall not exceed the percentage derived from dividing the deficient housing units occupied by low and moderate income households by the total 1993 occupied housing stock for the housing region in which the municipality is located.

"Initial occupancy" means the period beginning with the date on which the developer is granted permission by the local government to begin occupancy and ending on the date 95 percent occupancy is attained.

"Inventory" means that calculation undertaken by a municipality in accordance with the Fair Housing Act, N.J.S.A. 52:27D-329, in developing its housing element which accounts for its housing stock by age, condition, purchase or rental value, occupancy characteristics and type, including the number of units affordable to low and moderate income households in substandard housing capable of being rehabilitated, as provided for in section 10a of the Act.

"Judgment of repose" means a judgment issued by the Superior Court approving a municipality's plan to satisfy its fair share obligation.

"Landsat" means a satellite that maps land cover by interpreting spectral information reflected from the earth's surface.

"Low income housing" means housing affordable according to Federal Department of Housing and Urban Development or the standards included in this chapter for home ownership and rental costs, occupied or reserved for occupancy by households with a gross household income equal to 50 percent or less of the median gross household income for households of the same size within the housing region in which the housing is located, and which is subject to affordability controls promulgated by the Council.

"Market rate units" means housing within an inclusionary development, not restricted to low and moderate income households, that may sell at any price determined by a willing seller and a willing buyer.

"Median aggregate household income above the floor" means the result of multiplying the number of households in the municipality as of 1990 by the 1989 municipal median household income above the floor.

"Median household income above the floor" means the result of subtracting the regional household floor income from the 1989 median municipal household income.

"Minority" means an individual who is a member of one of the following racial or ethnic groups:

1. Black: An individual having origins in any of the Black Racial groups of Africa, but not of Hispanic origin;

2. American Indian or Alaskan Native: An individual having origins on any of the original people of North America, and who maintains cultural identification through tribal affiliation or community recognition;

3. Hispanic: An individual of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish culture or origin regardless of race; or

4. Asian or Pacific Islander: An individual having origin in any of the original peoples of the Far East, southeast Asia, and the Indian subcontinent or the Pacific Islands. This area includes, for example, China, India, Japan, Korea, the Philippine Islands and Samoa.

"Moderate income housing" means housing affordable according to Federal Department of Housing and Urban Development or the

standards in this chapter for home ownership and rental costs, occupied or reserved for occupancy by households with a gross household income in excess of 50 percent but less than 80 percent of the median gross household income for households of the same size within the housing region in which the housing is located, and which is subject to the Council affordability controls in this chapter.

"Multifamily unit" means a structure contaning five or more dwelling units.

"Municipal estimated land capacity" means an estimate based on Landsat data, tax data and assumptions pertaining to density and set-asides used in developing the undeveloped land cap pursuant to N.J.A.C. 5:93-2.16 and assumptions pertaining to density and set-asides.

"Municipal need for new construction" means a calculation used to determine the undeveloped land cap and 20 percent cap pursuant to N.J.A.C. 5:93-2.16 and 17.

"Municipal present need" means the sum of indigenous need and the municipal share of reallocated present need.

"Net density" means the total number of dwelling units within a designated portion of a tract divided by the total land area of the designated portion of the tract, including the open-space, roadways, parking areas and common facilities devoted exclusively to that portion of the tract. The result is expressed as dwelling units per acre.

"Planning area" means an area defined by a set of common criteria which focus on the degree and type of development or natural resources. Planning areas serve as organizing mechanisms for growth and development planning throughout the State. This definition is in accord with and derived from the State Development and Redevelopment Plan.

"Open-space" means any parcel or area of water or land essentially unimproved and set aside, dedicated, designated or reserved for public or private use or enjoyment or for the use and enjoyment of owners and occupants of land adjoining or neighboring such open space; provided that such areas may be improved with only those buildings, structures, streets and offstreet parking and other improvements that are designed to be incidental to the natural openness of the land.

"Overlay zone" means a zoned area of a municipality in which low and moderate income housing may be built as a matter of right in addition to another use. In approving such a zone, the Council may allow the existing use to continue and expand as a conforming use, but provide that when the prior use on the site is changed, the site shall produce low and moderate income housing or a development fee.

"Petition for Substantive Certification" means that petition which a municipality files, or is deemed to have filed, which engages the Council's mediation and review process.

"Pre-credited need" means the municipal low and moderate income housing obligation resulting from subtracting filtering, residential conversion and spontaneous rehabilitation from the sum of indigenous need, reallocated present need, prior cycle prospective, prospective need and demolitions.

"Pre-1987 credits" means credits approved by the Council for low and moderate income housing constructed between April 1, 1980 and December 15, 1986.

"Present need" means the sum of indigenous need and reallocated present need as determined by N.J.A.C. 5:93-2.5.

"Price differential" means the difference between the controlled unit sale price and the fair market value as determined at the date of a proposed contract of sale, after reasonable real estate broker fees have been paid.

"Priority" means a system of selecting applicants.

"Prior cycle prospective need" means that portion of the 1987-1993 prospective need included in the 1987-1999 low and moderate income housing need calculations.

"Prospective need" means a projection of low and moderate housing needs based on development and growth which is reasonably likely to occur in a region or a municipality. See N.J.S.A 52:27D-304(j).

"Qualified non-profit" means an organization granted non-profit status in accordance with section 501(c)(3) of the Internal Revenue Service code.

"Realistic development potential" means the municipal obligation as calculated pursuant to N.J.A.C. 5:93-4.2(e).

"Reallocated present need" means that portion of a housing region's present need that is redistributed throughout the housing region.

"Receiving municipality" means, for purposes of a Regional Contribution Agreement (RCA), a municipality which agrees to assume a portion of another municipality's fair share obligation.

"Reduction" means a one for one deduction of precredited need based on a fair share plan to construct low and moderate income units, transfer low and moderate income units via a regional contribution agreement and/or zone for low and moderate income housing that implements a housing element that has been certified by the Council or the Superior Court.

"Regional aggregate weighted median household income above the floor" means the result of adding the median aggregate household income above the floor for municipalities in the housing region.

"Regional household floor income" means 100 dollars less than the lowest municipal median household income in the housing region.

"Regional median household income above the floor" means the result of adding the median household income above the floor for each municipality in the housing region.

"Rehabilitated unit" means a previously deficient housing unit which has undergone significant renovation to meet municipal or other applicable housing code standards as further described in N.J.A.C. 5:93-5.2(b).

"Rehabilitation component" means the result of subtracting spontaneous rehabilitation from indigenous need. For a municipality where filtering and conversions exceed reallocated present, prior cycle prospective need, prospective need and demolitions, the rehabilitation component equals calculated need.

"Repayment clause" means the obligation of a seller exercising a repayment option to pay 95 percent of the price differential to a municipality at closing for use in the municipal housing plan.

"Repayment option" means the option of a seller of a low or moderate income unit to sell a unit pursuant to N.J.A.C. 5:93-12.7 at fair market value subject to compliance with the terms of a repayment clause.

"Resolution of Participation" means a resolution adopted by a municipality in which the municipality chooses to prepare a fair share plan and housing element in accordance with the Act.

"Section 8 income limits" means a schedule of income limits that define 50 percent and 80 percent of median income by household size. When used herein, Section 8 income limits shall refer to the "uncapped" schedule as published by the Council, in accordance with its rules.

"Sending municipality" means for purposes of a RCA, a municipality which transfers a portion of its fair share obligation to another willing municipality.

"Set-aside" means the percentage of housing units devoted to low and moderate income households within an inclusionary development.

"State Development and Redevelopment Plan (SDRP)" means the State plan for development promulgated by the State Planning Commission pursuant to P.L. 1985, c.398 (N.J.S.A. 52:18A-196 et seq.).

"Substandard housing unit" means a housing unit with health and safety code violations that require the repair or replacement of a major system. A major system includes a roof, plumbing (including wells), heating, electricity, sanitary plumbing (including septic systems) and/or a load bearing structural system.

"Substantive certification" means a determination by the Council approving a municipality's housing element and fair share plan in accordance with the provisions of the Act and the rules and criteria as set forth in this chapter. A grant of substantive certification shall be valid for a period of six years in accordance with the terms and

conditions contained therein, in accordance with N.J.S.A. 52:27D-322.

"Suitable site" means a site that is adjacent to compatible land uses, has access to appropriate streets and is consistent with the environmental policies delineated in N.J.A.C. 5:93-4.

"Surrogate" means a census indicator of deficient housing used in the calculation of present need as defined in N.J.A.C. 5:93-2.

"Survey" means that independent determination of need undertaken by a municipality in preparing its housing element, which is developed and produced in a manner and in such form as is required by this chapter.

"Target group" means identifiable organizations that may aid in attracting low and moderate income households to inclusionary developments. Examples of target groups include: public housing authorities, non-profit organizations, departments of aging, Section 8 programs, religious organizations, urban community action groups and personnel departments of local employers.

"Total need" means the sum of present and prospective need.

"Vacant land" means undeveloped and unused land area.

SUBCHAPTER 2. MUNICIPAL DETERMINATION OF PRESENT AND PROSPECTIVE NEED

5:93-2.1 General provisions

(a) Municipal present need and prospective need shall be calculated by summing municipal indigenous need and the municipal share of the appropriate housing region's reallocated present need and prospective need. The resulting total shall be modified by: prior-cycle prospective need; secondary sources of supply and demand; reduction for 1987-1993 housing activities; pre-1987 credits; the undeveloped land cap, and the 20-percent cap (see Appendix A, incorporated herein by reference). The end product of this process is the determination of municipal calculated need. This is the figure municipalities shall address in their housing elements. An example for a hypothetical municipality in the Southwest Region (Region 5)—Johnsonville—is provided to illustrate each of the individual calculations. The following flow diagram summarizes the sequence of calculations en route to the determination of calculated need.

FLOW DIAGRAM FOR THE CALCULATION OF LOW- AND MODERATE-INCOME HOUSING NEED

Using the Johnsonville Example

INDIGENOUS NEED		+	REALLOCATED PRESENT NEED		=	PRESENT NEED					
33			95			128					
PRESENT NEED		+	PROSPECTIVE NEED		=	TOTAL NEED					
128			568			695					
TOTAL NEED		+	PRIOR-CYCLE PROSPECTIVE NEED		+	DEMOLITIONS					
695			248			9					
(-)	FILTERING	(-)	RESIDENTIAL CONVERSION	(-)	SPONTANEOUS REHABILITATION		(=)	PRE-CREDITED NEED			
	89		16		8			839			
(-)	REDUCTION	(-)	PRE-1987 CREDITS	(-)	UNDEVELOPED LAND CAP	(-)	20% CAP	(=)	CALCULATED NEED*		
	439		101		0		0		299		

*Prior-cycle vacant land adjustment communities are indicated by "VL" even though their number is calculated. This indicates that although there is not much vacant land left in these communities, the affordable housing number may be met in other ways and is retained as part of overall Calculated Need.

(b) Exhibit 1 in the Technical Appendix A provides municipal-specific base data that may be employed to determine municipal Present and Prospective Need. Data for a hypothetical municipality, "Johnsonville," precedes the municipal base data for illustrative purposes in both Exhibits 1 and 3. Exhibit 2 in Appendix A duplicates the base data for each housing region that is presented in Columns A through L herein. Exhibit 3 is included for the convenience of the user of this guide. It provides a variety of data for each community, often from the 1990 Census, which would otherwise have to be researched in the process of undertaking this calculation.

(c) Selected municipalities receiving State aid (urban aid cities) pursuant to P.L. 1978, c.14 (N.J.S.A. 52:270-178 et seq.) as refined by the criteria in N.J.A.C. 5:93-2.3(b) shall calculate municipal calculated need as per the procedures delineated in N.J.A.C. 5:93-2.17.

5:93-2.2 Indigenous need—1993

(a) Indigenous need in a municipality is actual or capped deficient housing occupied by low- and moderate-income households as further defined in N.J.A.C. 5:93-1.3. Municipal indigenous need shall be determined from the total of deficient housing units occupied by low- and moderate-income households for the U.S. Census subregion in which the municipality is located. The data, derived from a multiple-index approach, are not available at the municipal level. To determine the municipal share of need from the U.S. Census subregion total, it is necessary to employ a single-index approach using surrogates of deficient housing available at both the municipal and U.S. Census subregion level. To calculate municipal indigenous need:

1. Locate the appropriate municipality in Exhibit 1 in Appendix A. Example: Johnsonville in Region 5 (Southwest).

2. Divide Column 2 (municipal single-index need) by Column 3 (subregional single-index need). The resulting percentage yields the municipal share of the U.S. Census subregion's total of deficient housing units occupied by low- and moderate-income households.

Example:

$$\frac{\text{Johnsonville single index need (Column 2)}}{\text{Subregional single index need (Column 3)}} = 410 \div 4544 = .090$$

(Municipal Share of Regional Need)

3. Multiply the result of the quotient obtained in (a)2 above by the number in Column 1 (subregional multiple index need).

Example:

Subregional Multiple Index Need (Column 1)		Municipal Share of Regional Need		
364	×	.090	=	33

This is the count of estimated low- and moderate-income deficient units in a municipality.

4. Column A from Appendix A, Exhibit 2, reproduced below displays the percentage for each housing region that is obtained by dividing the actual deficient housing units occupied by low- and moderate-income households in the region by the estimated total of 1993 occupied housing units in the region.

TABLE 1
(COLUMN A, FROM APPENDIX A, EXHIBIT 2)
1993 REGIONAL AVERAGE PERCENT
DEFICIENT HOUSING

Region	Percent Deficient
1. Northeast	.0290
2. Northwest	.0250
3. West Central	.0180
4. East Central	.0120
5. Southwest	.0150
6. South-Southwest	.0220

Multiply this percentage by the municipal projection of 1993 occupied housing stock in Exhibit 1, Column 4.

Example:

Johnsonville Total 1993* Occupied Housing Estimate (Column 4)		Region 5 Percentage of Low- and Moderate-Income Deficiency (Column A)		
12,695	×	.015	=	190

*Estimate as of July 1, 1993

5. Municipal Indigenous Need shall be the smaller number resulting from the calculations in (a)3 and 4 above.

Example: Johnsonville's Indigenous Need = 33.

6. If the calculation in (a)3 above is larger than (a)4 above, the difference between the two shall be distributed throughout the housing region as Reallocated Present Need as per N.J.A.C. 5:93-2.3 and 5:93-2.4. The results of this calculation are displayed for each housing region in Column B.

(b) Municipal indigenous need may also be determined through a survey of the municipality's housing stock as indicated in Appendix C incorporated herein by reference, when such survey is deemed adequate and accepted by the Council for identifying deficient housing units occupied by low- or moderate-income households.

5:93-2.3 Distribution of need 1993; 1993-1999

(a) Distribution of need applies the concept of fair share to the portion of regional housing need that is not locally responsible housing deficiency. This differs somewhat for present and prospective need and is explained in the Appendix A. The distribution of each housing region's reallocated present need and prospective need shall be accomplished through use of economic and land-use factors expressed as a percentage representing the municipal share of the housing region's total for each factor. The factors employed to distribute the housing region's need are the municipality's share of regional undeveloped land (Appendix A, Exhibit 1, Column 5), equalized nonresidential valuation (Exhibit 1, Column 6), aggregate household income differences (Exhibit 1, Column 7), and change in equalized nonresidential valuation (Exhibit 1, Column 8). All but equalized nonresidential valuation change are summed (Exhibit 1, Columns 5, 6 and 7), averaged and displayed in Exhibit 1, Column 9. This is the average of the Present Need allocation factors. Three economic and land-use factors (Exhibit 1, Columns 5, 7 and 8) are also summed, averaged, and displayed in Exhibit 1, Column 10. Column 10 represents the average of the Prospective Need allocation factors.

(b) Reallocated Present Need and Prospective Need shall be distributed to municipalities unless the municipality received State aid pursuant to P.L. 1978, c.14 (N.J.S.A. 52:27D-178 et seq.) and exhibits at least one of the following (see Appendix A, Attachment for a listing of selected urban aid cities):

1. A level of existing low- and moderate-income housing deficiency, according to the six housing deficiency criteria, that exceeds average regional low- and moderate-income housing deficiency for the region in which the urban aid municipality is located;

2. A population density of greater than 10,000 persons per square mile or 14.1 per acre; or

3. A population density of 6,000 to 10,000 persons per square mile or 9.4 to 14.1 per acre plus less than five percent of vacant, nonfarm, municipal land as measured by the average of vacant land valuation and vacant land parcels of all local land valuation/parcels in the *1990 Statement of Financial Condition of Counties and Municipalities* (obtainable from the Division of Local Government Services, Trenton, New Jersey: New Jersey Department of Community Affairs, Trenton, New Jersey 08625) incorporated herein by reference.

(c) Only those municipalities designated herein to receive reallocated present need and prospective need shall be included in the housing region totals of vacant land, equalized nonresidential valuation, change in equalized nonresidential valuation, and aggregate household income differences for purposes of distributing need.

5:93-2.4 Reallocated present need—1993

(a) Reallocated present need is the share of excess deficient housing that is distributed to non-urban aid municipalities in the region as delineated in N.J.A.C. 5:93-2.3(b). Table B below displays the Reallocated Present Need by housing region:

TABLE 1
(Column B of Appendix A, Exhibit 2)
1993 REGIONAL POOL OF EXCESS
DEFICIENT HOUSING UNITS

Region	Excess Deficient Housing Units
1. Northeast	7,002
2. Northwest	5,306
3. West Central	1,477
4. East Central	1,329
5. Southwest	1,751
6. South-Southwest	676
New Jersey	17,542

(b) To calculate reallocated percent need, divide the municipal number in Appendix A, Exhibit 1, Column 9 by 100 and multiply the resulting quotient by the total reallocated present need for the housing region in which the municipality is located to yield municipal Reallocated Present Need.

Example:

Regional Pool of Excess Deficient Units (Region 5)		Average of Johnsonville's Present Need Allocation Factors (Column 9)		
1,751	×	$\frac{5,414}{100}$	=	95

5:93-2.5 Present need—1993

Present need is the sum of indigenous need and reallocated present need. To determine municipal present need, add indigenous need (as calculated in N.J.A.C. 5:93-2.2) and reallocated present need (as calculated in N.J.A.C. 5:93-2.4).

Example:

Johnsonville's Present Need = Indigenous Need (33)	+ Reallocated Present Need (95)	= 128

5:93-2.6 Prospective need: 1993-1999

(a) Prospective need is the share of future households that are low and moderate income and as such require affordable housing not provided by the market except for secondary supply (see Appendix A). Prospective need for each housing region is projected in Table C below:

TABLE C
1993-1999 PROSPECTIVE NEED

Region	Regional Prospective Need
1. Northeast	4,787
2. Northwest	1,033
3. West Central	8,654
4. East Central	14,424
5. Southwest	8,993
6. South-Southwest	4,236
New Jersey	42,127

(b) To calculate municipal prospective need, divide the municipal number in Exhibit 1, Column 10 in the Appendix A by 100 and

multiply the resulting quotient by the prospective need for the housing region in which the municipality is located to yield municipal Prospective Need.

Example:

1999 Prospective Need (Region 5) (Column C)	×	Average of Johnsonville's Prospective Need Allocation Factors (Column 10)	
8,993	×	$\frac{6,312}{100}$	= 568

5:93-2.7 Total need—1993; 1993-1999

Total need is the sum of present and prospective need. To determine municipal total need, add present need (as calculated in N.J.A.C. 5:93-2.5) and prospective need (as calculated in N.J.A.C. 5:93-2.6).

Example:

Johnsonville's Total Need = Present Need (128) + Prospective Need (568) = 695

5:93-2.8 Prior-cycle prospective need: 1987-1993

(a) Prior-cycle prospective need is the recalculated prospective need for the prior period. It is included in this chapter because it is part of the 1987-1999 need before reductions are taken. It is recalculated because procedures are more accurate since the 1990 Census has become available as a check against the original 1987-1993 projections.

(b) Recalculated prospective need is obtained by applying 0.52 to the prior-cycle prospective need. Before using the prior-cycle prospective need, it is adjusted for the effects of prior-cycle secondary sources of housing supply and demand. Recalculated demolitions are added to prior-cycle prospective need, and the sum is diminished by scaled-down prior-cycle secondary sources of supply. Each municipality's net (after secondary sources of supply and demand (demolitions) have been accounted for) prior-cycle prospective need is found in Appendix A, Exhibit 3, Column 1.

PRIOR-CYCLE PROSPECTIVE NEED = 248

Municipal Need Prior to Secondary Sources	=	Total Need	+	Prior-Cycle Prospective Need
944		695		248

5:93-2.9 Demolitions

(a) Demolitions are a source of secondary housing demand, as they eliminate housing opportunities for low- and moderate-income households. Therefore, a number representing demolitions affecting low- and moderate-income households shall be added to municipal need—total need plus prior-cycle prospective need—to this point, "Municipal need" or "municipal need to this point" refers to total need plus prior-cycle prospective need being altered serially by secondary sources of supply and demand, a reduction, pre-1987 credits, and undeveloped land and 20-percent caps up to the point that calculated need (the actual municipal obligation) is determined (see Appendix A). To determine this number:

1. Average 1988, 1989, and 1990 municipal demolitions as reported in New Jersey Residential Building Permits (1988, 1989 and 1990 Summaries) (available from the New Jersey Department of Labor, Division of Labor Market and Demographic Research, CN 388, Trenton, N.J. 08625).

Example:

Johnsonville averaged five demolitions per year for the three years.

2. Multiply the one-year average by six to estimate 1993-1999 demolitions (Exhibit 3, Column 2).

Example:

Johnsonville Average Demolitions	×	Number of Years Projected	
5	×	6	= 30

3. To determine the percentage of demolitions affecting low- and moderate-income households in a municipality, multiply the number of demolitions for six years by the 1990 subregional low- and moderate-income percentage for that municipality.

Number of Demolitions in Six Years	×	Low- and Moderate-Income Percentage (Exhibit 1, Column 11)	
30	×	.2402	= 7.2

4. Multiply the number of demolitions affecting low- and moderate-income households (calculated in (a)3 above) by 1.2 to reflect a greater proportion of overall demolitions affecting this income group. The number of demolitions affecting low- and moderate-income households shall be the result of this product or 95 percent of the total projected demolitions, whichever is lower. The resulting number shall be added to municipal need.

Example:

Demolitions Impacting Low- and Moderate-Income Households	×	Low- and Moderate-Income Factor	
7.2	×	1.2	= 9

(9 is lower than 95 percent of 30, or 28.5—so 9 is used.)

5:93-2.10 Filtering

(a) Filtering causes a reduction in municipal need (total and prior-cycle prospective) based on the recognition that the housing needs of low- and moderate-income households are partially met by sound housing units formerly occupied by the higher-income sector of the housing market (see Appendix A). Filtering is highly correlated with the presence of older and multifamily (five units or more) housing units. Table D, Column 1 displays regional filtering projections. Column 2 displays the total number of multifamily housing units in each region in 1990. Column 3 displays the total number of pre-1940 (older) units in each region.

TABLE D
FILTERING

Region	COLUMN 1 1993-1999 Filtering Projection	COLUMN 2 1990 Multifamily (5 Units or More) Unit Totals	COLUMN 3 1990 Pre-1940 Unit totals
1. Northeast	4,895	193,286	255,434
2. Northwest	4,535	156,893	206,403
3. West Central	2,830	70,199	61,647
4. East Central	3,550	74,459	93,848
5. Southwest	2,994	63,582	80,208
6. South-Southwest	1,382	41,231	58,521
New Jersey	20,185	599,650	756,061

(b) To determine the impact of filtering on municipal need after all the calculations up to and including N.J.A.C. 5:93-2.9:

1. Determine the municipal number of total multifamily units in 1990 as reported in the U.S. Census of Housing (Appendix A, Exhibit 3, Column 3).

Example:

Johnsonville had 2,719 total multifamily units in 1990.

2. Divide this number by the number of total multifamily units for the region (Table D, Column 2) in which the municipality is located.

3. Determine the municipal number of pre-1940 units in 1990 as reported in the U.S. Census of Housing.

Example:

Johnsonville had 272 pre-1940 units in 1990. (Appendix A, Exhibit 3, Column 4)

4. Divide this number by the total of pre-1940 units in 1990 for the region (Table D, Column 4) in which the municipality is located.

5. Weight the calculation resulting from (b)2 above by two, then average the above calculations. This yields the municipality's weighted share of older and multifamily housing units in the housing region.

Example:

Johnsonville's Multifamily Units, 1990		Total Multifamily Units in 1990 (Region 5) (Column E)		Johnsonville's Share of Multifamily Units
2,719	÷	63,582	=	.04276

Johnsonville's pre-1940 Units, 1990		Total Pre-1940 Units in 1990 (Region 5) (Column F)		Johnsonville's Share of Pre-1940 Units
257	÷	80,208	=	.00339

6. Average the shares in (b)5 above after weighting the first by two

(.04276 + .04276 + .00339) ÷ 3	=	.02964 (Johnsonville's Weighted Share of Older and Multifamily Units)

7. Multiply this percentage by the filtering projections in Table D, Column 4 for the region in which the municipality is located to yield the reduction to municipal total need (plus prior-cycle prospective need) due to filtering.

Example:

Johnsonville's Share of Region 5 Older and Multifamily Units		Filtering Projection (Region 5) (Column D)	
.02964	×	2,993	= 89

5:93-2.11 Residential conversion

(a) Residential conversion is the creation of dwelling units from already existing residential structures. It is a significant source of housing supply to low- and moderate-income households and it causes a reduction to municipal need (see Appendix A). Residential conversion is highly correlated with the presence of two- to four-family housing units. Table E, Column 1 below displays projections of conversions for each housing region. Table E, Column 2 displays the total of two- to four-family housing units in each housing region in 1990.

TABLE E
RESIDENTIAL CONVERSION

Region	COLUMN 1 1993-1999 Conversion Projections	COLUMN 2 1990 2-4 Family Unit Totals
1. Northeast	2,649	218,392
2. Northwest	2,229	150,817
3. West Central	930	44,103
4. East Central	886	45,844
5. Southwest	881	27,265
6. South-Southwest	775	40,576
New Jersey	8,351*	526,997

*May not be equivalent to Appendix A figure because all secondary sources of supply may not be used; Appendix A displays what is used.

(b) To determine the impact of conversions on municipal need:

1. Determine the municipal number of total two- to four-family housing units in 1990 as reported in the U.S. Census of Housing (Detailed Housing Characteristics Part 32—New Jersey).

Example:

Johnsonville had 490 two- to four-family units. (Appendix A, Exhibit 3, Column 5)

2. Divide the number by the total number of two- to four-family housing units for the region (Table E, Column 2) in which the municipality is located to obtain the municipal share of two- to four-family housing units in the housing region.

Example:

Johnsonville's 1990 Total 2-4 Family Housing Units		Regional 1990 Total 2-4 Family Housing Units (Region 5) (Column H)		Johnsonville's Share of 2-4 Family Housing Units in Region
490	÷	27,265	=	.01797

3. Multiply this percentage by the conversion projection in Table E, Column 1 for the region in which the municipality is located to yield the reduction to municipal need due to conversion.

Example:

Johnsonville's Share of 2-4 Family Housing Units		1993-1999 Conversion Projections (Region 5) (Column G)	
.01797	×	881	= 16

5:93-2.12 Spontaneous rehabilitation

(a) Spontaneous rehabilitation measures the private market's ability to rehabilitate deficient low- and moderate-income housing units up to applicable state and local code standards; and shall cause a reduction to municipal need (see Appendix A). Spontaneous rehabilitation is highly correlated with income. A combination of income differences from $100.00 below the lowest municipal median household income in the region weighted by the number of households in a municipality ($100.00 below the lowest municipal median household income in the region is used that there will be no negative differences in the regional pool) and household income differences not weighted is used to develop this measure. The former is weighted twice; the latter once. Table F, Column 1 below displays spontaneous rehabilitation projections by housing region.

TABLE F
SPONTANEOUS REHABILITATION

Region	COLUMN 1 1993-1999 Spontaneous Rehabilitation Projections	COLUMN 2 1993 Regional Household Income Floor ($)	COLUMN 3 1993 Weighted Regional Income Differences ($)	COLUMN 4 1993 Unweighted Regional Income Differences ($)
1. Northeast	710	20,515	19,234,394,000	4,393,888
2. Northwest	597	23,705	16,299,646,900	3,698,545
3. West Central	249	31,008	8,828,753,140	1,835,119
4. East Central	237	22,719	11,539,122,100	2,526,644
5. Southwest	236	19,015	10,120,912,300	2,557,328
6. South-Southwest	207	18,343	3,422,312,000	1,234,261
New Jersey	2,237	—	69,445,140,000	16,245,786

(b) To determine the impact of spontaneous rehabilitation on municipal need to this point:

1. Determine the municipal 1993 median household income as adjusted from the 1990 Census of Population (Appendix A, Exhibit 3, Column 6).

Johnsonville's 1993 median household income is $55,927.

2. Subtract the regional floor income (lowest municipal median household income in the region in 1993—$19,015; Table F, Column 2) from the 1993 municipal median household income.

$55,927 - $19,015 = $36,913

3. Multiply this number by the number of occupied housing units (households) in the municipality as of 1993 (U.S. Census of Population—1990, update; Appendix A, Exhibit 1, Column 4). This yields municipal 1993 aggregate household income above the floor (weighted income).

Example:

Johnsonville's number of households in 1993 is 12,695.

Calculation:

$36,913 × 12,695 = $468,592,783

4. Divide 1993 municipal median aggregate weighted household income above floor by the 1993 summed regional aggregate weighted median household income above floor for the housing region in which the municipality is located (see Table F, Column 3) to obtain the municipal share of regional aggregate weighted household income above the floor.

Example:

Johnsonville's Aggregate 1993 Weighted Household Income (above the floor)		1993 Aggregate Weighted Household Income (above the floor) (Region 5) (Column K)		Johnsonville's Share of Aggregate 1993 Weighted Household Income (above the floor)
$468,592,783	÷	$10,120,912,300	=	.04630

5. Divide 1993 municipal median household income above the floor (unweighted) by the 1993 summed regional median household income above the floor (unweighted) for the housing region in which the municipality is located (see Table F, Column 4) to obtain the municipal share of regional household income above the floor (unweighted).

Example:

Johnsonville's 1993 Household Income (Unweighted) (above the floor) (Step 2 above)		1993 Aggregate Household Income (Unweighted) (above the floor) (Region 5) (Column L)		Johnsonville's Share of 1993 Aggregate Household Income (Unweighted) (above the floor)
$36,913	÷	$2,557,328	=	.01443

6. Multiply the weighted share of regional income times two and add it to the unweighted share. Divide this sum by three. Multiply the result by the spontaneous rehabilitation projections for the housing region in which the municipality is located (see Table F, Column 1) to yield the reduction to municipal total need (plus prior-cycle prospective need) due to spontaneous rehabilitation.

Example:

Johnsonville's Weighted Share of 1993 Aggregate Household Income × 2 (Step 4 above)		Johnsonville's Unweighted Share of 1993 Aggregate Householdd Income (Step 5 above)		1993-1999 Region 5 Spontaneous Rehabilitation Estimate (Column I)
[(.04630 + .04630	+	.01443)	+3]	× 236 = 8

5:93-2.13 Pre-credited need: 1987-1999

Pre-credited need is total need and prior-cycle prospective need modified by secondary sources of demand and supply.

Total Need	+	Prior-Cycle Prospective Need	+	Demolitions
695		248		9
- Filtering	-	Residential Conversions	-	Spontaneous Rehabilitation
89		16		8

= Pre-Credited Need
839

5:93-2.14 Reduction

(a) The Council offers a one-for-one reduction of cumulative 1987 to 1999 need for affordable housing activities undertaken from 1987 to 1993. It is a reduction for units zoned for or transferred, whether or not the units have been constructed.

(b) Information for the reduction is derived from the Council, court, and other records of affordable housing activity. This information is specific to individual municipalities and is contained in Appendix A, Exhibit 3, Column 7. Municipal need at this point is pre-credited need minus the reduction. A municipality cannot take a reduction that will bring municipal need number below zero.

Pre-Credited Need	-	Reduction (Exhibit 3—Column 7)	=	Municipal Need After Reduction
839		439		400

5:93-2.15 Pre-1987 credits

A one-for-one credit shall be granted for low- and moderate-income housing constructed between April 1, 1980 and December 15, 1986 that conforms to the criteria in N.J.A.C. 5:93-3.1 and 3.2. Municipal need at this point is pre-credited need after the reduction, minus pre-1987 credits. A pre-1987 credit cannot be taken that will bring a municipal need number below zero.

Municipal Need After Reduction	(-)	Pre-1987 Credits (Exhibit 3—Col. 8)	=	Municipal Need After Pre-1987 Credits
400	-	101	=	299

5:93-2.16 Undeveloped land cap

(a) In order to minimize the number of municipalities that will require a vacant land adjustment in accordance with N.J.A.C. 5:93-4, the Council shall permit a municipality to cap its need based on the Council's estimate of undeveloped residential land.

(b) The undeveloped residential land a community has for the purposes of accommodating affordable housing need is:

1. Its landsat-determined undeveloped land multiplied by a share of land for residential purposes (average of ratio of residential parcels to all developed land parcels and residential equalized valuation to all developed properties' equalized valuation multiplied by 1.5, and capped at 95 percent of all land locally);
2. Times a density of six units per acre;
3. Times a 20-percent set-aside for affordable housing.

(c) The information used in (b) above is available by municipality in the *53rd Annual Report of the Division of Local Government Services 1990—Statements of Financial Condition of Counties and Municipalities* (Trenton, NJ: New Jersey Department of Community Affairs, 1991), incorporated herein by reference.

(d) Municipal estimated land capacity is determined by multiplying available residential land by six units per acre and then by the 20-percent set-aside.

Undeveloped Residential Lands (acres) (Exhibit 3—Col. 9)	×	Appropriate Density for Low and Moderate (unit/acre)	×	Share of Low and Moderate (20%)	=	Estimated Land Capacity
5,937	×	6	×	.2	=	7,124

(e) The undeveloped land cap is the difference between municipal estimated land capacity and the need for new construction. The need for new construction is municipal need, net of pre-1987 credits, minus the rehabilitation component. The rehabilitation component in this example is indigenous need minus spontaneous rehabilitation (see N.J.A.C. 5:93-1.3, Definitions). (In this case it is 33 minus 8 = 25.)

Municipal Need After Pre-1987 Credits		Rehabilitation Component		Need for New Construction
299	-	25	=	274

1. If the need for new construction is lower than the municipal estimated land capacity, the need is not reduced. The undeveloped land cap is zero.

2. If the need for new construction is greater than the municipal estimated land capacity, the amount over capacity is subtracted from the need for new construction. This difference is the undeveloped land cap. Municipal need at this point equals pre-credited need minus the reduction, minus pre-1987 credits, and minus the undeveloped land cap.

Municipal Need for New Construction		Estimated Land Capacity		Undeveloped Land Cap
274		7,124		0

Municipal Need After Pre-1987 Credits	-	Undeveloped Land Cap	=	Municipal Need After Undeveloped Land Cap
299		0		299

(f) Questions on the amount of undeveloped land in a community shall be resolved through the Council's adjustment process (N.J.A.C. 5:93-4). The undeveloped land cap shall not circumvent the Council's adjustment process.

5:93-2.17 Twenty-percent cap

(a) A cap of 20 percent of the estimated 1993 occupied housing stock (community capacity) cannot be exceeded by a municipality's need for new construction. The need for new construction at this point is equal to either the aforementioned municipal need for new construction or estimated land capacity, whichever is smaller. This is based on the premise that if the affordable housing was provided as a 20-percent set-aside of inclusionary housing, and if the planned affordable housing was more than 20 percent of existing units, then the new affordable housing and accompanying market units would exceed the number of existing housing units in the community.

(b) Community capacity is determined by multiplying the estimated 1993 occupied housing in the municipality (Appendix A, Exhibit 1, Column 4) by 0.20 and comparing this to the municipal need for new construction.

1. If the community capacity is larger than municipal need for new construction, the 20-percent cap is zero. This is the case for the present example.

2. If community capacity is smaller than municipal need for new construction, the difference between community capacity and the municipal need for new construction is subtracted from the latter to yield the 20-percent cap. The 20-percent cap is the difference between community capacity and the municipal need for new construction. Municipal need at this point equals pre-credited need minus the reduction, minus pre-1987 credits, minus the undeveloped land cap, minus the 20-percent cap.

Johnsonville's 1993 Occupied Housing Estimate		Twenty Percent (20%)	=	Community Capacity
12,695 units	×	0.20	=	2,539 units

Municipal Need for New Construction		Community Capacity	=	Twenty Percent (20%) Cap
274		2,539	=	0

Municipal Need After Undeveloped Land Cap	-	Twenty Percent (20% Cap)	=	Municipal Need After 20-Percent Cap
299		0		299

5:93-2.18 Calculated need: 1987-1999

Municipal calculated need is the sum of total need, prior-cycle prospective need, and demolitions; minus filtering, conversion, and spontaneous rehabilitation, yielding, pre-credited need; minus the reduction, pre-1987 credits, undeveloped land cap, and 20-percent cap (see Appendix A).

Example:

	Total Need	*plus*	Prior-cycle Prospective Need	*plus*	Demolitions			
	695	+	248	+	9			
minus	Filtering	*minus*	Residential Conversion	*minus*	Spontaneous Rehabilitation	*equals*	Pre-Credited Need	
–	89	–	16	–	8	=	839	
minus	Reduction	*minus*	Pre-1987 Credits	*minus*	Undeveloped Land Cap			
–	439	–	101	–	0			
minus	20% Cap	*equals*	Calculated Need					
	0	=	299					

5:93-2.19 Vacant land adjustment communities; prior cycle

Municipalities that received an adjustment from the courts or the Council due to undeveloped land in the first affordable housing cycle have received a calculated need number. However, the Council has developed a streamlined process for these communities to receive substantive certification. The calculated need is retained in the system as a goal for future affordable housing efforts as development and redevelopment occur in the community.

5:93-2.20 Calculation of indigenous need: selected urban aid cities

(a) Selected municipalities receiving state aid (urban aid cities) pursuant to P.L. 1978, c.14 (N.J.S.A. 52:270-178 et seq.) that are exempt from the distribution of reallocated present need and prospective need as described in N.J.A.C. 5:93-2.3 (see Appendix A, Attachment shall determine their indigenous need as indicated below:

1. Follow the procedures delineated in N.J.A.C. 5:93-2.2(a)1 to 3. These calculations yield the count of actual low- and moderate-income deficient units in the selected urban aid city. This estimate of low- and moderate-income deficient units may also be determined through a survey of the municipality's housing stock when such survey is deemed adequate and accepted by the Council for identifying deficient housing units occupied by low- or moderate-income households.

2. Modify the number calculated in (a)1 above as instructed in N.J.A.C. 5:93-2.9, 2.10, 2.11, and 2.12 (demolitions, filtering, residential conversions and spontaneous rehabilitation.)

3. Perform the calculation required in N.J.A.C. 5:93-2.2(a)4.

4. Municipal Indigenous Need (for Urban Aid Cities) shall be the smaller number resulting from the calculations in (a)2 and 3 above.

5. If the calculation in (a)2 above is larger than the calculation in (a)3 above, the difference between the two shall be distributed throughout the housing region as reallocated present need (see Appendix A).

6. No additional calculations need be made by these cities at this point.

5:93-2.21 Low- and moderate-income split

The municipal calculated need obligation shall be divided equally between low- and moderate-income households.

Example:

Johnsonville's total obligation of 299 units would include 150 low-income and 149 moderate-income units.

(An odd number is always split in favor of the low-income unit.)

SUBCHAPTER 3. CREDITS/REDUCTIONS

5:93-3.1 General

(a) The Fair Housing Act provides that the Council determine municipal fair share, after crediting on a one for one basis each current unit of low and moderate income housing of adequate standard, including any such housing constructed or acquired as part of a housing program specifically intended to provide housing for low and moderate income households. Given the approach the Council has developed for determining calculated need, the Council has determined that it is appropriate to allow credits for units constructed after April 1, 1980. Since it was not until December 15, 1986 that the Council established criteria for an eligible low and moderate income unit, the crediting criteria for housing units created between April 1, 1980 (the date of the census) and December 15, 1986 shall be different than the period subsequent to December 15, 1986.

(b) In determining calculated need, COAH has granted credits for housing units constructed between April 1, 1980 and December 15, 1986. These credits are based on the criteria delineated in N.J.A.C. 5:93-3.2. In determining calculated need, the Council has also provided a reduction to the municipal housing obligation based on the realistic opportunity a municipality created in response to its 1987-1993 housing need through regional contribution agreements, plans for new construction or through its zoning powers. The source for this information includes data from the Council's records, county planning boards and Masters appointed by the court. To the extent that this information is incomplete or incorrect, the Council shall modify the calculated need, in accordance with this chapter.

(c) Municipalities shall not receive both a reduction and a credit for the same housing unit. The Council's intent with the reductions and the credits is to ensure that a municipality's obligation is lowered by one, provided: the municipality has created a realistic opportunity that resulted in a sound housing unit; or, if the unit has not yet materialized, the municipality continues to offer the realistic opportunity. A reduction shall be considered a credit when a low or moderate income unit is constructed (or in the case of a regional contribution agreement, constructed or rehabilitated) and appropriately restricted to a low or moderate income household.

(d) Unless otherwise stated, a municipality shall receive credits for housing activity prior to the date of the publication of its petition for substantive certification, provided such activity complies with criteria for credits in this subchapter. A municipality shall document eligible new construction with certificates of occupancy; eligible rehabilitation with final inspections; and transferred units with evidence of the required transfer of funds to the sending municipality.

(e) For units constructed after December 15, 1986, a municipality shall receive credits for housing activity that complies with the criteria in this subchapter and with the rules governing new construction, and transferred units (via a regional contribution agreement) between 1987-1993, in accordance with N.J.A.C. 5:92, a housing unit constructed under the auspices of a government funded, financed or otherwise assisted housing program designed specifically for households whose income does not exceed 80 percent of median shall also be eligible for a credit provided:

1. At least half of the units are affordable to households whose incomes do not exeed 50 percent of median income; and

2. The units are governed by controls on affordability that are substantially the same as those set forth in N.J.A.C. 5:92.

(f) A credit and/or a reduction in excess of the municipal precredited need shall be applied on a one for one basis against its future housing obligation.

5:93-3.2 Credits for units constructed between April 1, 1980 and December 15, 1986 (pre-1987 credits)

(a) A housing unit created and occupied between April 1, 1980 and December 15, 1986 is eligible for a one for one credit when it has been developed specifically for households whose income does not exceed 80 percent of median income and the unit is governed by controls on affordability that are the same as those set forth in Subchapter 12 of Appendix C and Appendix F, incorporated herein by reference.

(b) A municipality may receive a one for one credit for each unit satisfying the following criteria:

1. The unit shall have been constructed between April 1, 1980 and December 15, 1986. The municipality shall document the date of construction with a certificate of occupancy date;

2. The unit shall have been certified to be in sound condition as a result of an exterior inspection performed by a licensed building inspector; and

3. The unit is currently occupied by a low or moderate income household. The municipality shall document the household income with the most recent Federal tax return.

5:93-3.3 Credits for housing activity subsequent to December 15, 1986

(a) A municipality shall receive a one for one credit for every low or moderate income unit constructed within its borders or within a receiving municipality as a result of a regional contribution agreement that addresses its 1987-1993 housing need provided:

1. The unit has not been addressed in N.J.A.C. 5:93-14, Reductions; and

2. The unit complies with the criteria referenced in N.J.A.C. 5:93-3.1(e).

5:93-3.4 Rehabilitation subsequent to the 1990 census

(a) A municipality may receive credit for rehabilitation of low and moderate income substandard units performed subsequent to April 1, 1990.

(b) Units shall be eligible for crediting if:

1. They were rehabilitated up to the applicable code standard and that the average capital cost expended on rehabilitating the housing units was at least $8,000; and

2. The unit is currently occupied by the occupants who resided within the unit at the time of rehabilitation or by other eligible low or moderate income households.

(c) Credits for rehabilitation shall not exceed the rehabilitation component and shall only be credited against the rehabilitation component.

SUBCHAPTER 4. MUNICIPAL ADJUSTMENTS

5:93-4.1 Purpose and background

(a) Subchapters 2 and 3 delineate the criteria for determining the municipal housing obligation. However, there may be instances where a municipality can exhaust an entire resource (land, water or sewer) and still not be able to provide a realistic opportunity for addressing the need for low and moderate income housing as determined by the Council. This subchapter outlines standards and procedures for municipalities to demonstrate that the municipal response to its housing obligation is limited by the lack of land, water or sewer. The procedures in this subchapter shall not be used to reduce or defer the rehabilitation component.

(b) Where a municipality attempts to demonstrate that it does not have the capacity to address the housing obligation calculated by the Council, the municipality shall identify sites that are realistic for inclusionary development in order to calculate the realistic development potential of the community, in accordance with N.J.A.C. 5:93-4.2. Where the realistic development potential is less than the municipal calculated need minus any credits granted pursuant to N.J.A.C. 5:93-3.4, the municipality shall provide a response toward the obligation not addressed by the realistic development potential. Examples of such a requirement include, but are not necessarily limited to, a redevelopment ordinance, an ordinance permitting apartments in developed areas of the municipality and a mandatory development fee ordinance.

(c) With the concept of realistic development potential, the Council is recognizing that some sites are more realistic and/or appropriate than others for the location of inclusionary development. For example, some sites may lack infrastructure or be surrounded by incompatible land uses. However, these sites and others have the potential to develop or redevelop over time and, as such development takes place, the Council has determined that such sites shall contribute toward the housing obligation.

(d) A municipality seeking an adjustment due to available land capacity shall base the number of units that may be restricted to senior citizens and the number of units that may be transferred via a regional contribution agreement on the realistic development potential. The realistic development potential shall equal the calculation pursuant to N.J.A.C. 5:93-4.2(e). If additional low and moderate income housing opportunities develop pursuant to N.J.A.C. 5:93-4.2(g) (describing the municipal response in addition to the realistic development potential), the municipality may seek a plan amendment, pursuant to N.J.A.C. 5:91-13 to age restrict or transfer more units, based on a demonstrated increased realistic development potential.

5:93-4.2 Lack of land

(a) Municipalities that request an adjustment due to available land capacity shall submit an existing land use map at an appropriate scale to display the land uses of each parcel within the municipality. Such a map shall display the following land uses: single family, two-to-four family, other multi-family, commercial, industrial, agricultural, parkland, other public uses, semipublic uses and vacant land.

(b) Municipalities that request an adjustment due to available land capacity shall submit an inventory of vacant parcels by lot and block that includes the acreage and owner of each lot.

(c) The Council shall review the existing land use map and inventory to determine which sites are most likely to develop for low and moderate income housing. All vacant sites shall initially be presumed to fall into this category. In addition, the Council may determine that other sites, that are devoted to a specific use which involves relatively low-density development would create an opportunity for affordable housing if inclusionary zoning was in place. Such sites include, but are not limited to: golf courses not owned by its members; farms in SDRP planning areas one, two and three; driving ranges; nurseries; and nonconforming uses. The Council may request a letter from the owner of sites that are not vacant indicating the site's availability for inclusionary development.

(d) Municipalities may present documentation that the Council shall use to eliminate a site or part of a site from the inventory of sites described in (c) above. Partial elimination of a site shall not necessarily eliminate an entire site as unsuitable. Municipalities may seek to eliminate sites from the inventory described in (c) using the criteria set forth below. Municipalities shall submit transparent overlays drawn to the same scale as the existing land use map depicting those sites which the municipality maintains are inappropriate for development.

1. Agricultural lands shall be excluded when the development rights to these lands have been purchased or restricted by covenant.

2. Environmentally sensitive lands shall be excluded as follows:

i. Within the areas of the State regulated by the Pinelands Commission, Division of Coastal Resources of the DEPE and the Hackensack Meadowlands Development Commission of DCA, the Council shall adhere to the policies delineated in The Pinelands Comprehensive Management Plan, N.J.A.C. 7:50; the Coastal Permit Program Rules, N.J.A.C. 7:7-1, Coastal Resource and Development Rules, N.J.A.C. 7:7E-1; and the Zoning Regulations of the Hackensack Meadowlands District, N.J.A.C. 19:4.

ii. In the areas of the State not regulated by the Pinelands Commission, the Division of Coastal Resources and the Hackensack Meadowlands Development Commission, municipalities may exclude as potential sites for low and moderate income housing: inland wetlands as delineated on the New Jersey Freshwater Wetlands Maps, or when unavailable, the U.S. Fish and Wildlife Service

National Wetlands Inventory; or as delineated on-site by the U.S. Army Corps of Engineers or DEPE, whichever agency has jurisdiction; when on-site delineation is required by the Council; flood hazard areas as defined in N.J.A.C. 7:13; and sites with slopes in excess of 15 percent, as determined from the U.S.G.S. Topographic Quadrangles, which render a site unsuitable for low and moderate income housing. In cases where part of a site is unsuitable for low and moderate income housing because of flood hazard areas or inland wetlands, the Council shall not permit low and moderate income housing to be constructed on that unsuitable part of the site; provided however, that this rule shall not prohibit construction of low and moderate income housing on the remainder of the site. In the case of slopes in excess of 15 percent, a municipality may regulate inclusionary development through a steep slope ordinance, provided the ordinance also regulates non-inclusionary developments in a consistent manner. The Council reserves the right to exclude sites in whole or in part when excessive slopes threaten the viability of an inclusionary development.

iii. Where the Legislature adopts legislation that requires the mapping of other natural resources and provides a mechanism for their regulation, the Council shall include such resources in its criteria and guidelines for municipal adjustment.

3. Historic and architecturally important sites may be excluded as follows:

i. Municipalities may apply to exempt a buffer area to protect sites listed on the State Register of Historic Places. The Council shall forward such request to the Office of New Jersey Heritage for a recommendation pertaining to the appropriateness and size of a buffer.

ii. Upon receipt of the Office of New Jersey Heritage's recommendation, the Council shall determine if any part of a site should be eliminated from the inventory described in (c) above.

iii. Within historic districts, a municipality may regulate low and moderate income housing to the same extent it regulates all other development.

4. Recreational lands may be excluded as follows:

i. Municipalities may reserve three percent of their total developed and developable acreage for active municipal recreation and exclude this acreage from consideration as potential sites for low and moderate income housing. However, all sites designated for recreation must be designated for recreational purposes in the municipal master plan. In determining developable acreage, municipalities shall calculate their total vacant and undeveloped lands and deduct from that total number the lands excluded by the Council's rules regarding historic and architecturally important sites, agricultural lands and environmentally sensitive lands. Municipalities shall also exclude from this calculation of total vacant and undeveloped lands, those owned by nonprofit organizations, counties and the State or Federal government when such lands are precluded from development at the time of substantive certification. Municipalities shall submit appropriate documentation demonstrating that such lands are precluded from development. Existing active municipal recreation areas shall be subtracted from the three percent calculation of total developed and developable acreage to determine additional land that may be reserved for active municipal recreation.

ii. Sites designated for recreation must be purchased and limited to recreational purposes within one year of substantive certification. Sites that are not purchased and limited to recreational purposes shall, if determined necessary by the Council, be zoned to permit inclusionary development.

5. Individual sites that the Council determines are not suitable for low and moderate income housing may also be eliminated from the inventory described in (c) above.

(e) The Council shall consider sites, or parts thereof, not specifically eliminated from the inventory described in (c) above, for inclusionary development. The Council shall consider the character of the area surrounding each site and the need to provide housing for low and moderate income households in establishing densities and set-asides for each site, or part thereof, remaining in the inventory. The minimum presumptive density shall be six units per acre and the maximum presumptive set-aside shall be 20 percent. The density and set-aside of each site shall be summed to determine the realistic development potential of each municipality. Example: Lowmod Borough has three suitable sites. The sites are 10 acres, five acres and one acre. The larger sites may accommodate eight units/acre. The one acre site may accommodate six units/acre. All sites are assigned a 20 percent set-aside. The realistic development potential equals 25 low and moderate income units.

$$\begin{array}{r} 10 \text{ acres} \times 8 \text{ units/acre} \times .2 = 16 \\ 5 \text{ acres} \times 8 \text{ units/acre} \times .2 = 8 \\ \underline{1 \text{ acre} \times 6 \text{ units/acre} \times .2 = 1} \\ 25 \end{array}$$

A municipality that received an adjustment due to lack of vacant land in addressing its 1987-1993 need obligation shall be presumed to have addressed its realistic development potential, provided the municipality continues to implement the terms of its previous substantive certification.

(f) The municipality may address its realistic development potential through any activity approved by the Council, pursuant to N.J.A.C. 5:92-5. The municipality need not incorporate into its housing element and fair share plan all sites used to calculate the realistic development potential if the municipality can devise an acceptable means of addressing its realistic development potential. The realistic development potential shall not vary with the strategy and implementation techniques employed by the municipality.

(g) If the realistic development potential described in (e) above is less than the municipal calculated need minus credits, pursuant to N.J.A.C. 5:93-3.4, the Council shall review the existing municipal land use map for areas that may develop or redevelop. Examples of such areas include, but are not limited to: a private club owned by its members; publicly owned land; downtown mixed use areas; high density residential areas surrounding the downtown; areas with a large aging housing stock appropriate for accessory apartments; and properties that may be subdivided and support additional development. After such an analysis, the Council may require a least any combination of the following in an effort to address the housing obligation:

1. Zoning amendments that permit apartments or accessory apartments;

2. Overlay zoning requiring inclusionary development or the imposition of a development fee consistent with N.J.A.C. 5:93-8; in approving an overlay zone, the Council may allow the existing use to continue and expand as a conforming use, but provide that where the prior use on the site is changed, the site shall produce low and moderate income housing or a development fee; or

3. Zoning amendments that impose a development fee consistent with N.J.A.C. 5:93-8.

5:93-4.3 Lack of water and sewer

(a) When a community has sufficient land, but insufficient water and/or sewer to support inclusionary development, the Council shall review each possible site for inclusionary development to determine if it is realistic for the site to receive the required water and/or sewer during the period of substantive certification. The Council shall require sufficient information to determine the site's prospects of receiving infrastructure, and the site's prospects of inclusion in a 208 plan amendment, developed in accordance with the rules of the New Jersey Department of Environmental Protection and Energy. If the site had been zoned for inclusionary development, the Council shall consider how long the site had been zoned and if the developer had filed a development application.

(b) If the Council determines that a site may receive water and/or sewer during the period of substantive certification, it shall require the site to be zoned for inclusionary development, or, if the site had already been zoned for inclusionary development, it shall require the continuation of that zoning. If the Council determines that a site may not receive water and/or sewer during the period of substantive certification, the Council shall not require inclusionary zoning, but may require overlay zoning requiring inclusionary development (if water and sewer become available) and/or the imposition of a development fee consistent with N.J.A.C. 5:93-8.

(c) The lack of adequate capacity, in and of itself, shall constitute a durational adjustment of the municipal housing obligation. The requirement to address the municipal housing obligation shall be deferred until adequate water and/or sewer are made available. In order to provide water and/or sewer on sites the Council determines are realistic for inclusionary development, municipalities shall adhere to the following:

1. Notwithstanding the lack of adequate water and/or sewer at the time a municipality petitions for substantive certification, the municipality shall reserve and set aside new water and/or sewer capacity, when it becomes available, for low and moderate income housing, on a priority basis;

2. Municipal officials shall endorse all applications to the DEPE or its agent to provide water and/or sewer capacity. Such endorsements shall be simultaneously submitted to the Council;

3. Where the DEPE or its designated agent approves a proposal to provide infrastructure to a site for the development of low and moderate income housing identified in the housing element, the municipality shall permit such development; and

4. Where a municipality has designated sites for low and moderate income housing that lack adequate water and/or sewer and where the DEPE or its designated agent approves a proposal to provide water and/or sewer to a site other than those designated for the development of low and moderate income housing in the housing element, the municipality shall amend its housing element and fair share housing ordinance to permit development of such site for low and moderate income housing. The amended housing element and fair share housing ordinance shall be submitted to the Council within 90 days of the site's approval by the DEPE or its agent. The Council may waive these requirements when it determines that the municipality has a plan that will provide water and/or sewer to sufficient sites to address the municipal housing obligation within the substantive certification period.

(d) Municipalities may demonstrate that the cost of providing water and/or sewer to realistic sites identified in (a) and (b) above, is prohibitive by completing "The Costs of Providing Infrastructure" application provided by the Council (see Appendix D, incorporated herein by reference) and submit it to the Council for its review. The Council shall forward "The Costs of Providing Infrastructure" application to the DCA Division of Local Government Services for review. The Council shall consider the report of the Division of Local Government Services in determining whether to permit an adjustment due to prohibitive costs associated with providing water and/or sewer to inclusionary sites. Where the Council determines the cost associated with providing water and/or sewer to inclusionary sites is prohibitive, it shall limit the municipality's fiscal responsibility of providing water and/or sewer. However, notwithstanding any limits placed on the municipality's fiscal responsibility to provide water and/or sewer, the Council may require the municipality to designate and zone appropriate sites to accommodate the municipal housing obligation or to adopt other approaches consistent with N.J.A.C. 5:93-4.2(g). The municipality shall also adhere to the requirements outlined in (c)1 to 4 above.

5:93-4.4 Application for grants

A municipality that has demonstrated that land, water and/or sewer limits its ability to address the municipal rehabilitation component may be required to address its rehabilitation component by submitting an application for Federal and/or State housing programs. Such a municipality shall be required to apply for a county, State and/or Federal grant if the Council determines that the success of such a grant application is realistic and necessary to address the rehabilitation component.

5:92-4.5 Waivers

(a) The Council shall entertain waiver requests by motion, in accordance with N.J.A.C. 5:91-12, from municipalities seeking relief from the following requirements:

1. The use of an entire resource (land, water, sewer) in addressing the municipal housing obligation; and

2. The requirement to impose development fees on all development within the municipality.

(b) The criteria for evaluating such a waiver request shall include one or more of the following:

1. Past inclusionary practices, measured by the following criteria: jobs to housing ratio; municipal median income as compared to regional median income; and the percentage of low and moderate income households in the municipality as compared to the percentage in the housing region;

2. A demonstration of hardship. To demonstrate hardship related to the imposition of development fees, the municipality shall, at a minimum, document that the imposition of development fees would retard necessary economic development within the municipality. To demonstrate hardship related to utilizing all available land, water and sewer capacity, the municipality shall (where applicable), at a minimum, document prospects for obtaining additional capacity and the public good realized by allowing competing land uses a reservation of the limited capacity; or

3. A demonstration that the municipality has actively pursued its municipal housing obligation by petitioning for certification prior to litigation.

SUBCHAPTER 5. PREPARING A HOUSING ELEMENT

5:93-5.1 Overview of a housing element

(a) Once a municipality has subtracted its credits (pursuant to N.J.A.C. 5:93-3.4) from its calculated need, and/or received an adjustment pursuant to N.J.A.C. 5:93-4, it shall develop a plan to address the municipal housing obligation. In addressing the need, a municipality may address its rehabilitation component through a rehabilitation program or by creating new units. The remaining portion of the municipal housing obligation may be addressed through a combination of techniques, including, but not necessarily limited to: municipally sponsored construction; inclusionary zoning; regional contribution agreements; alternative living arrangements; the purchase of ECHO housing; the creation of accessory apartments; the purchase of housing units that have never been occupied; and the purchase of housing units that have been vacant for at least 18 months. (The Council has determined that if a housing unit has been vacant for 18 months or more, it is reasonable to conclude that such a unit is not "filtering down" to low and moderate income households and that encouraging the purchase of the unit for low and moderate income households may prevent the unit from deterioration or vandalism.) This subchapter shall discuss the standards and, in some cases, limitations, of each implementation technique. It shall outline standards for senior citizen housing and rental housing. This subchapter shall also discuss the status of sites included in the housing element that addressed the 1987-1993 municipal housing obligation.

(b) A municipality's housing element shall be designed to achieve the goal of providing affordable housing to meet present and prospective housing needs, with particular attention to low and moderate income housing. The housing element shall include the municipality's strategy for addressing its present and prospective housing needs and shall contain the following:

1. An inventory of the municipality's housing stock by age, condition, purchase or rental value, occupancy characteristics and type, including the number of units affordable to low and moderate income households and substandard housing capable of being rehabilitated;

2. A projection of the municipality's housing stock, including the probable future construction of low and moderate income housing, for the six years subsequent to the adoption of the housing element, taking into account, but not necessarily limited to, construction permits issued, approvals of applications for development and probable residential development of lands;

3. An analysis of the municipality's demographic characteristics, including, but not limited to, household size, income level and age;

4. An analysis of the existing and probable future employment characteristics of the municipality;

5. A determination of the municipality's present and prospective fair share for low and moderate income housing and its capacity to accommodate its present and prospective housing needs, including its fair share for low and moderate income housing;

6. If a development fee is imposed pursuant to N.J.A.C. 5:93-8, a copy of the spending plan as required in (c) below;
7. A consideration of the lands that are most appropriate for construction of low and moderate income housing and of the existing structures most appropriate for conversion to, or rehabilitation for, low and moderate income housing, including a consideration of lands of developers who have expressed a commitment to provide low and moderate income housing;
8. A map of all sites designated by the municipality for the production of low and moderate income housing and a listing of each site that includes its owner, acreage, lot and block;
9. The location and capacities of existing and proposed water and sewer lines and facilities relevant to the designated sites;
10. Copies of necessary applications for sewer service and water quality management plans submitted pursuant to Sections 201 and 208 of the Federal Clean Water Act, 33 U.S.C. § 1251, et seq.;
11. A copy of the most recently adopted municipal master plan and, where required, the immediately preceding, adopted master plan;
12. For each designated site, a copy of the New Jersey Freshwater Wetlands maps where available. When such maps are not available, municipalities shall provide appropriate copies of the National Wetlands Inventory maps provided by the U.S. Fish and Wildlife Service;
13. A copy of appropriate United States Geological Survey Topographic Quadrangles for designated sites; and
14. Any other documentation pertaining to the review of the municipal housing element as may be required by the Council.

(c) If a municipality intends to collect development fees, it shall prepare a plan to spend development fees that includes the following:
1. A projection of revenues anticipated from imposing fees on development, based on historic development activity;
2. A description of the administrative mechanism that the municipality will use to collect and distribute revenues;
3. A description of the anticipated use of all development fees;
4. A schedule for the creation or rehabilitation of housing units;
5. If the municipality envisions being responsible for public sector or non-profit construction of housing, a pro-forma statement of the anticipated costs and revenues associated with the development; and
6. The manner through which the municipality will address any expected or unexpected shortfall if the anticipated revenues from development fees are not sufficient to implement the plan.

5:93-5.2 Rehabilitation

(a) Each municipality shall be provided with the Council's estimate for substandard units occupied by low and moderate income households. This estimate shall be the municipality's indigenous need, unless the municipality or an objector performs the Council's Structural Conditions Survey (see Appendix D, incorporated herein by reference). Where the municipality or objector performs the Structural Conditions Survey, the Council shall review the results of the data collected and shall modify the indigenous need if it determines a modification is warranted.

(b) The purpose of a rehabilitation program is to rehabilitate substandard housing units occupied by low and moderate income households. A substandard housing unit is defined as a unit with health and safety code violations that require the repair or replacement of a major system. A major system shall include a roof, plumbing (including wells), heating, electricity, sanitary plumbing (including septic systems) and/or a load bearing structural system. Upon rehabilitation, housing deficiencies shall be corrected and the house shall be brought up to code standard. The standard for evaluating rehabilitation activity shall be the local property maintenance code, or, if none is available, the BOCA National Existing Structures Code. The rehabilitation activity shall not include luxury improvements, the purchase of appliances (with the exception of stoves) or improvements that are strictly cosmetic.

(c) A municipality that chooses to rehabilitate units shall designate an entity to administer the rehabilitation program. The municipality may designate an employee to administer the program or may enter into an agreement for a governmental agency or private consultant to administer all or some of the program.

(d) The municipality shall prepare a marketing plan for its rehabilitation program, subject to the Council's approval. The rehabilitation program shall be marketed through a combination of some, though not necessarily all, of the following: brochures; posters in prominent locations; cable television and radio announcements; notices included in utility bills; notices in municipal tax bills; notices included in municipal publications; and informational meetings with welfare organizations, urban action community groups, personnel departments of local employers, social workers, civic and religious leaders, senior citizen groups and fraternal organizations.

(e) A municipality that chooses to administer a rehabilitation program shall maintain files on each program applicant. The files may be used in responding to monitoring requests and to protect the municipality against charges of irregularity. The files shall include:
1. The name of each applicant;
2. If the applicant is not approved, the reasons for the disapproval; and
3. If the applicant is approved:
i. Proof of income eligibility (Federal tax return);
ii. The initial inspection by the building inspector;
iii. Bids by contractors;
iv. The final contract to do the work;
v. Progress reports;
vi. A copy of the final inspection; and
vii. The lien on the property.

(f) Rental units may not be excluded from a municipal rehabilitation program.

(g) The Council shall require six year controls on affordability on owner-occupied units and 10 year controls on affordability on rental units. The controls on affordability may be in the form of a lien filed with the appropriate property's deed. Rents in rehabilitated units may increase annually based on the standards in N.J.A.C. 5:93-9.15.

(h) A municipality that chooses to rehabilitate its rehabilitation component shall be responsible for funding its program. This requirement includes administrative and actual rehabilitation activities. A municipality shall provide $2,000 per unit of its rehabilitation component towards administration and $8,000 per unit for rehabilitation activity to total $10,000 per unit of its rehabilitation component. Given this requirement:
1. Municipalities shall provide sufficient dollars to fund one-third of the municipal rehabilitation component within one year of substantive certification. In each subsequent year of the substantive certification period, the municipality shall provide sufficient dollars to fund one-sixth of the municipal rehabilitation component.
2. Municipalities may rehabilitate substandard units that require less than $8,000 of work, provided they also rehabilitate substandard units that require more than $8,000 of work. Municipal rehabilitation activity shall average at least $8,000 per unit for each two year period of substantive certification.
3. The Council may waive part or all of the funding required for administration if there is an agreement with an agency to administer the program at reduced cost.
4. Municipalities that seek a waiver from the $8,000 rehabilitation standard may do so by presenting case studies documenting local housing conditions.

(i) Financing of rehabilitation programs shall be structured to encourage rehabilitation and continued occupancy. Low interest rates and forgivable loans are encouraged. Leveraging of private financing is also encouraged if the result is low interest loans that encourage rehabilitation. If a housing unit is sold prior to the end of the controls on affordability, at least part of the loan shall be recaptured and used to rehabilitate another housing unit.

(j) If the municipality structures a loan program to recapture money, recaptured money shall be used for another low and moderate income housing purpose or to repay a municipal bond issued to finance a low and moderate income housing activity.

(k) The municipality, as a condition of certification, shall develop a rehabilitation manual that complies with COAH's rules and summarizes the administration of the rehabilitation program. The manual shall include a copy of the lien to be used and shall describe:

1. The rehabilitation program's staff and their responsibilities;
2. Procedures for program marketing;
3. Eligible repairs and improvement;
4. The amount of money available for rehabilitation;
5. Financing terms;
6. Income qualification criteria;
7. Procedures for application intake;
8. Procedures for review and approval of work (such procedures should require interim inspection of work); and
9. The length of affordability controls.

(l) Municipalities that administer rehabilitation programs shall complete annual monitoring reports required by the Council (See N.J.A.C. 5:93-12). After reviewing the progress of rehabilitation activity, the Council may require technical assistance meetings to identify implementation techniques designed to increase rehabilitation activity. Failure to submit monitoring reports or respond to direction designed to increase rehabilitation activity may result in further Council action.

(m) A municipality receiving State aid pursuant to P.L. 1978, c.14 (N.J.S.A. 52:27D-178 et seq.) may seek a waiver from addressing its entire rehabilitation component in one six year period of substantive certification. A municipality seeking such a waiver shall demonstrate that it cannot rehabilitate the entire rehabilitation component in six years and/or that an extraordinary hardship exists, related to addressing the entire rehabilitation component in six years.

5:93-5.3 New construction; site criteria and general requirements

(a) Municipalities may create new low and moderate income units within its borders by sponsoring their construction, with or without a non-profit corporation, or by zoning sites for inclusionary development.

(b) Municipalities shall designate sites that are available, suitable, developable and approvable, as defined in N.J.A.C. 5:93-1. In reviewing sites, the Council shall give priority to sites where infrastructure is available. All sites designated for low and moderate income housing shall receive approval for consistency review, as set forth in Section 208 of the Clean Water Act, 33 U.S.C. 1251 et seq., prior to substantive certification. Where a site is denied consistency review, the municipality shall apply for an amendment to its Section 208 plan to incorporate the denied site.

(c) For each site designated for new construction of low and moderate income units, the municipality shall provide the following minimum documentation:

1. A general description of each site to be used for inclusionary development, including, but not limited to, the following: acreage, current zoning, surrounding land uses, and street access. Maps shall be submitted showing the location of all sites;
2. A description of any environmental constraints, including steep slopes, wetlands and flood plain areas. The municipality shall include calculations of the amount of acreage that is environmentally constrained and any remaining buildable acreage. Documentation shall include the appropriate wetland and flood plain maps required pursuant to N.J.A.C. 5:93-5.1;
3. Information shall be submitted regarding location, size and capacity of lines and facilities within the service area, as well as the status of the 201/208 plans. Documentation shall include maps showing the location of the sewer and water facilities; and
4. For each site, the total number of housing units; the gross and net density of the proposed development; the total number of low and moderate income units; and the number of low and moderate income units that will be for sale and for rent.

(d) Municipalities shall structure plans for new construction, conversion and gut rehabilitation (including new construction, conversion and gut rehabilitation that is part of a regional contribution agreement) that conform to the Council's rules pertaining to bedroom mix, age restriction, price stratification, rental housing, controls on affordability and affirmative marketing.

(e) Unless otherwise permitted, the Council shall not provide credit for housing that is restricted in occupancy to any specific group.

5:93-5.4 New construction; conformance with the State Development and Redevelopment Plan (SDRP)

(a) In Planning Areas 1 and 2, as designated in the SDRP, the Council shall encourage inclusionary development within centers. However, municipalities may locate inclusionary developments within the environs as defined in the SDRP.

(b) In Planning Area 3, the Council shall encourage inclusionary development within centers. Where a municipality proposes an inclusionary site within Planning Area 3 outside of a center, the Council may permit such a site if infrastructure is available or can be easily extended from Planning Area 2.

(c) In Planning Areas 4 or 5, as designated in the SDRP, the Council shall require inclusionary development to be located in centers. Where the Council determines that a municipality has not created a realistic opportunity within the development boundaries of a center to accommodate that portion of the municipal inclusionary component that the municipality proposes to address within the municipality, the Council shall require the municipality to identify an expanded center(s) or a new center(s) and submit the expanded or new center(s) to the State Planning Commission for designation.

(d) In municipalities that are divided by more than one Planning Area, the following principles shall apply:

1. The Council shall encourage and may require the use of sites in Planning Areas 1 and 2 prior to approving inclusionary sites in Planning Areas 3, 4 and 5 that lack sufficient infrastructure;
2. The Council shall encourage and may require the use of sites within Planning Area 3 prior to approving inclusionary sites in Planning Areas 4 and 5 that would require the expansion of existing infrastructure; and
3. The Council shall encourage and may require the use of sites to which existing infrastructure can easily be extended prior to approving inclusionary sites that require the creation of new infrastructure in an area not presently serviced by infrastructure.

5:93-5.5 Municipally sponsored construction and gut rehabilitation

(a) A municipality may elect to provide low and moderate income units through a municipally sponsored construction program. A municipally sponsored construction program shall address four major areas of concern. It shall document that there is municipal control of the site(s); an administrative mechanism to construct the proposed housing; a funding plan and evidence of adequate funding capacity; and timetables for construction of the units. More specifically, the following minimum documentation shall be submitted:

1. The municipality shall demonstrate that it has control or has the ability to control the site(s). Control may be in the form of outright ownership or an option on the property;
2. An administrative mechanism shall be submitted for the development indicating who will monitor construction, income qualify applicants and administer the units once they are occupied. The municipality may contract with an outside agency to provide these functions, provided a written agreement between the administrative agency and the municipality is submitted to the Council.
3. The municipality shall submit detailed information demonstrating that it has adequate funding capabilities. The documentation shall include:
   i. A pro forma statement for the project; and
   ii. Evidence that the municipality has adequate and stable funding. If State or Federal funds will be used, the municipality shall provide documentation indicating the funding available to the municipality and any applications still pending. In the case where an application for outside funding is still pending, the municipality shall provide a stable alternative source, such as municipal bonding, in the event that the funding request is not approved. As outside funds become available, the municipality may reduce its reliance on municipal resources; and
4. A construction schedule, or timetable, shall be submitted for each step in the development process: including preparation of a site plan, granting of municipal approvals, applications for State and Federal permits, selection of a contractor and construction. The construction schedule shall provide for construction to begin within two years of substantive certification.

5:93-5.6 Zoning for inclusionary development

(a) Municipalities that choose to provide zoning for inclusionary development shall select sites that conform to the criteria in N.J.A.C. 5:93-5.3 and shall submit the information required in N.J.A.C. 5:93-5.3.

(b) The Council shall presumptively require a minimum gross density of three to five units per acre and a maximum set-aside of 20 percent, where the market units within the inclusionary development are detached single family units. The Council will presumptively require a minimum gross density of six units per acre and a maximum set-aside of 20 percent where the market units are attached housing units. Sites zoned for inclusionary development shall permit the low and moderate income units to be addressed by a diversity of attached housing types.

(c) The Council may require higher densities in circumstances including, but not limited to:

1. Where the existing zoning exceeds three units per acre;

2. When it determines that land is a scarce resource within the municipality; or

3. When the Council determines that higher densities are required to provide an opportunity for inclusionary development in a specific municipality, based on the particular circumstances of that municipality.

(d) Municipalities zoning for inclusionary development shall require low and moderate income housing units to be built in accordance with the following schedule:

Minimum Percentage of Low and Moderate Income Units Completed	Percentage of Market Housing Units Completed
0	25
10	25 + 1 unit
50	50
75	75
100	100

(e) The Council encourages a design of inclusionary developments that integrates the low and moderate income units with the market units.

5:93-5.7 Regional contribution agreements

A municipality may address its housing obligation by entering into a regional contribution agreement in accordance with N.J.A.C. 5:93-6.

5:93-5.8 Alternative living arrangements

(a) Municipalities may receive credit against the municipal housing obligation for alternative living arrangements by entering into an agreement for the location of such a facility with the provider of the facility or by granting preliminary approval to a developer of an alternative living arrangement.

(b) The unit of credit for an alternative living arrangement shall be the bedroom.

5:93-5.9 Accessory apartments

(a) Municipalities may seek credit for up to 10 accessory apartments. A municipality seeking credit for accessory apartments shall:

1. Demonstrate that the housing stock lends itself to accessory apartments. The Council will favor a large (measured in square feet), older housing stock;

2. Provide at least $10,000 per unit to subsidize the creation of the accessory apartment;

3. Demonstrate that rents of accessory apartments will average 57.5 percent of median income, including utilities. The rent shall be based on the number of bedrooms in accordance with N.J.A.C. 5:93-7.4; and

4. Demonstrate that accessory apartments will be affirmatively marketed, in accordance with N.J.A.C. 5:93-11.

(b) Accessory apartments shall be exempt from Council bedroom mix requirements (N.J.A.C. 5:93-7.3).

(c) Accessory apartments reserved for senior citizens shall be included with the 25 percent that may be reserved for senior citizens pursuant to N.J.A.C. 5:93-5.13.

5:93-5.10 Purchase of ECHO (Elder Cottage Housing Opportunities) housing units

(a) Municipalities may receive credit for ECHO housing units that may be placed on a property owner's lot, provided the municipality purchases the ECHO unit and makes it available to property owners within the municipality.

(b) ECHO housing units shall be credited against the 25 percent that may be reserved for senior citizen households pursuant to N.J.A.C. 5:93-5.13.

5:93-5.11 Purchase of housing units that have never been occupied and vacant housing units

(a) Municipalities may receive credit against the municipal housing obligation by purchasing housing units that have never been occupied and offering them in sound condition at affordable prices and/or rents to low and moderate income households. No more than 30 percent of the units in any one development may be purchased and restricted to low and moderate income households, unless 100 percent of the units in the development are so purchased and restricted. The sales price or rent of affordable units shall conform to the standards in N.J.A.C. 5:93-7.

(b) Municipalities may receive credit against the municipal housing obligation by purchasing housing units that have been vacant for at least 18 months and offering them in sound condition at affordable prices and/or rents to low and moderate income households. To receive such credit, the municipality shall demonstrate to the Council's satisfaction, that the housing has been vacant for at least 18 months. The sales price or rent of the affordable units shall be consistent with the standards in N.J.A.C. 5:93-7.

(c) The Council shall review plans to purchase housing units that have never been occupied and housing units that the Council has determined to be vacant for at least 18 months in a manner similar to its review of municipally sponsored construction, conversion and gut rehabilitation. Affordable low and moderate income housing created pursuant to this section shall, as best as practicable, conform to the Council's bedroom mix rules (N.J.A.C. 5:93-7.3) and shall be affirmatively marketed pursuant to N.J.A.C. 5:93-11.

5:93-5.12 Status of sites addressing the 1987-1993 municipal obligation

(a) Municipalities that received substantive certification for their 1987-1993 obligation based, in part, on the municipal choice to sponsor the construction of low and moderate income housing are responsible for constructing the low and moderate income housing. Failure of the community to satisfy the conditions of substantive certification and construct the housing shall not absolve the municipality from its responsibility.

(b) Sites zoned for inclusionary development in addressing the 1987-1993 housing obligation shall retain such zoning if:

1. The site was subject to an agreement pursuant to the Council's mediation process or part of a negotiated settlement in court; or

2. The developer of the site has filed a development application with the municipality;

(c) A municipality seeking to amend its plan to replace or delete a site used in addressing the 1987-1993 housing obligation shall follow the procedures set forth in N.J.A.C. 5:91-13.

5:93-5.13 Senior citizen housing

(a) In general, a municipality may restrict for senior citizens 25 percent of the housing obligation remaining after subtracting credits (pursuant to N.J.A.C. 5:93-3.4) from its calculated need. A municipality that receives an adjustment due to available land may restrict housing for senior citizens based on the following formula:

Senior citizen housing = .25 [realistic development potential + (rehabilitation component — credits pursuant to N.J.A.C. 5:93-3.4)]

If the municipality is transferring housing units via a regional contribution agreement, the maximum amount of age restricted units in the sending municipality shall not exceed 25 percent of the newly constructed low and moderate income units to be created in the sending municipality. Housing units transferred via a regional contribution agreement may include senior citizen housing units

provided that the sum of the newly constructed senior citizen units created in the sending and receiving municipalities does not exceed the total permitted above. This restriction shall not apply to the rehabilitation of existing age restricted units in either the sending or receiving municipality.

(b) A receiving municipality may seek a waiver to restrict more low and moderate income units to senior citizens than permitted by (a) above. In reviewing such a request, the Council shall consider the municipality's past inclusionary practices, measured by objective criteria, such as: jobs to housing ratio; municipal median income as compared to the regional median income; and the percentage of low and moderate income households in the municipality as compared to the percentage in the housing region. The Council shall also consider the waiver request within the context of the objectives of the receiving municipality's project plan.

5:93-5.14 Rental housing

(a) Every municipality shall create a realistic opportunity for at least 25 percent of its inclusionary component to be constructed as rental units. A municipality may provide this opportunity through one or any combination of the following:

1. Tax credits administered by the Agency and other funding administered by the Federal government, DCA and the Agency;
2. A municipally sponsored rental development;
3. Agreements with developers for the municipality to purchase low and moderate income units and maintain them as rental units;
4. The creation of accessory apartments pursuant to N.J.A.C. 5:93-5.8;
5. Permitting inclusionary sites to be developed as sales or rental housing with a density increase if the developer chooses to build rental housing. The Council shall presumptively require a minimum density of eight units per acre and a maximum set-aside of 15 percent for rental housing. A municipality, choosing this approach, shall provide this option to build rental housing on sufficient sites to address the 25 percent rental obligation.

(b) The Council shall grant a rental bonus toward the municipal housing obligation for each rental unit constructed. The Council may also grant this rental bonus when it determines that the municipality has provided or received a firm commitment for the construction of rental units. This rental bonus shall be applied to each rental unit until such time the municipality addresses the 25 percent requirement set forth in (a) above. The rental bonus shall equal one and one-third (1.33) for rental units restricted to senior citizens and two (2.0) for rental units open to the general public.

(c) Municipalities that choose to transfer the rental obligation via a regional contribution agreement shall do so by creating new rental units in the receiving municipality. Municipalities that transfer the rental obligation shall receive a one unit credit for each rental unit transferred.

SUBCHAPTER 6. REGIONAL CONTRIBUTION AGREEMENTS

5:93-6.1 General provisions

(a) In general, a municipality may propose the transfer of up to 50 percent of the housing obligation remaining after subtracting credits (pursuant to N.J.A.C. 5:93-3.4) from its calculated need. A municipality that receives an adjustment due to available land may propose a regional contribution agreement based on the following formula:

RCA = .5 [realistic development potential + (rehabilitation component — credits pursuant to N.J.A.C. 5:93-3.4)]

However, a municipality may not transfer any portion of its rehabilitation component. A municipality may propose such a transfer to another municipality within its housing region by means of a contractual agreement into which two municipalities voluntarily enter. The Council shall not review a regional contribution agreement without a contractual agreement between the two municipalities.

(b) Notwithstanding the contractual agreement that initiates the review of a regional contribution, described in (a) above, the Council may require any contractual amendments it deems necessary upon reviewing the regional contribution agreement.

(c) The Council shall maintain current lists of municipalities which have stated an intent to enter into RCAs as receiving municipalities and shall provide copies of such lists to potential sending municipalities as requested.

5:93-6.2 Terms

(a) At least 50 percent of the units accepted by a receiving municipality shall be affordable to low income households. The Council may modify this requirement if it determines that the sending municipality has adequately provided for its low income housing obligation elsewhere in its housing element. In the same case of regional contribution agreements for scattered site rehabilitation of occupied units, the receiving community shall ensure, as best as practicable, that 50 percent of the rehabilitated units are occupied by low income households.

(b) A receiving municipality may use revenues collected as a result of a regional contribution for any activity approved by the Council for addressing the low and moderate income obligation. Eligible activities shall include, but are not necessarily limited to, those activities outlined in N.J.A.C. 5:93-5.1.

(c) All RCAs shall specify payment schedules which conform to a construction or rehabilitation schedule and which relate to the receiving municipality's ability to deliver housing units in a timely fashion.

(d) All RCAs shall require that a receiving municipality submit a proposed project plan which shall be in such form and contain such information as the Agency may require.

(e) Sending and receiving municipalities shall, as part of their contract negotiations, determine the use of transferred funds that may be in excess of the amount necessary to implement the RCA. Such funds shall either be returned to the sending community and/or utilized by the receiving community to produce additional low and moderate income housing units or for a capital expenditure ancillary to or benefiting low and moderate income households. However, if a receiving municipality can accomplish the housing activity approved as part of its project plan for less than the minimum per unit transfer pursuant to N.J.A.C. 5:93-6.4(b), the difference between the cost of the housing activity and the minimum per unit transfer shall be used within the receiving municipality. The specific use of excess funds by the receiving community need not be specified in the RCA contract, but shall be subject to Council approval.

5:93-6.3 Credits

No receiving municipality shall receive credit towards its fair share obligation for units provided pursuant to a RCA, where credit for such units has been awarded to a sending municipality.

5:93-6.4 Amount and duration of contributions

(a) In negotiating RCAs, cosmetic improvements may be included in determining the negotiated price of rehabilitating a housing unit. However, to be eligible for rehabilitation, a housing unit shall be substandard as defined in N.J.A.C. 5:93-1.3. Upon rehabilitation, housing deficiencies shall be corrected and the unit shall be brought up to code standard. The standard for evaluating rehabilitation activity shall be the local property maintenance code, or if none is available, the BOCA National Existing Structures Code (available from Building Officials and Code Administrators, Inc., 4051 West Flossmoor Road, Country Club Hills, Illinois 60478-5795)

(b) A sending municipality shall transfer at least $20,000 to a receiving municipality for each unit transferred as part of a regional contribution agreement. This threshold has been established after consideration of:

1. The housing stock in New Jersey's urban municipalities;
2. The average cost of a regional contribution since 1986;
3. The maximum subsidies available under the Neighborhood Preservation Balanced Housing Program established pursuant to N.J.S.A. 52:27D-320; and
4. The average internal subsidization required for a developer to provide each low and moderate income unit within an inclusionary development.

(c) The receiving municipality may spend less than $20,000 per unit in implementing the regional contribution agreement, provided

the remaining funds are used to produce or rehabilitate additional low and moderate income units.

(d) RCAs shall run concurrent with the sending municipality's period of substantive certification, not to exceed six years. Contributions may be prorated in municipal appropriations concurrent with the certification period, not to exceed six years.

(e) All RCAs that include a scattered site rehabilitation program shall be structured so that the final transfer payment occurs within five years of the approval of the regional contribution agreement. All rehabilitation activity shall occur within the sending community's period of substantive certification. Rehabilitation schedules shall be structured for completion within five years of the approval of a regional contribution agreement. Rehabilitation schedules shall be subject to Council approval and shall not be structured to require a disproportionate share of rehabilitation during the latter portion of the five year period.

5:93-6.5 Monitoring and enforcement

(a) All RCAs shall require receiving municipalities to file annual reports with the Agency setting forth the progress in implementing the project to be produced under an RCA. This report shall be in such form as the Council and the Agency may from time to time require.

(b) The Council shall take such actions as may be necessary to enforce a RCA with respect to the timely implementation of a project by the receiving municipality. In implementing its enforcement responsibilities, the Council may:

1. Initiate or join a lawsuit to enforce a RCA;
2. Bar a delinquent receiving municipality from entering into further RCAs for a specified period of time;
3. Recommend that the Agency and the Department of Community Affairs withhold further assistance available under the Act; and/or
4. Take such other actions as the Council may determine necessary, including ordering a sending municipality, for good cause, to temporarily or permanently cease payment to a receiving municipality.

SUBCHAPTER 7. INCLUSIONARY DEVELOPMENTS

5:93-7.1 Purpose and scope

The purpose of this chapter is to provide standards that pertain to the creation of low and moderate income housing units. The rules that follow shall pertain to all inclusionary developments, including those created as part of a regional contribution agreement. This subchapter provides standards on: the distribution of low and moderate income units; bedroom distribution; and establishing the rents and prices of low and moderate income units.

5:93-7.2 Distribution of low and moderate income units

(a) At least half of all units within each inclusionary development shall be affordable to low income households.

(b) At least half of all rental units shall be affordable to low income households.

(c) At least one-third of all units in each bedroom distribution (pursuant to N.J.A.C. 5:93-73) shall be affordable to low income households.

5:93-7.3 Bedroom distribution

(a) Inclusionary developments that are not restricted to senior citizens shall be structured such that:

1. At a minimum, 20 percent of all low and moderate income units shall be one bedroom units;
2. At a maximum, 20 percent of all low and moderate income units may be efficiency units; and
3. At a minimum, 20 percent of all low and moderate income units shall be three bedrooms.

(b) Low and moderate income units restricted to senior citizens may utilize a modified bedroom distribution. At a minimum, the number of bedrooms shall equal the number of senior citizen low and moderate income units within the inclusionary development. The standard can be met by creating all one bedroom units or by creating a two bedroom unit for each efficiency unit. Applications to waive this standard shall be made in accordance with N.J.A.C. 5:93 and shall be referred by the Council to the DCA Division on Aging for review and recommendations.

5:93-7.4 Establishing rents and prices of units

(a) The following criteria shall be used in determining maximum rents and sale prices:

1. Efficiency units shall be affordable to one person households;
2. One half of all one bedroom units shall be affordable to one person households; and one half of all one bedroom units shall be affordable to two person households;
3. One half of all two bedroom units shall be affordable to two person households; and one half of all two bedroom units shall be affordable to three person households; and
4. Three bedroom units shall be affordable to five person households.

(b) Median income by household size shall be established by a regional weighted average of the uncapped Section 8 income limits published by HUD. To compute this regional income limit, the HUD determination of median county income for a family of four is multiplied by the households within the county. The resulting product for each county within the housing region is summed. The sum is divided by the estimated total households in each housing region. This quotient represents the regional weighted average of median income for a household of four. This regional weighted average is adjusted by household size based on multipliers used by HUD to adjust median income by household size. The maximum average rent and price of low and moderate income units within each inclusionary development shall be affordable to households earning 57.5 percent of median income. In averaging 57.5 percent, prices of sales units may be stratified. The following stratification example represents a method for establishing sales prices. Prices of sales units shall be established so that for every six units:

1. One is priced at 43.0 percent of median;
2. Two are priced at 48.0 percent of median;
3. One is priced at 59.5 percent of median;
4. One is priced at 71.5 percent of median; and
5. One is priced at 75.0 percent of median.

(c) In averaging 57.5 percent under (b) above, developers and/or municipal sponsors of rental units may establish one rent for a low income unit and one rent for a moderate income unit for each bedroom distribution.

(d) Municipalities shall require that the initial price of a low and moderate income owner-occupied single family housing unit be established so that after a downpayment of five percent, the monthly principal, interest, insurance, property taxes (property taxes shall be based on the restricted value of low and moderate income units) and condominium or homeowner fees do not exceed 28 percent of the eligible gross monthly income. Municipalities shall, by ordinance, require that master deeds of inclusionary developments regulate condominium or homeowner association fees or special assessments of low and moderate income purchasers at a specific percentage of those paid by market purchasers. The percentage that shall be paid by low and moderate income purchasers shall be at least one-third of the condominium or homeowner association fees paid by market purchasers. Once established within the master deed, the percentage shall not be amended without prior approval from the Council.

(e) Municipalities shall require that gross rents, including an allowance for utilities, be established so as not to exceed 30 percent of the gross monthly income of the appropriate household size referenced in (a) above. The allowance for utilities shall be consistent with the utility allowance approved by HUD for use in New Jersey.

(f) Low income housing units shall be reserved for households with a gross household income less than or equal to 50 percent of the median income approved by the Council. Moderate income housing units shall be reserved for households with a gross household income equal to or more than 50 percent, but less than 80 percent of the median income approved by the Council. For example, a household earning 48 percent of median income may be placed in any low income unit; however, a household earning 53 percent may not qualify for a low income unit. A household earning 67 percent of median may be placed in any moderate income housing unit. Low and moderate income units shall not be offered to households that

are not income eligible without Council approval pursuant to N.J.A.C. 5:93-9.16.

SUBCHAPTER 8. DEVELOPMENT FEES

5:93-8.1 Purpose

(a) The New Jersey Supreme Court, in *Holmdel Builder's Ass'n v. Holmdel Township,* 121 *N.J.* 550 (1990) (issued December 13, 1990), determined that mandatory development fees are both statutorily and constitutionally permissible. The Court further anticipated that the Council would promulgate appropriate development fee rules specifying, among other things, the standards for these development fees. The purpose of this subchapter is to provide such guidance.

(b) Except as otherwise provided in these rules, a municipality may only collect and spend development fees through participation in the Council's substantive certification process or through a comprehensive review designed to achieve a judgment of repose. The exceptions to this rule are set forth in N.J.A.C. 5:93-8.3 through 8.6 inclusive. These exceptions are permitted because some communities have already received substantive certification; others have achieved a judgment of repose; and still others are litigating exclusionary zoning cases. Some of these municipalities have already collected fees. The Council has created a process for these municipalities to collect and/or retain fees. However, in the future, the ability to collect and spend development fees shall be limited to municipalities that petition for substantive certification. Urban aid municipalities are also considered a special case. These municipalities have historically housed a disproportionate share of New Jersey's poor and, as a result, may have exceedingly high fair share obligations that would be extremely difficult to address in a six year period. Therefore, the Council will allow these municipalities to collect fees outside of substantive certification provided the municipality adheres to the rules in this subchapter. The rules that follow provide basic requirements for collecting and spending development fees. They then provide additional requirements for municipalities in various categories.

(c) While the rules that follow shall govern those municipalities that petition for substantive certification and urban aid cities, the Council will review development fee ordinances and plan to spend money upon the request of the court with jurisdiction in an exclusionary zoning lawsuit.

5:93-8.2 Basic requirements

(a) Except as set forth in N.J.A.C. 5:93-8.3 through 8.6 inclusive, the Council shall not review or approve any development fee ordinance unless the municipality has petitioned for substantive certification.

(b) No municipality shall collect development fees unless the municipality has adopted a housing element and the Council has approved its development fee ordinance.

(c) No municipality shall spend development fees unless the Council has approved a plan for spending such fees. With the exception provided for in N.J.A.C. 5:93-8.3, municipalities that have not received substantive certification or a judgment of repose shall not spend development fees until they have received substantive certification or a judgment of repose.

5:93-8.3 Urban aid municipalities

Municipalities that qualify for State aid pursuant to P.L. 1978, c.14 (N.J.S.A. 52:27D-178 et seq.) shall not collect or spend development fees without conforming to the requirements set forth in N.J.A.C. 5:93-8.2. Council approval of the municipal development fee ordinance shall allow the municipality to collect development fees for a period specified by the Council, not to exceed six years, commencing with the Council's approval of the development fee ordinance. Notwithstanding any other provision of this chapter, these municipalities shall have one year from the Council's approval of their development fee ordinance to submit a plan for spending development fees. These municipalities may collect and spend development fees without petitioning for substantive certification.

5:93-8.4 Municipalities that collected fees and received certification

(a) This rule deals with the category of municipalities that have collected development fees prior to December 13, 1990 and have received substantive certification. These municipalities may petition the Council to review and approve an ordinance regarding development fees collected prior to December 13, 1990. The Council may approve such ordinance, provided it conforms to the procedures in N.J.A.C. 5:93-8.8, Development fee ordinance review, and N.J.A.C. 5:91-15, Procedures for retaining development fees.

(b) The municipalities in this category shall not resume collecting development fees or spend development fees without comforming to N.J.A.C. 5:93-8.2.

(c) Notwithstanding any other provision of this chapter, the municipalities in this category shall submit plans to spend the development fees (regardless of when these fees were collected) prior to the expiration of their substantive certification periods.

5:93-8.5 Municipalities that collected fees and are proceeding toward certification

(a) This rule deals with the category of municipalities that have collected development fees prior to December 13, 1990 and have petitioned for substantive certification. These municipalities may petition the Council to review and approve an ordinance regarding development fees collected prior to December 13, 1990. The Council may approve such ordinances provided they conform to the procedures in N.J.A.C. 5:93-8.8, Development fee ordinance review, and N.J.A.C. 5:91-15, Procedures for retaining development fees.

(b) The municipalities in this category shall not resume collecting development fees or spend development fees without conforming to N.J.A.C. 5:93-8.2.

(c) Notwithstanding any other provision of this chapter, municipalities in this category shall submit plans to spend the development fees and receive approval of these plans prior to receiving substantive certification.

5:93-8.6 Municipalities that have not collected fees that have received substantive certification, or are proceeding toward substantive certification

(a) This rule deals with municipalities that have not collected development fees and that have received substantive certification or are proceeding toward substantive certification. Municipalities in this category shall not collect fees until they have adopted a housing element and received the Council's approval of its development fee ordinance. No municipality in this category shall spend development fees unless the Council has approved a plan for spending such fees.

(b) Municipalities that have not received substantive certification shall submit plans for spending the development fees and receive approval for these plans prior to receiving substantive certification.

(c) Notwithstanding any provision of this chapter, municipalities in this category that have received substantive certification shall submit plans for spending the development fees prior to the expiration of the substantive certification period or period of repose.

5:93-8.7 Other municipalities that have not collected fees

(a) Except as provided for in N.J.A.C. 5:93-8.3 through 8.6 inclusive, municipalities that have not collected fees shall not collect fees until they have adopted a housing element, petitioned for substantive certification and received the Council's approval of its development fee ordinance.

(b) No municipality in this category may spend development fees unless the Council has approved a plan for spending such fees and granted substantive certification. Municipalities shall submit these plans when they petition for substantive certification. Municipalities that have petitioned for substantive certification prior to the effective date of this rule shall submit plans for spending development fees prior to receiving substantive certification.

5:93-8.8 Development fee ordinance review

(a) The Council shall not review a development fee ordinance unless the municipality has submitted:

1. A copy of an adopted housing element that complies with the Municipal Land Use Law, N.J.S.A. 40:55D et seq.;

2. A copy of the proposed ordinance designed to collect development fees;
3. A description of any changes to the municipal zoning ordinance during the previous two years;
4. A request in the form of a resolution by the governing body for the Council to review the development fee ordinance;
5. If the municipality has received a court ordered judgment of repose, a copy of the compliance plan, implementation ordinances and information regarding the period of time encompassed by the judgment of repose;
6. A description of the types of developments that will be subject to fees;
7. A description of the amount and nature of the fees imposed;
8. A statement regarding the use of density bonuses or other devices to counterbalance development fees; and
9. If development fees have been collected prior to December 13, 1990 and the municipality wishes to retain some or all of these fees, the following information must be submitted to the Council within 90 days of the effective date of this rule:
i. A copy of the ordinance pursuant to which the fees were collected; and the proposed ordinance, if any, designed to reimpose some or all of these fees;
ii. A request in the form of a resolution by the governing body for the Council to review the development fee ordinance used to collect the fees;
iii. The name of each developer that paid a development fee;
iv. The amount paid by each developer and the formula for the amount collected;
v. The equalized assessed value of each development at the time of collection;
vi. An accounting of all money collected and identification of the municipal account that houses all development fees;
vii. If any money collected through a development fee ordinance has been spent, an accounting of the expenditure; and
viii. Any other information the Council may require.

(b) Municipalities that collected fees prior to December 13, 1990, shall be able to retain such revenues or reimpose such fees to the extent that the fees collected by the municipality do not exceed the amount permitted by this chapter. Municipalities interested in retaining development fees collected prior to December 13, 1990 shall also conform to the procedures outlined in N.J.A.C. 5:91-15, Procedures for retaining development fees.

5:93-8.9 Content of plans to spend development fees

Plans to spend development fees shall consist of the information required in N.J.A.C. 5:93-5.1(c).

5:93-8.10 Development fees; residential

(a) Residential development fees shall be a maximum of one-half of one percent of the equalized assessed value for residential development, provided no increased density is permitted.

(b) Where there is a zoning change that permits increased residential development, the municipality may impose a development fee of up to six percent of the equalized assessed value for each additional unit that may be realized as a result of the rezoning.

Example: if a rezoning allowed two extra units to be constructed, the fees could equal one-half of one percent of equalized assessed value on the first unit and six percent of equalized assessed value on the two incremental units.

(c) Municipalities may allow developers of sites zoned for inclusionary development to pay a fee in lieu of building low and moderate income units, provided the Council determines the municipal housing element and fair share plan provides a realistic opportunity for addressing the municipal fair share obligation. The fee may equal the cost of subsidizing the low and moderate income units that are replaced by the development fee. For example, an inclusionary development may include a 20 percent set-aside, no set-aside and a fee that is the equivalent of a 20 percent set-aside or a combination of a fee and set-aside that is the equivalent of a 20 percent set-aside.

(d) Municipalities may collect fees exceeding those permitted in this section, provided they enter into agreements with developers that offer a financial incentive for paying higher fees. The financial incentive may be in the form of a tax abatement. No agreement may provide for a voluntary developer fee without also providing for a comparable off-setting incentive. All agreements are subject to Council approval.

5:93-8.11 Development fees; non-residential

(a) Non-residential development fees shall be a maximum of one percent of the equalized assessed value for non-residential development.

(b) Municipalities may collect fees exceeding those permitted in this section provided they enter into agreements with developers that offer a financial incentive for paying higher fees. Such agreements may include, but are not limited to, a tax abatement, increased commercial/industrial square footage, increased commercial/industrial lot coverage and/or increased commercial/industrial impervious coverage in return for an increased fee. The fee negotiated must bear a reasonable relationship to the additional commercial/industrial consideration to be received. All agreements are subject to Council approval.

5:93-8.12 Eligible exactions, ineligible exactions and exemptions

(a) Except as provided for in N.J.A.C. 5:93-8.10, inclusionary developments shall be exempt from development fees. All other forms of new construction may be subject to development fees.

(b) Development fees may be collected when an existing structure is expanded or undergoes a more intense use. The development fee that may be collected shall be calculated on the increase in the equalized assessed value of the improved structure.

(c) Municipalities shall not reduce densities from pre-existing levels and then require developers to pay development fees in exchange for an increased density.

(d) Developments that have received preliminary or final approval prior to the imposition of a municipal development fee shall be exempt from development fees unless the developer seeks a major change in the approval. Municipalities that collected development fees prior to December 13, 1990 may not retain any fees imposed subsequent to granting preliminary or final development approval, unless the developer seeks a major change in the approval.

(e) Municipalities may exempt specific types of development from fees or may impose lower fees for specific types of development, provided each classification of development is addressed consistently. For example, all retail development may be exempt from fees.

(f) Municipalities may exempt specific areas of the municipality from the imposition of fees or reduce fees in order to promote development in specific areas of the municipality.

5:93-8.13 Collection of fees

Municipalities may collect up to 50 percent of the fee on any specific development at the time of issuance of the building permit. The remaining portion may be collected at the issuance of the certificate of occupancy.

5:93-8.14 Housing trust fund

All development fees shall be deposited in a separate interest bearing housing trust fund. In establishing the housing trust fund, the municipality shall provide whatever express written authorization that may be required by the bank to permit the Council to direct the disbursement of development fees pursuant to N.J.A.C. 5:93-8.17 and 8.18.

5:93-8.15 Use of money

(a) A municipality may use revenues collected from development fees for any activity approved by the Council for addressing the municipal fair share. Such activities include, but are not limited to: rehabilitation, new construction, regional contribution agreements, purchase of land for low and moderate income housing, improvement of land to be used for low and moderate income housing, extensions and/or improvements of roads and infrastructure to low and moderate income housing sites, assistance designed to render units to be more affordable and administration of the implementation of the housing element. Municipalities are encouraged to use development fee revenues to attract other funds such as, but not

limited to, available public subsidies and funds from private lending institutions.

(b) Funds shall not be expended to reimburse municipalities for past housing activities.

(c) At least 30 percent of the revenues collected from development fees shall be devoted to render units more affordable. Examples of such activities include, but are not limited to, downpayment assistance, low interest loans, and rental assistance. This requirement may be waived in whole or in part when the municipality demonstrates the ability to address the requirement of affordability assistance from another source.

(d) Municipalities may contract with a private or public entity to administer the implementation of any part of its housing element, including the requirement for affordability assistance.

(e) No more than 20 percent of the revenues collected from development fees shall be expended on administration, including, but not limited to, salaries and benefits for municipal employees or consultant fees necessary to develop or implement: a rehabilitation program; a new construction program; a regional contribution agreement; a housing element; and an affirmative marketing program. Administrative funds may be used for: income qualification of households; monitoring the turnover of sale and rental units; and compliance with Council monitoring requirements. Development fees shall not be used to defray the costs of existing staff.

5:93-8.16 Monitoring

Municipalities that collect development fees shall complete and return all monitoring forms related to the collection of fees, expenditure of revenues and implementation of the plan certified by the Council or approved by the court. Quarterly financial reports, and annual program implementation and auditing reports shall be completed on forms designed by the Council.

5:93-8.17 Penalties

(a) The municipality's ability to collect fees and the Council's approval of an ordinance and spending plan shall be conditioned on compliance with all requirements of this subchapter. Occurrence of the following may result in the Council taking an action pursuant to section (b) below:

1. Failure to submit a plan pursuant to N.J.A.C. 5:93-5.1(c) within the time limits imposed by the Council;

2. Failure to meet deadlines for information required by the Council in its review of a housing element, development fee ordinance, or plan for spending fees;

3. Failure to proceed through the Council's administrative process toward substantive certification in a timely manner;

4. Failure to address the Council's conditions for approval of a plan to spend development fees within the deadlines imposed by the Council;

5. Failure to address the Council's conditions for substantive certification within deadlines imposed by the Council;

6. Failure to submit accurate monitoring reports within the time limits imposed by the Council;

7. Failure to implement the plan to spend development fees within the time limits imposed by the Council, or within reasonable extensions granted by the Council;

8. Expenditure of development fees on activities not permitted by the Council;

9. Revocation of certification; or

10. Other good cause demonstrating that the revenues are not being used for the intended purpose.

(b) Consistent with this rule, any ordinance adopted by a municipality for the purpose of imposing and collecting development fees shall provide that, in the event that any of the conditions described in N.J.A.C. 5:93-8.17(a) occur, the Council shall be authorized, on behalf of the municipality, to direct the manner in which all development fees collected pursuant to that ordinance shall be expended. Should any such condition occur, such revenues shall immediately become available for expenditure at the direction of the Council upon the municipal clerk's receipt of written notification from the Council that such a condition has occurred. In furtherance of the foregoing, any such municipality shall, in establishing a bank account pursuant to N.J.A.C. 5:93-8.14, ensure that the municipality has provided whatever express written authorization may be required by the bank to permit the Council to direct the disbursement of such revenues from the account following the delivery to the bank of the aforementioned written notification provided by the Council to the municipality's clerk.

(c) The Council may, after a hearing pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., revoke development fee ordinance approval for any municipality that fails to comply with the requirements of this subchapter. Where such approval has been revoked, the Council shall not approve an ordinance permitting such municipality to collect development fees for the remaining period of the substantive certification period or judgment of repose. With regard to municipalities that qualify for State aid pursuant to P.L. 1978, c.14 (N.J.S.A. 52:27D-178 et seq.) the Council shall not approve any ordinance permitting such municipalities to collect development fees for the remainder of the approval period (of up to six years) following a Council determination that they failed to comply with this subchapter.

(d) Neither loss of development fees, nor loss of the municipality's ability to collect development fees shall alter the municipality's responsibilities pursuant to substantive certification or a court ordered judgment of repose.

5:93-8.18 Designation of entities to receive development fees

(a) The Council shall solicit plans from public sector entities and non-profit agencies to create or rehabilitate affordable housing.

(b) The Council shall designate such agencies to receive revenues from development fees when the Council takes an action pursuant to N.J.A.C. 5:93-8.17.

(c) To the extent practicable, when the Council takes an action pursuant to N.J.A.C. 5:93-8.17, the Council shall assign development fee revenues to projects planned within the municipality that generated the revenues or within close proximity to the municipality (such as within the county or region).

5:93-8.19 Ongoing collection of fees

(a) Municipalities that qualify for State aid pursuant to P.L. 1978, c.14 (N.J.S.A. 52:27D-178 et seq.) and have received Council approval to collect development fees, shall not collect such fees for more than the period specified by the Council, not to exceed a six year period, unless the municipality has refiled an adopted housing element with the Council and received the Council's approval of its development fee ordinance. These municipalities shall submit a plan for spending development fees within one year of the Council's approval of their development fee ordinance. Municipalities that fail to renew their ability to collect development fees within the six year period may resume the collection of development fees by complying with the requirements of this section.

(b) Except as provided for in (a) above, the ability for all other municipalities to collect development fees shall expire with their substantive certification or judgment of repose, unless the municipality has filed an adopted housing element with the Council; petitioned for substantive certification; and received the Council's approval of its development fee ordinance. Municipalities that fail to renew their ability to collect development fees prior to the expiration of their substantive certification or judgment of repose may resume the collection of development fees by complying with the requirements of this section.

5:93-8.20 Severability

If any part of this subchapter shall be held invalid, the holding shall not affect the validity of the remaining parts of this subchapter. If any part of this subchapter is held invalid in one or more of their applications, the rules shall remain in effect in all valid applications that are severable from the invalid application.

SUBCHAPTER 9. CONTROLS ON AFFORDABILITY

5:93-9.1 Purpose and scope

(a) This subchapter is designed to provide assurances that low and moderate income units are created with controls on affordability over time and that low and moderate income people occupy these

units. To that end, municipalities shall designate a municipal authority with the responsibility of ensuring the affordability of sales and rental units over time. The authority shall also be responsible for: affirmative marketing; income qualification of low and moderate income households; placing income eligible households in low and moderate income units upon initial occupancy; and placing income eligible households in low and moderate income units as they become available during the period of affordability controls. Municipalities may establish a municipal authority or may contract with the Department of Community Affairs Affordable Housing Management Service (AHMS).

(b) In placing eligible households in low and moderate income units, municipalities shall utilize the following income eligibility verification and certification procedures:

1. Every household member 18 years of age or over who will live in the affordable unit and receives income shall be required to provide income documentation as applicable and determined by the reviewer for the Authority. Household members 18 years of age or over not receiving income must produce documentation of current status.

2. Verification may include, but is not limited to, the following:

i. Four consecutive pay stubs including overtime, bonuses, or tips dated within 120 days of the interview date or a letter from employer stating present annual income figure as projected annually;

ii. A copy of regular IRS Form 1040 (Tax computation form) 1040A, or 1040 EZ as applicable and State income tax returns filed for each of the three years prior to the date of interview;

iii. A letter or appropriate reporting form verifying benefits such as Social Security, Unemployment, Welfare, Disability or Pension income (monthly or annually);

iv. A letter or appropriate reporting form verifying any other sources of income claimed by the applicant such as alimony and child support;

v. Reports that verify income from assets to be submitted by banks or other financial institutions managing trust funds, money market accounts, certificates of deposit, stocks or bonds;

vi. Evidence or reports of income from assets such as real estate or businesses that are directly held by any Eligible Household Member;

vii. Evidence or reports that verify assets that do not earn regular income such as non-income producing real estate or savings that do not earn interest; and

viii. A notarized statement of explanation in such form as to be satisfactory to the reviewer.

3. Generally, sources of annual income shall be based on regular income reported to the IRS and which can be utilized for mortgage approval. Complete income information is essential to unit selection.

4. Income includes but is not limited to wages, salaries, tips, commissions, alimony, regularly scheduled overtime, pensions, social security, unemployment compensation, AFDC, verified regular child support, disability, net income from business or real estate, and income from assets such as savings, CDs, money market, mutual funds, stocks and bonds and imputed income from non-income producing assets such as equity in real estate.

5. Assets not earning a verifiable income shall have an imputed interest income using a current average annual savings interest rate. Assets not earning income includes present real estate equity. Applicants owning real estate must produce documentation of a market value appraisal and outstanding mortgage debt. The difference will be treated as the monetary value of the asset and the imputed interest added to income.

6. Income from assets that have delayed earnings, such as IRA's or annuity programs shall not be included in current income until such payments are being received. However, these assets must be reported and verified.

7. Net rent from real estate is considered income after the monthly mortgage payment including real estate taxes and insurance is deducted. Other expenses are not deductible. In addition, the equity in the rented real estate is considered an asset and will have the imputed interest income on the calculated value of equity added to income.

8. Income does not include payments, rebates or credits received under Federal or State low income home energy assistance programs, Food Stamps, payments received for care of foster children, relocation assistance benefits, income of live-in attendants, scholarships, student loans, personal property such as automobiles, lump-sum additions to family assets such as inheritances, one-time lottery winnings, and insurance settlements except for additional income earned from these additions, and casual, sporadic or irregular gifts and bonuses.

9. Standard credit information services that provide conventional credit and tenant reports may be utilized when certifying an Eligible Household with required written permission from the household. An unsatisfactory credit history or credit information that demonstrates a disproportionate debt to income ratio may result in a denial of certification. Court-ordered payments for alimony or child support to another household shall be considered a regular monthly debt whether or not it is being paid regularly.

10. Households whose total Gross Annual Income is measured at 50 percent or below 50 percent of the authorized median income guideline shall be certified as low income households and referred to units designated for low income households.

11. Households whose total gross annual income is measured above 50 percent but below 80 percent of the authorized median income shall be certified as moderate income households and referred to units designated for moderate income households.

12. Generally, households will be referred to units where predetermined total monthly housing costs correspond to the household's calculated ability to pay using 28 percent of gross monthly income as a standard for homeownership and 30 percent of gross monthly income as a standard for rental units.

13. At the discretion of the Authority, households may also be required to produce documentation of household composition for determining the correct unit size and the applicable median income guide.

14. Generally, households will be referred to available units using the following standards for occupancy:

i. A maximum of two persons per bedroom;

ii. Children of same sex in same bedroom;

iii. Unrelated adults or persons of the opposite sex other than husband and wife in separate bedrooms; and

iv. Children not in same bedroom with parents.

15. Households may be considered for units other than as above, but in no case shall a household be referred to a unit that provides for more than one additional bedroom per household occupancy standards as stated in (b)14 above.

16. A form for certification shall be prepared and signed by the Authority. Only Eligible Households receiving certification shall be referred to Affordable Housing units.

17. Certified Households who reject an opportunity for affordable housing may be replaced on the referral list at their request and may be reinterviewed for certification when their name appears on a listing for a subsequent unit.

18. Certification shall be valid for no more than 120 days unless a valid sales contract or lease has been executed within that time period. In this event, certifications shall be valid until such time as the sales contract or lease is ruled invalid and no occupancy has occurred. Certifications may be renewed in writing at the request of a Certified Household for no more than an additional period of 120 days at the discretion of the Authority.

19. Eligible Households who are denied certification may make a written request for a redetermination. Eligible Households shall be required to produce additional documentation to support their claim. Eligible Households who are denied certification a second time may request a hearing by forwarding a written request to the Authority within 30 days following the household's receipt of a denial notification. If a written request has not been received within the 30 day time period, the ineligible determination will be final. The hearing decision shall be final.

5:93-9.2 Length of controls

(a) In developing housing elements, municipalities shall determine measures to assure that newly constructed low and

moderate income sales units remain affordable to low and moderate income households for an appropriate period of not less than 20 years. The authority shall do so by requiring all conveyances of newly constructed low and moderate income sales units subject to the Act, to contain the restrictive covenant and mortgage lien adopted by the Council.

(b) Municipalities receiving State Aid pursuant to P.L. 1978, c.14 (N.J.S.A. 52:27D-178 et seq.) that exhibit one of the characteristics delineated in N.J.A.C. 5:93-2.3(b) shall adopt measures to assure that newly constructed low and moderate income sales units remain affordable to low and moderate income households for a period of not less than 10 years. The authority shall do so by requiring all conveyances of newly constructed low and moderate income sales units subject to the Act to contain the restrictive covenant and mortgage lien adopted by the Council.

(c) Rehabilitated owner-occupied single family housing units that are improved to code standard shall be subject to affordability controls for at least six years.

(d) Rehabilitated renter-occupied housing units that are improved to code standard shall be subject to affordability controls for at least 10 years.

(e) Municipalities shall adopt measures to assure that newly constructed low and moderate income rental units remain affordable to low and moderate income households for a period of at least 20 years. Municipalities receiving State aid pursuant to P.L. 1978, c.14 (N.J.S.A. 52:27D-178 et seq.) that exhibit one of the characteristics delineated in N.J.A.C. 5:93-2.3(b) shall adopt measures to assure that newly constructed low and moderate income rental units remain affordable to low and moderate income households for a period of at least 10 years. Affordability controls on rental units may exceed the prescribed periods if the developer agrees to a longer period.

(f) Housing units created through conversion of a non-residential structure shall be considered a new housing unit and shall be subject to controls on affordability as delineated in (a), (b) and (e) above.

5:93-9.3 General provisions concerning uniform deed restriction liens and enforcement through certificates of occupancy or reoccupancy on sales units

(a) No municipality shall issue a certificate of occupancy for initial occupancy of a low or moderate income sales unit unless there is a written determination by the authority that the unit is to be controlled by a deed restriction and mortgage lien as adopted by the Council. The authority shall make such determination within 10 days of receipt of a proposed deed restriction and mortgage lien. Amendments to the deed restriction and lien shall be permitted only if they have been approved by the Council. A request for an amendment to the deed restriction and lien may be made by the authority, the municipality or a developer.

(b) No municipality shall permit the initial occupancy of a low or moderate income sales unit prior to issuance of a certificate of occupancy in accordance with (a) above.

(c) Municipalities shall, by ordinance, require a certificate of reoccupancy for any occupancy of a low or moderate income sales unit resulting from a resale and shall not issue such certificate unless there is a written determination by the authority that the unit is to be controlled by the deed restriction and mortgage lien prior to issuance of a certificate of occupancy, regardless of whether the sellers had executed the deed restriction and mortgage lien adopted by the Council upon acquisition of the property. The authority shall make such determination within 10 days of receipt of a proposed deed restriction and mortgage lien.

(d) The certificate of reoccupancy shall not be required in sales for which controls are allowed to expire or in which the repayment option is being exercised pursuant to N.J.A.C. 5:93-9.4.

(e) The mortgage lien and the restrictive covenant shall be filed with the records office of the county in which the unit is located. The lien and restrictive covenant shall be in the form adopted by the Council, as delineated in the Appendix E, unless amendments have been approved by the Council, for a specific municipality.

(f) The restrictive covenant, including the repayment clause, and the mortgage lien shall have priority over all mortgages on the property except for a first mortgage placed on the property by the mortgagee prior to the expiration of resale controls.

5:93-9.4 Option to buy sales units

(a) The restrictive covenant governing the deeds of low and moderate income units shall include an option permitting purchase of the affordable housing unit at the maximum allowable restricted sales price at the time of the first non-exempt sale after controls on affordability have been in effect on the unit for the period, specified in N.J.A.C. 5:93-9.2. The option to buy shall be available to the municipality, the Department of Community Affairs, the Agency, or a qualified non-profit as defined in this chapter.

(b) All restrictive covenants governing low and moderate income units shall require the owner to notify the authority and the Council by certified mail of any intent to sell the unit 90 days prior to entering into an agreement for the first non-exempt sale after controls have been in effect on the housing unit for the period specfied in N.J.A.C. 5:93-9.2.

(c) Upon receipt of such notice, the option to buy the unit at the maximum allowable restricted sales price or any mutually agreeable sales price that does not exceed the maximum allowable restricted sales price shall be available for 90 days. The authority shall notify the municipality, the Department of Community Affairs, the Agency, and the Council that the unit is for sale. If the municipality exercises this option, it may enter into a contract of sale. If the municipality fails to exercise this option within 90 days, the first of the other entities giving notice to the seller of its intent to purchase during the 90 day period, shall be entitled to purchase the unit. If the option to purchase the unit at the maximum allowable restricted sales price is not exercised by a written offer to purchase the housing unit within 90 days of receipt of the intent to sell, the owner may proceed to sell the housing unit. If the owner does not sell the unit within one year of the date of the delivery of notice of intent to sell, the option to buy the unit shall be restored and the owner shall be required to submit a new notice of intent to sell 90 days prior to any future proposed date of sale.

(d) Any option to buy a housing unit at the maximum allowable restricted sales price shall be exercised by certified mail and shall be deemed exercised upon mailing.

5:93-9.5 Municipal option; sales units

(a) Any municipality that elects to purchase a low or moderate income unit pursuant to N.J.A.C. 5:93-9.4 may:

1. Convey or rent the housing unit to a low or moderate income purchaser or tenant at a price or rent not to exceed the maximum allowable restricted sales price or rent for a period of up to 20 years; or

2. Convey the unit at fair market value subject to the provisions of (c) below.

(b) Municipalities that purchase low income housing units shall maintain them as low income housing units.

(c) Municipalities that elect to purchase low or moderate income housing units and convey them at a fair market value shall:

1. Notify the Council of any proposed sale and sales price 90 days before closing;

2. Notify the Council of the price differential as defined in N.J.A.C. 5:93-1.3; and

3. Deposit the price differential in an interest bearing housing trust fund devoted solely to the creation, rehabilitation or maintenance of low and moderate income housing.

(d) Money deposited in housing trust funds may not be expended until the municipality submits and the Council approves a spending plan in accordance with N.J.A.C. 5:93-5.1(c). Money deposited in housing trust funds shall be subject to the restrictions, monitoring requirements and penalties outlined in N.J.A.C. 5:93-8.15 through 17.

5:93-9.6 State option; sales units

(a) When the Department of Community Affairs or Agency elects to purchase a low or moderate income unit pursuant to N.J.A.C. 5:93-9.4, it may:

1. Convey or rent the housing unit to a low or moderate income purchaser or tenant at a price or rent not to exceed the allowable restricted sales price or rental; or

2. Convey the unit at fair market value and utilize the price differential to subsidize the construction, rehabilitation or maintenance of low and moderate income housing within the appropriate housing region.

5:93-9.7 Non-profit option; sales units

(a) Non-profit agencies may apply to the Council at any time for the right to purchase low or moderate income units subsequent to the period of controls on affordability of up to 20 years.

(b) Non-profit agencies that have been designated by the Council shall be eligible to purchase low or moderate income units pursuant to N.J.A.C. 5:93-9.4 for the sole purpose of conveying or renting the housing unit to a low or moderate income purchaser or tenant at a price or rent not to exceed the allowable restricted sales price or rental. Low income units shall be made available to low income purchasers or tenants and the housing unit shall be regulated by the restrictive covenant and lien adopted by the Council, and included in Appendix E, incorporated herein by reference. The term of the controls on affordability shall be the same as those required by N.J.A.C. 5:93-9.2.

5:93-9.8 Seller option; sales units

(a) An eligible seller of a low or moderate income unit which has been controlled for the period established in N.J.A.C. 5:93-9.2, who has provided notice of an intent to sell, may proceed with the sale if no eligible entity as outlined in N.J.A.C. 5:93-9.4(c) and 9.7 exercises its option to purchase within 90 days.

(b) Subject to N.J.A.C. 5:93-9.9, the seller may elect to:

1. Sell to a qualified low and moderate income household at a price not to exceed the maximum permitted sales price in accordance with existing Council rules, providing the unit is regulated by the restrictive covenant and lien adopted by the Council and included in Appendix E, incorporated herein by reference, for a period of at least 20 years; or

2. Exercise the repayment option and sell to any purchaser at market price, providing that 95 percent of the price differential is paid to the authority, as an instrument of the municipality, at closing.

(c) If the sale will be to a qualified low and moderate income household, the authority shall certify the income qualifications of the purchaser and shall ensure the housing unit is regulated by the restrictive covenant and lien required by the Council, which has been included in Appendix E, incorporated herein by reference.

(d) The authority shall examine any contract of sale containing a repayment option to determine if the proposed sales price bears a reasonable relationship to the housing unit's fair market value. In making this determination, the authority may rely on comparable sales data or an appraisal. The authority shall not approve any contract of sale where there is a determination that the sales price does not bear a reasonable relationship to fair market value. The authority shall make a determination within 20 days of receipt of the contract of sale and shall calculate the repayment option payment.

(e) The authority shall adopt an appeal procedure by which a seller may submit written documentation requesting the authority to recompute the repayment obligation if the seller believes an error has been made, or to reconsider a determination that a sales price does not bear a reasonable relationship to fair market value. A repayment obligation determination made as a result of an owner's appeal shall be a final administrative determination of the authority.

(f) The repayment shall occur at the date of closing and transfer of title for the first non-exempt transaction after the expiration of controls on affordability.

(g) Repayment proceeds shall be deposited in a housing trust fund (see N.J.A.C. 5:93-8.14) and may be used as per N.J.A.C. 5:93-8.15. Money deposited in housing trust funds may not be expended until the municipality submits and the Council approves a spending plan (See N.J.A.C. 5:93-5.1(c)).

5:93-9.9 Municipal rejection of repayment option; sales units

(a) A municipality shall have the right to determine that the most desirable means of promoting an adequate supply of low and moderate income housing is to prohibit the exercise of the repayment option and maintain controls on lower income housing units sold within the municipality beyond the period required by N.J.A.C. 5:93-9.2. Such determination shall be made by resolution of the municipal governing body and shall be effective upon filing with the Council and the authority. The resolution shall specify the time period for which the repayment option shall not be applicable. During such period, no seller in the municipality may utilize the repayment option permitted by N.J.A.C. 5:93-9.8.

(b) Municipalities that exercise the option outlined in (a) above shall:

1. Provide public notice in a newspaper of general circulation; and

2. Notify the authority and Council of its governing body's action.

(c) The authority shall ensure that the deed restriction on all affected housing units reflects the extended period of controls.

5:93-9.10 Continued application of options to create, rehabilitate or maintain low and moderate income units; sales units

When a housing unit has been maintained as a low or moderate income unit after controls have been in effect for the period specified in N.J.A.C. 5:93-9.2, the restrictive covenant governing the housing units shall allow municipalities, the State, non-profit agencies and sellers of low and moderate income units to again exercise all the same options as provided in this subchapter.

5:93-9.11 Eligible capital improvements prior to the expiration of controls; sales units

(a) Property owners of single family, owner-occupied housing may apply to the authority for permission to increase the maximum price for eligible capital improvements. Eligible capital improvements shall be those that render the unit suitable for a larger household. In no event shall the maximum price of an improved housing unit exceed the limits of affordability for the larger household. Property owners shall apply to the authority if an increase in the maximum sales price is sought.

(b) At resale, all items of property which are permanently affixed to the units and/or were included when the unit was initially restricted (for example, refrigerator, range, washer, dryer, dishwasher, wall to wall carpeting) shall be included in the maximum allowable resale price. Other items of property may be sold to the purchaser at a reasonable price that has been approved by the authority at the time of signing the agreement to purchase. The purchase of central air conditioning installed subsequent to the initial sale of the unit and not included in the base price may be made a condition of the unit resale provided the price has been approved by the authority. Unless otherwise permitted by the Council, the purchase of any property other than central air conditioning shall not be made a condition of the unit resale. The owner and the purchaser must personally certify at the time of closing that no unapproved transfer of funds for the purpose of selling and receiving property has taken place at resale.

5:93-9.12 Subsidy to ensure affordability prior to the expiration of controls; sales units

If the use of median income data adopted by the Council to index the cost of housing renders a unit unaffordable to a low or moderate income household at the time of resale, a municipality shall not lose credit for the housing unit, provided that adequate controls on affordability remain in place, but the municipality may subsidize the housing unit to maintain affordability.

5:93-9.13 Impact of foreclosure on resale while controls are in place; sales units

A judgment of foreclosure or a deed in lieu of foreclosure by a financial institution regulated by State and/or Federal law or by a lender on the secondary mortgage market (including, but not limited to, the Federal National Mortgage Association, the Home Loan Mortgage Corporation, the Government National Mortgage Association or an entity acting on their behalf) shall extinguish controls on affordable housing units provided there is compliance

with N.J.A.C. 5:93-9.14. Notice of foreclosure shall allow the authority, the municipality, the Department of Community Affairs, the Agency or a non-profit entity to purchase the affordable housing unit at the maximum permited sales price and maintain it as an affordable unit for the balance of the intended period of controls. Failure to purchase the affordable housing unit shall result in the Council adding that unit to the municipal present and propective fair share obligation. Failure of the financial institution to provide notice of a foreclosure action to the authority shall not impair any of the financial institution's rights to recoup loan proceeds; shall not negate the extinguishment of controls or the validity of the foreclosure; and shall create no cause of action against the financial institution.

5:93-9.14 Excess proceeds upon foreclosures; sales units

In the event of a foreclosure sale, the owner of the affordable housing unit shall be personally obligated to pay to the authority responsible for assuring affordability, any surplus funds, but only to the extent that such surplus funds exceed the difference between the maximum price permitted at the time of foreclosure and the amount necessary to redeem the debt to the financial institution, including costs of foreclosure.

5:93-9.15 Annual indexed increases while controls are in place; sales and rentals

The price of an owner-occupied housing unit and the rents of affordable housing units may increase annually based on the percentage increase in the regional median income limit for each housing region. However, in no event shall the maximum resale price established by the authority be lower than the last recorded purchase price.

5:93-9.16 Procedures for initial sales, resale prior to the expiration of controls, and rentals

(a) Low and moderate income sales units shall not be offered to non-income eligible households at initial sale without Council approval. Parties that petition the Council for such approval shall document efforts to sell housing units to income eligible households and shall adhere to the procedures outlined in N.J.A.C. 5:91-12.

(b) Persons wishing to sell affordable units shall notify the authority responsible for assuring affordability of the intent to sell. If no eligible buyer enters a contract of sale for the unit within 90 days of notification, the authority shall have the option to purchase the unit for a negotiated price that shall not exceed the maximum price permitted based on the regional increase in the median income as defined by HUD or other recognized standard adopted by the Council. If the authority does not purchase the unit, the seller may apply for permission to offer the unit to a non-income eligible household at the maximum price permitted. The seller shall document efforts to sell the unit to an income eligible household as part of this application. If the request is granted, the seller may offer a low income housing unit to a moderate income household and a moderate income housing unit to a household earning in excess of 80 percent of median. In no case shall the seller be permitted to receive more than the maximum price permitted. In no case shall a sale pursuant to this section eliminate the resale controls on the unit or permit any subsequent seller to convey the unit except in full compliance with the terms of this subchapter.

(c) Owners of low and moderate income rental units shall not offer rental units to non-income eligible households without prior approval of the Council. Parties that petition for such approval shall document all efforts to rent to income eligible households and demonstrate to the satisfaction of the Council that alternatives, such as a reduction in rent, is not feasible. Parties that petition the Council shall adhere to the procedures outlined in N.J.A.C. 5:91-12.

SUBCHAPTER 10. COST GENERATION

5:93-10.1 Purpose and scope

(a) Section 14(b) of the Fair Housing Act (N.J.S.A. 52:27D-301 et seq.) incorporates the need to eliminate unnecessary cost generating features from municipal land use ordinances as a requirement of substantive certification. In order to receive and retain substantive certification, municipalities shall eliminate development standards that are not essential to protect the public welfare and to expedite (or "fast track") municipal approvals/denials on inclusionary development applications. In order to expedite the review of development applications, municipalities shall cooperate with developers of inclusionary developments in scheduling pre-application conferences. Municipal boards shall schedule regular and special monthly meetings (as needed) and provide ample time at these meetings to consider the merits of the inclusionary development application. The goal of such a schedule is to act on a development application within time limits approximating those outlined in the Municipal Land Use Law (N.J.S.A. 40:55D-1 et seq.) Failure to expedite the approval/denial of an inclusionary development application shall be considered a reason for revoking substantive certification.

(b) Inclusionary developments that are included in a housing element and fair share plan have proceeded through a very public process. Therefore, the focus of municipal review shall not be whether the sites are properly zoned. Rather, the focus shall be whether the design of the inclusionary development is consistent with the zoning ordinance and the mandate of the Fair Housing Act regarding unnecessary cost generating features. Municipalities shall be expected to cooperate with developers of inclusionary developments in granting reasonable variances necessary to construct the inclusionary development.

5:93-10.2 Standards

(a) In reviewing the fair share plans, the Council shall use the standards promulgated pursuant to N.J.S.A. 40:55D-40.1 through 40.7 (P.L. 1993 c.32) as a frame of reference. Municipalities that wish to impose more stringent standards shall bear the burden of justifying the need for such standards. In its review of municipal ordinances, the Council shall give special attention to:

1. The combined impact of requirements that cumulatively prevent an inclusionary development from achieving the density and set-aside necessary to address the municipal fair share. Examples of such requirements include but are not limited to: building setbacks, spacing between buildings, impervious surface requirements and open space requirements;

2. Requirements to provide oversize water and sewer mains to accommodate future development without a reasonable prospect for reimbursement;

3. Excessive road width, pavement specifications and parking requirements;

4. Requirements for sidewalks and paved paths in excess of those required in the "Model Subdivision and Site Plan Ordinance";

5. Excessive culvert and pumping station requirements; and

6. Excessive landscape, buffering and reforestation requirements.

(b) Municipal housing elements and fair share plans shall allow for phased construction and phased bonding of on-site and off-site improvements required of inclusionary developments.

(c) The Council shall not permit restrictions on the bedroom mix of the market rate units within an inclusionary development.

5:93-10.3 Special studies/escrow accounts

(a) It is common for municipalities to require inclusionary developers to conduct special studies related to the fiscal, traffic and environmental impacts of proposed inclusionary developments. These studies are then reviewed by municipal professionals who are paid from escrow accounts funded by the inclusionary developer as a requirement of the municipal review of the development application. The Council has determined that these studies shall not be used to alter the density of sites that are part of the municipal substantive certification. Such studies may be used to foster proper design and to determine pro-rata off-site improvements. The Council has also determined that it is unnecessary for developers of inclusionary developments to pay for the initial preparation of such a study and for its review. Therefore, municipalities that receive substantive certification shall offer inclusionary developers the option of preparing fiscal, traffic and environmental impact studies or choosing a consultant from a list of at least three professionals (prepared by the municipality) to prepare the studies. If the de-

veloper chooses a consultant from the municipally prepared list, the developer and municipality shall rely on the consultant's recommendations.

(b) Fees to review development applications shall be estimated prior to payment of filing fees. Developers shall be entitled to review all charges against any escrowed fees and be provided with monthly accounting reports upon request.

5:93-10.4 Relief subsequent to substantive certification

(a) Developers may provide notice to the Council of the date they filed their development application with the municipality. The municipality need not have deemed the application complete for the developer to provide such notice.

(b) Developers and/or municipalities that cannot agree on specific standards that apply to a specific inclusionary development may request the Council to provide a mediator to resolve the dispute. The resulting mediation shall not require a transfer to the Office of Administrative Law pursuant to the Administrative Procedures Act.

(c) Inclusionary developers may seek an administrative order to expedite the municipal review of a development application by filing a motion pursuant to N.J.A.C. 5:91-12. Developers need not request mediation pursuant to (b) above in order to file such a motion; and the Council may hear such a motion concurrent with any such mediation.

(d) Inclusionary developers may request the Council to act as an advocate for inclusionary developments that require permits from DEPE and DOT.

5:93-10.5 Revocation of substantive certification

A Council determination, after a hearing conducted pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., that a municipality has delayed action on an inclusionary development application, required unnecessary cost generating standards or obstructed the construction of an inclusionary development may result in Council action revoking substantive certification.

SUBCHAPTER 11. AFFIRMATIVE MARKETING

5:93-11.1 The affirmative marketing plan; definition and contents

(a) The affirmative marketing plan is a regional marketing strategy designed to attract buyers and/or renters of all majority and minority groups, regardless of sex, age or number of children, to housing units which are being marketed by a developer or sponsor of affordable housing. It is a continuing program and covers the period of deed restriction.

(b) The affirmative marketing plan shall provide the following information:

1. The name and address of the project;
2. The number of units, including the number of sales and rental units;
3. The price of sales and/or rental units;
4. The approximate starting date for advertising to target groups and for initial occupancy;
5. The name of rental manager and/or sales agent; and
6. A description of outreach efforts to groups that are not readily reached by commercial media efforts (see N.J.A.C. 5:93-11.4 for advertising program details).

(c) The affirmative marketing plan shall be a part of the fair share plan and shall be referenced by ordinance.

5:93-11.2 Training and general responsibilities

(a) The municipality shall assure the affirmative marketing of low and moderate income units. Municipalities shall designate a municipal authority to be responsible for implementing the affirmative marketing plan. A representative of the municipal authority shall attend an affirmative marketing training program approved by the Council. The municipality may contract with other agencies to administer the affirmative marketing program and the actual sales and rentals of the units. However, such a contract does not relieve the municipality of its responsibility to assure affirmative marketing of low and moderate income units.

(b) In implementing an affirmative marketing program, a municipality may delegate specific tasks to a developer of an inclusionary development provided that all applicant and sales records of low and moderate income units are returned to the municipality for reporting purposes and to aid with future resales.

(c) In implementing the affirmative marketing plan, municipalities shall provide counseling in areas of mortgage and rental qualification.

5:93-11.3 Advertising program

(a) The advertising program shall outline methods to be used in reaching all segments of the eligible population.

(b) The plan shall describe the media to be used in advertising the availability of housing, including:

1. Newspapers of general circulation;
2. Radio stations;
3. Television stations, local cable, etc.;
4. Other types of media, including publications of limited circulation, such as neighborhood oriented weekly newspapers, religious publications, and the publications of local real estate industry groups; and
5. Brochures and flyers. Brochures and flyers may be designed to meet specific housing information needs of those persons who are members of minority groups. For example, such brochures and flyers may utilize language translations.

(c) The advertising process for each inclusionary development shall begin at least three months prior to expected occupancy.

(d) Applications for low and moderate income housing shall be available in several convenient locations, including, at a minimum, the municipal administrative building(s), the municipal library and at the developer's sales office.

(e) If the cost of advertising low and moderate income units are to be a developer's responsibility, the requirement shall be a condition of the municipal planning board's approval.

5:93-11.4 Marketing for initial sales and/or rent up; composition of marketing pool

(a) Households that apply for low and moderate income housing shall be screened for preliminary income eligibility by comparing their total income to the low and moderate income limits adopted by the Council, in accordance with this chapter. Applicants shall be notified as to their eligibility status.

(b) In order to insure a sufficient supply of qualified applicants, the advertising process shall continue until at least 10 income-eligible applicants, determined eligible in accordance with (a) above, have applied for each low and moderate income unit available or until all the low and moderate units within the inclusionary development are under contract for sale.

(c) Having screened applicants for preliminary income eligibility, the municipal authority may analyze the income and household sizes of applicants to determine which applicants have the assets and/or income necessary to purchase or rent each available low or moderate income unit.

(d) The municipal authority shall interview each applicant to: verify the applicant's income; determine the applicant's asset availability; and review the applicant's credit history. Applicants shall be required to submit income verification for each household member 18 years or older. This process shall be utilized in establishing the final certified applicant group.

(e) If there are more certified applicants than low and moderate income units, municipalities shall utilize a method of random selection to determine which certified applicants shall have the opportunity to rent or buy low and moderate income units. Reviewing applications as they are received (first come/first served) shall be an acceptable method of random selection. Therefore, as soon as an applicant is included in the certified applicant group, pursuant to (d) above, the applicant may be offered a low or moderate income unit.

(f) The process described in (a) through (e) above may run concurrently as households apply for low and moderate income units and shall be repeated until all low and moderate income units are occupied.

5:93-11.5 Continuing marketing activities

(a) The types of activities to be undertaken after the completion of initial occupancy of sales and rental units in order to fill vacancies resulting from normal turnover shall include:

1. Marketing activities to maintain a current pool of at least five income eligible applicants, determined eligible in accordance with N.J.A.C. 5:93-11.4(a), for each low and moderate unit;

2. Prescreened lists, which shall be updated annually by contacting each applicant and requesting an updated correction of income changes and family size; and

3. As units become available, the municipal authority shall select eligible applicants for the units, as described in N.J.A.C. 5:93-11.4(c) through (f).

5:93-11.6 Monitoring and plan submission deadlines

(a) Municipalities shall evaluate the results of their affirmative marketing activities and file a report with the Council by August 30th of each year. Such report shall include:

1. Monitoring forms approved by the Council;

2. Copies of any brochures, flyers, print advertisements and application forms used in the municipal affirmative marketing program;

3. An evaluation of the income and demographic characteristics of each applicant of low and moderate income housing, as well as the occupants of the units; and

4. An evaluation of any necessary adjustments in the affirmative marketing program as a result of the evaluation in (a) above.

(b) The Council shall review and assess the effectiveness of the municipal affirmative marketing program. If it is deemed that the affirmative marketing program is not effective, the municipality shall be required to amend the program.

5:93-11.7 Residency preference

(a) Municipalities may provide an occupancy preference for up to 50 percent of the low and moderate income units created in each inclusionary development. At initial occupancy and reoccupancy, income eligible households that reside or work in the municipality may be given the first opportunity to purchase or rent low and moderate income units up to this 50 percent limitation. These applicants shall be selected at random from a pool of certified applicants that reside or work in the municipality.

(b) Municipalities that choose to provide the residency preferences outlined in (a) above shall create a separate pool of non-resident certified applicants from the housing region that shall be selected at random for at least 50 percent of the low and moderate income units created in the municipality. Resident applicants who were not selected in the first pool may be placed in this regional pool.

(c) Urban aid municipalities shall be exempt from the residency preference limitations outlined in N.J.A.C. 5:93-11.7(a) and (b). Urban aid municipalities shall affirmatively market, but may provide an occupancy preference for all low and moderate income units created in the municipality.

SUBCHAPTER 12. MONITORING

5:93-12.1 Completion of monitoring forms

(a) A municipality that has received substantive certification shall complete monitoring forms adopted by the Council and submit them to the Council no later than August 30th of each year. Failure to submit monitoring forms in a timely manner may result in a Council action, including:

1. The revocation of substantive certification;

2. The revocation of the certification required to collect development fees; and/or

3. Such other action as the Council may determine necessary.

SUBCHAPTER 13. SITE SPECIFIC RELIEF AND THE STATE DEVELOPMENT AND REDEVELOPMENT PLAN (SDRP)

5:93-13.1 Purpose and scope

(a) The Fair Housing Act allows municipalities two years following the filing of a housing element to petition for substantive certification. Municipalities that file housing elements with the Council prior to an exclusionary lawsuit and petition or are sued within two years of such filing shall not, except in extraordinary situations (see N.J.A.C. 5:91-4.5) be subject to the Council granting site specific relief to an objector of the municipal housing element. Municipalities that do not petition or are not sued within two years of filing a housing element may be subject to the Council granting site specific relief to one or more objectors. The process of granting such relief is outlined in N.J.A.C. 5:91-1 et seq.

(b) The Fair Housing Act at N.J.S.A. 52:27D-307 directs the Council to "give appropriate weight" in carrying out its duties to the implementation of the SDRP. It is the purpose of this subchapter to outline the way in which the goals and policies of the SDRP will be considered by the Council in awarding site specific relief to an objector to a municipal housing element. This process relies upon the SDRP's definitions of "Planning Areas" and "Centers." The principles outlined in the subchapter are illustrated in Appendix G.

5:93-13.2 Site-specific relief in Planning Areas 1 and 2

When considering granting site-specific relief to an objector in Planning Area 1 or 2, the Council shall grant such relief if the Council determines that the objector's site is available, approvable, developable and suitable.

5:93-13.3 Site-specific relief in Planning Area 3

(a) When considering granting site-specific relief to an objector in Planning Area 3, the Council shall determine if the realistic development potential within the development boundaries of centers and Planning Areas 1 and/or 2 is adequate to address the municipal inclusionary component.

1. If the objector's site is located within a center, the Council shall presumptively grant relief if the site is available, approvable, developable and suitable.

2. If the realistic development potential within the development boundaries of centers and Planning Areas 1 and/or 2 is adequate to address the municipal inclusionary component and the objector's site is not located in a center, the Council shall deny relief to the objector.

3. If the realistic development potential within the development boundaries of centers and Planning Areas 1 and/or 2 is not adequate to address the municipal inclusionary component:

i. The Council shall grant relief to sites that are suitable if it determines the site lies within a center or Planning Area 1 and/or 2; has access to infrastructure; or that infrastructure can be easily extended from Planning Area 2;

ii. Where the objector's site does not lie within a center or Planning Area 1 and/or 2, does not have access to infrastructure or where infrastructure cannot be easily extended from Planning Area 2, the Council shall render a decision on granting relief after consideration of:

(1) A report from the Office of State Planning that contains recommendations pertaining to the appropriateness of the area surrounding the objector's site for center designation; and

(2) The presence of other suitable sites serviced by infrastructure or to which infrastructure can easily be extended from Planning Area 2.

5:93-13.4 Site-specific relief in Planning Areas 4 and 5

(a) When considering granting site-specific relief to an objector in Planning Areas 4 and 5, the Council shall determine if the realistic development potential within the development boundaries of centers and Planning Areas 1 and/or 2 is adequate to address the municipal inclusionary component.

1. If the objector's site is located within a center, the Council shall presumptively grant relief if the site is available, approvable, developable and suitable.

2. If the realistic development potential within the development boundaries of centers and Planning Areas 1 and/or 2 is adequate to address the municipal inclusionary component, and the objector's site is not located in a center, the Council shall deny relief to the objector.

3. If the realistic development potential within the development boundaries of centers and Planning Areas 1 and/or 2 is not adequate to address the municipal inclusionary component, the Council shall

render a decision on granting relief after consideration of a report from the Office of State Planning that contains recommendations pertaining to the appropriateness of the area surrounding the objector's site for center designation.

APPENDICES

TABLE OF CONTENTS

APPENDIX

A. 1987-1999 Low and Moderate Income Housing Need Estimates (COAH Affordable Housing Procedures)
- Exhibit 1 Base Data for Municipal Housing Need Calculation by Municipality (Part I)
- Exhibit 2 Base Data for Municipal Housing Need Calculation by Region
- Exhibit 3 Base Data for Municipal Housing Need Calculation by Municipality (Part II)

B. Estimating Undeveloped Land in New Jersey Using Thematic Mapper Satellite Data, 1990 Census Data and the TIGER Files

C. Structural Conditions Survey

D. The Cost of Providing Infrastructure

E. Deed Restriction and Lien (New Construction—Sales Units)

F. State Planning Commission Memorandum of Understanding and Flow Charts

G. Regional Contribution Agreement County Review Checklist

APPENDIX A
METHODOLOGY

INTRODUCTION

The section that follows details the procedures required to calculate the municipal low- and moderate-income housing obligation in New Jersey. Included here are procedures to calculate affordable housing need as well as the changes in these procedures that are included in the second round of affordable housing numbers. These changes emerge as a result of: (1) housing data that is no longer available in the 1990 U.S. Census; (2) improvements in methodological approaches that have emerged during the first round of implementation; and (3) a desire to hone the methodology so that it better interprets the *Mount Laurel* affordable housing mandate.

The procedures reflect the work of three primary groups:

1. The consultants at Rutgers University, Center for Urban Policy Research (CUPR);
2. The Methodology Subcommittee of the New Jersey Council on Affordable Housing (COAH), including participating COAH staff; and
3. The Working Group of professionals experienced in low- and moderate-income housing who have met regularly and provided input at several critical steps.

The basic method of housing need determination has been continued despite its complexity because it is fair and impartial and because it embodies the most up-to-date and sophisticated procedures for housing need determination and allocation. It has been accepted by field practitioners, its procedures are understood and used by these individuals, and the method's results are both internally consistent and intuitively correct. The existing system's procedures have been challenged in numerous court cases and have prevailed in almost every instance due to their accuracy and thoroughness.

The revised 1987-1999 procedures have evolved over a year-long period in which every aspect of the methodology has been reviewed and either retained or reworked. The procedure, while accepted and understood, will continue to be reviewed for its currency and adequacy as the second round of numbers unfolds and is discussed.

NEW JERSEY COUNCIL ON AFFORDABLE HOUSING (COAH) AFFORDABLE HOUSING NEED NUMBERS—1987-1999

A.	Indigenous Need	42,739		
B.	Reallocated Present Need	17,542		
C.	Present Need		60,281	
D.	Prospective Need		42,127	
E.	Total Need			102,408
F.	Prior-Cycle Prospective Need		38,202	
G.	Secondary Sources of Supply (–) and Demand (+)			
	1. *Demolitions*		8,037	
	2. *Filtering*		-20,185	
	3. *Conversions*		- 8,143	
	4. *Spontaneous Rehabilitation*		- 2,208	
H.	Pre-Credited Need			118,111
I.	Reduction		-27,841	
J.	Pre-1987 Credits		- 3,163	
K.	Undeveloped Land Cap		- 3,068	
L.	20-Percent Cap		- 725	
M.	**Calculated Need**			**83,313**
N.	Calculated Need By Region			

Region	Indigenous Need	Reallocated Present and Prospective Need*	Total
Northeast	14,307	4,086	18,393
Northwest	11,050	- 434	10,616
West Central	4,755	3,938	8,693
East Central	4,575	16,162	20,737
Southwest	4,332	8,669	13,001
South-Southwest	3,720	8,153	11,873
STATE TOTAL	**42,739**	**40,574**	**83,313**

PROCEDURES: DEVELOPING HOUSING REGIONS

Housing subregions related to journey-to-work have historically been constructed using travel times on various categories of roads during prime commuting periods. The first formal procedure for the accomplishment of this was published by the American Society of Planning Officials in 1951, following planner-economist, J.D. Carroll's work on journey-to-work analysis and its importance in planning. Points on roads outward from an *employment center* representing travel times would be connected to each other in the same fashion as if one were to weave together points in the spokes of a wheel. These zones of potential residence, emanating outward from the center of an employment zone, would take on an amoeba-like form as various gradations of roadways (collectors, arterials, freeways, and so on) would allow different distances to be traveled for the same travel time. The "isotime zones," as they were called, represented an estimate of all places accessible from the employment center within the time specified on the outer edge of the zone. These were termed local markets or submarkets.[1]

While this procedure may have gained acceptance for the delineation of a submarket, clearly for data presentation purposes a more recognizable and permanent market area has had to be constructed. The market area, while keyed to journey-to-work, had to take into account the availability of employment and U.S. Census data to isolate centers of employment. Historically, this was available only on a county basis in the form of *County Business Patterns,* an annual tabulation of jobs by category in the United States published by the U.S. Department of Commerce. Recognizing the expanding scope of the market, *FHA Techniques of Housing Market Analysis* lists the prerequisites for housing market delineation:

> The location of actual and prospective employment centers and the availability of transportation facilities of all types underlie the selection of general locational alternatives as places of residence for the working population.
>
> The housing market area usually extends beyond city limits regardless of the magnitude of the market under consideration. In the larger markets, the market area may extend into several adjoining counties through the outward growth of the primary metropolitan area.
>
> The actual delineation of a housing market area and submarket areas is determined primarily by Census area definitions.[2]

Housing Regions in New Jersey

Information on journey-to-work for New Jersey counties may be obtained from the 1990 Census to modify the 1980 Public Use Microdata Sample (PUMS) for New Jersey—a five-percent sample of all New Jersey households.[3] Information can be crafted to scrutinize times traveled one-way to work (in minutes) for all those employed in households as of April 1990. Also a part of the data set are the origin and destination of the worktrip. The information to be used in the initial grouping procedure concerns worktrip origin and destination. This information is used only at the county level, i.e., for each employed member of the household, worktrip county of origin and county of destination. All modes of travel are included: automobile, bus, rail, and miscellaneous (walking, biking, and so on).

The program chosen to group counties is the CLUSTER procedure for the Statistical Analysis System (SAS) package. CLUSTER is a grouping procedure designed to help identify groups of observations that have similar attributes. It partitions the data into a smaller number of groups such that data units belonging to one group are "similar" in a certain sense, while data units belonging to different groups are "dissimilar" in the same sense. The procedure is dependent upon "distance" (value separation) between variables. It is unique in that it assumes no conceptual associations or distance values *a priori.* CLUSTER computes its own distance matrix and standardizes the matrix across the data set.[4]

Certain controls are placed on the grouping mechanism. Counties that could be grouped based on similar commuting ties have to be contiguous. In addition, no less than two nor more than four counties are allowed to cluster as part of any group. These are the requirements of the *Fair Housing Act.* The lower threshold is to ensure that no single county appeared "left over"; the upper threshold was chosen to avoid large commuting distances within any one identified region.[5]

After including certain judgmental decisions regarding the size of a region and its capacity to handle need, as well as the necessary inclusion in each region of at least one central city, the journey-to-work sorting of counties takes the following form:

Group 1	Group 2	Group 3	Group 4	Group 5	Group 6
Bergen	Essex	Middlesex	Monmouth	Camden	Atlantic
Passaic	Morris	Somerset	Ocean	Gloucester	Cape May
Hudson	Union	Hunterdon	Mercer	Burlington	Cumberland
Sussex	Warren				Salem

(SEE MAP ON FOLLOWING PAGE)

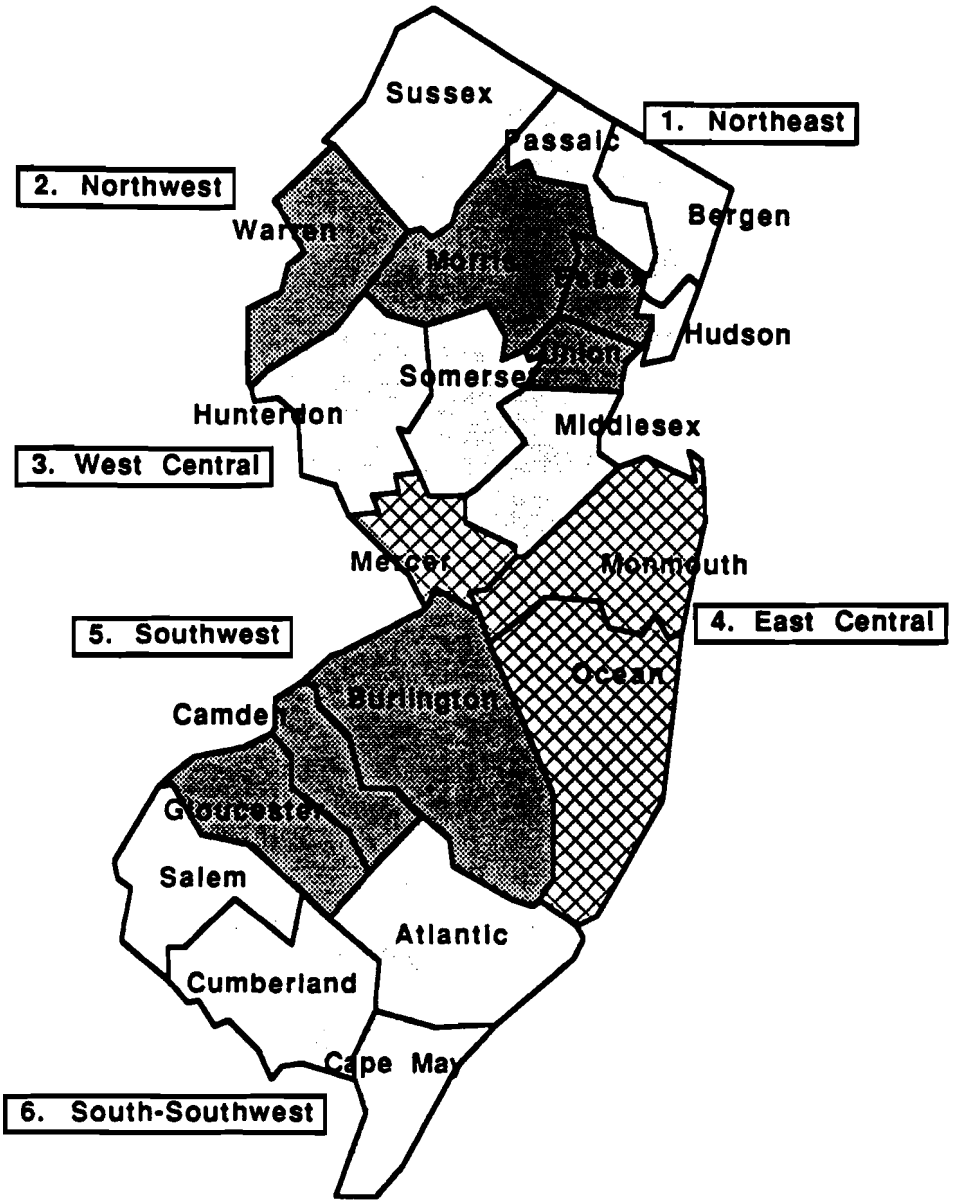
The above distribution of counties reflects vacant land concentrations and growing commuting ties between Sussex and the remaining counties in Group 1, Warren and the remaining counties in Group 2, and Mercer and the remaining counties in Group 4. Within each grouping, there are sufficient vacant land and established or growing commuting ties; also, each region has at least one established central city. This enables affordable housing need to be absorbed by regions and regional contribution agreements (RCAs) to be effected within regions.

In most cases, the commuting ties between counties of these groups are stronger among each other than between a single county of the group and another group as a whole. There may be selected instances where a single county of one group is related more intensely to a single adjacent county of another group than to members of its own group; yet overall, there are usually weaker commuting ties with the other group as a whole. The above listings provide the necessary sort of constituent New Jersey counties on both commuting ties and land sufficiency to implement affordable housing goals.

INCOME QUALIFICATION OF THE LOW- AND MODERATE-INCOME POPULATION

Data from the 1990 U.S. Census modifying the 1980 New Jersey Public Use Microdata Sample (PUMS) is again used to qualify a household according to HUD Section 8[6] family-income requirements. The PUMS tapes contain records for a sample of housing units with information on the characteristics of each unit as well as on the people who reside in these units. Information from this file makes it possible initially to eliminate all individuals living in institutions, group quarters, or as boarders/lodgers from potential low- and moderate-income housing demand. This removes from direct count those people who comprise prison/sanitarium, college, nursing home, boarders/boarding homes, and other related populations.[7] Sub-households and sub-families are not separately distinguished as this would double-count existing housing deterioration, and no information is available on how or if sub-families/sub-households would choose to separate in the future. Thus, one household per unit is counted. Applications for low- and moderate-income housing built under the first round of *Fair Housing Act* compliance (1987-1993) indicate unit sharing—parts of families and unrelated individuals seeking to reside together. This partially confirms continued, shared, or unrelated household use of new low- and moderate-income housing units.

NEW JERSEY COUNCIL ON AFFORDABLE HOUSING
HOUSING REGIONS (1993–1999)



GROUP 1 *NORTHEAST*	GROUP 2 *NORTHWEST*	GROUP 3 *WEST CENTRAL*	GROUP 4 *EAST CENTRAL*	GROUP 5 *SOUTHWEST*	GROUP 6 *SOUTH-SOUTHWEST*
BERGEN	ESSEX	MIDDLESEX	MONMOUTH	CAMDEN	ATLANTIC
PASSAIC	MORRIS	SOMERSET	OCEAN	GLOUCESTER	CAPE MAY
HUDSON	UNION	HUNTERDON	MERCER	BURLINGTON	CUMBERLAND
SUSSEX	WARREN				SALEM

Once these selection procedures are undertaken, the PUMS may be employed to array all households by size and income status. HUD median family income for a region is determined, and 80 percent and 50 percent are assigned to household sizes of four for the upper limits of moderate and low incomes, respectively. Each household size of more or less than four is allowed a positive or negative adjustment of the 80 percent or 50 percent of median figure to qualify for moderate- or low-income designation.[8] (This is based on the philosophy that if you have more children/dependents or household members you can earn more and still qualify for moderate/low income; in reverse fashion, if you have fewer dependents or members, it is more difficult to qualify by establishing a lower income for qualification.)

The procedure spelled out above separates low- and moderate-income households, adjusted for household size, from all other households in the region. This relative selection of a population qualifying for housing need forms the basis of all need estimates. In subsequent steps, the housing units occupied by these households are initially checked for deterioration to determine Present Need. The number of income-defined households is then projected into the future to determine Prospective Need. The detailing of these steps is explained below.

PRESENT NEED

Indigenous Need

Indigenous Need is a component of Present Need which is the total deficient housing signaled by surrogates unique to each community. Where communities' deficient housing as a percentage of all occupied housing units exceeds the regional average, their excess need is sent to a housing pool for subsequent redistribution in the region. Housing from the pool is reallocated to all communities in the region with the exception of designated Urban Aid Cities. The Indigenous Need for communities below the regional average of housing deficiency is their tabulated deficient units. For those above the regional average, their Indigenous Need is their deficient housing capped by the regional average percent deterioration.

Recognizing the evolution of the concept of deteriorated housing from 1960 and earlier where enumerators attempted to physically identify bad housing from field survey, to the current period where deficient housing is isolated through housing-quality surrogates, information provided by the 1990 Census is used to signal housing deficiency via surrogates.[9]

Surrogates do not themselves confirm that a unit is deficient. They indicate that if a unit has these characteristics, it most likely would be independently found via field survey as deficient. Surrogates are developed by listing the characteristics of units found as deficient and viewing which characteristics consistently are associated with field-confirmed deficiency. Six housing quality surrogates are used with structure age to signal housing deficiency. The bulk of these indices represent the culmination of numerous empirical studies on factors indicative of inferior versus superior housing quality; the remainder are clear surrogates of inferior housing.[10] *They represent the full range of information available on housing quality from the 1990 Census.* No index is slighted, and all are simultaneously employed. They include:

(a) *Year Structure Built.* A distinction is made between units built before 1940 and from 1940 to 1990. This pre-World War II cutoff is the classic differentation point of new versus old housing in the literature.[11]

(1) *Persons per Room.* 1.01 or more persons per room is an index of overcrowding.

(2) *Plumbing Facilities.* Inadequate plumbing is indicated by either a lack of exclusive use of plumbing or incomplete plumbing facilities.

(3) *Kitchen Facilities.* Inadequate kitchen facilities are indicated by shared use of a kitchen or the non-presence of a sink with piped water, a stove, or a refrigerator.

(4) *Heating Fuel.* Inadequate heating is use of coal, coke, wood or no fuel for heating.

(5) *Sewer.* Inadequate sewer services are indicated by a lack of public[12] sewer, septic tank, or cesspool.

(6) *Water.* Inadequate water supply is indicated by a lack of either city water, drilled well, or dug well.

A unit has to have at least two characteristics to be isolated as deficient once it qualifies as housing a low- or moderate-income family. Since age is so highly correlated with structure deterioration and loss, if in 1990 the unit was more than fifty years old and had at least one other negative housing characteristic, it is selected as deficient. If, on the other hand, it was a newer unit in 1990, in the absence of the unit-age qualification, two or more negative structural characteristics signal housing deficiency. Multiple deficient characteristics in a single housing unit is an important concept. Using multiple indicators in a high probability of isolating bad housing, yet a very low probability of classifying good housing as bad.

Three variables originally used to determine inadequate housing have been replaced by three additional variables. Lack of central heat, four or more stories with no elevator, and indirect access (passing through another unit to get to one's own) are no longer reported by the U.S. Census.

Three other variables related to both structural conditions and inferior or superior housing condition replaced the indicators that are no longer reported. These are:

(1) The use of nonstandard heating fuels or no fuel, indicating in most cases temporary or marginal housing;

(2) Lack of public sewer, septic tank, or cesspool, indicating unsanitary sewage disposal; and

(3) Lack of city water, a drilled well, or a dug well, also indicating a less-than-adequate water supply.

It should be realized that any of these characteristics need not signal deficiency on their own. The unit must be occupied by a poor household; be more than 50 years old and contain a single deficiency; or be similarly occupied, be 50 years old or less, but contain an additional detrimental condition, to signal deficiency. Even then, the unit may not be actually deficient, but there is a high probability that it will be subsequently lost from the stock.

This procedure for establishing housing deficiency: (1) is drawn from the literature of the field; (2) encompasses a broad array of physical insufficiency including such items as incomplete or inadequate kitchen and plumbing, crowding, inadequate heating fuels, and insufficient sewer and water resources; (3) ensures against erroneous inclusion of good units; and (4) provides a very high probability that the housing identified, at least in relative terms, is clearly less than adequate.

Due to confidentiality protection and data availability, the procedure to specify Indigenous Need can be estimated only to each of 52 subregions of the state.[13] It is taken down to the community level by six housing quality variables available at both the subregional level and the community level. These are:[14]

(1) *Plumbing Facilities*—nonexclusive use of complete plumbing
(2) *Persons per Room*—space inadequacy, i.e., 1.01 or more persons per room
(3) *Age of Housing*—housing built in 1939 or earlier
(4) *Water or Sewer Problem*—deficiency in one or the other, whichever is greater
(5) *No Telephone*—absence of telephone in unit
(6) *Nonstandard Heating Fuel*—use of coal, coke, or wood for heating, or no fuel

The pool of low- and moderate-income families living in deficient housing once calculated at the subregional level is distributed to individual communities on the basis of their share of six indices of deficient housing at the local level to the total deficient at the regional level, also measured by these indices. At the local level, these latter variables cannot be cross-tabulated with income in the same way as information at the subregional level can. Thus, the best available information and the most rigorous procedures are used to isolate the poor living in deficient housing at the subregional level, and this is taken to the municipal level through other housing quality variables less complete in terms of isolating the income of those who live in these units, but found comparably at these two geographic levels.[15]

In order to address present need with some lead time appropriate for planning and implementation, present need is actually projected to be estimated as if July 1, 1993 were the 1990 period and the sample of housing deficiencies was taking place at this time. This is done by reproducing the incidence rates of deterioration associated with certain age groups and household types in 1990, and projecting these households and their associated housing conditions to the 1993 period. The new array and number of households in 1993 carry with them the deterioration noted in 1990.

As noted earlier, for communities with severe housing deficiencies, their deficiencies are capped at the regional average percentage of deficiencies as a proportion of total occupied housing. The excess over this regional percentage is distributed to all communities in the region. This is covered below.

Municipal surveys to determine Indigenous Need may be presented to the Council as an alternative method to this procedure. (See Section 10—Fair Housing act.) The Council will provide guidance as to the appropriate form and scale of such surveys.

INDIGENOUS NEED BY REGION†

NORTHEAST	14,307
NORTHWEST	11,050
WEST CENTRAL	4,755
EAST CENTRAL	4,575
SOUTHWEST	4,332
SOUTH-SOUTHWEST	3,720
STATE TOTAL	42,739

†See earlier figure for mapped display of regions

Reallocated Present Need

Reallocated Present Need is the share of excess deterioration in a region transferred to all communities of the region with the exception of selected Urban Aid Cities. (See Attachment.) Urban Aid Cities, almost all of which are densely populated and have a higher-than average proportion of low- and moderate-income families living in deteriorated housing, are not expected to have this regional burden reinforced by future low- and moderate-income housing requirements.[16] Therefore, when the Reallocated Present Need pool for the region is computed from an average deficiency percentage for the entire region, Urban Aid Cities are not expected to share in that pool. Instead, *the excess* of deficient units over the regional percentage of deficiencies *is redistributed* to the region to no more than the level that would bring them to the regional average. The exact procedure for redistribution is covered under Distribution of Low- and Moderate-Income Housing Need.

REALLOCATED PRESENT NEED BY REGION

NORTHEAST	7,002
NORTHWEST	5,306
WEST CENTRAL	1,477
EAST CENTRAL	1,329
SOUTHWEST	1,751
SOUTH-SOUTHWEST	676
STATE TOTAL	17,542

Present Need

Present Need is the sum of Indigenous and Reallocated Present Need in a municipality. It represents individual municipal housing responsibility reflective of its own housing inadequacy/deficiency (except where it is regionally excessive) and regional responsibilities in terms of its share of the pool of housing replacement/repair that must be undertaken by primary suburban communities due to excess deterioration found in more urban communities.

PRESENT NEED BY REGION

NORTHEAST	21,309
NORTHWEST	16,356
WEST CENTRAL	6,232
EAST CENTRAL	5,904
SOUTHWEST	6,083
SOUTH-SOUTHWEST	4,396
STATE TOTAL	60,281

DISTRIBUTION OF LOW- AND MODERATE-INCOME HOUSING NEED

Low- and moderate-income housing need is distributed to each community using three of the four economic and land-use factors listed below. These factors in the first two cases represent measures of *responsibility,* i.e., the labor force either existing in the community or drawn to the municipality in the future—in both cases needing housing. In the second two cases, they represent measures of *capacity,* i.e., the physical (land) and fiscal (income) capacity to absorb and provide for such housing.[17] The last three factors are used to distribute excess *Present Need* (Reallocated Present Need); the first, third, and fourth factors are used to distribute Prospective Need. All factors operate individually, are equally weighted, and involve all municipalities in the region except Urban Aid municipalities. All allocations on the below variables reflect the fraction representing the community's share of the regional total.

1. *Change in equalized nonresidential valuation from 1980 to 1990.* This is reported in the *Annual Report of the Division of Local Government Services* 1980 (43rd Annual Report) and 1990 (53rd Annual Report). Change in equalized nonresidential property valuation is used in place of employment change for the reasons indicated below.

2. *Equalized nonresidential valuation (commercial and industrial).* This is by municipality and is also reported in the *Annual Report of the Division of Local Government Services* 1990 (53rd Annual Report).

Nonresidential property valuation is used as a replacement for actual employment in a municipality to avoid the zip code problem associated with the Covered Employment data. This refers to situations where the zip code address of a firm does not reflect actual location of its employment. This is true when an employer's mailing address is different from its actual location. It is assumed that where a firm pays its taxes is a good indicator of the location of the facility and thus its employment. Real property valuation (absent business personal property), through regression analysis, has been found to be an excellent surrogate for the intensity of use or number of employees in the structure. Equalized valuation through the application of an assessment-to-sales or equalization ratio is used to standardize for the differing levels of assessment relative to true or market values that exist in an individual community.

3. *Undeveloped Land*—Undeveloped land in the community that can accommodate development. All undeveloped land in the community is estimated through use of land satellite imagery (LANDSAT). The undeveloped land inventory is compiled via LANDSAT information prepared for the Council on Affordable Housing by the Department of Environmental Resources of Cook College at Rutgers University. It reflects photoimagery as of March 1991.

Undeveloped land is further refined by the State Development and Redevelopment Plan's Planning Areas. To be sensitive to the State Planning Commission's goals for each Planning Area, undeveloped land is weighted as follows:

PLANNING AREA	WEIGHTING	RESULT
1	1	Full count of undeveloped acres
2	1	Full count of undeveloped acres
3	0.5	Half count of undeveloped acres
4	0.0	Zero count of undeveloped acres
5	0.0	Zero count of undeveloped acres

Undeveloped land in the Pinelands growth areas (Regional Growth Areas and Pinelands Towns) are treated equivalently to Planning Area 3; all other Pinelands areas are treated equivalent to Planning Area 4 or Planning Area 5. CAFRA has regular State Plan territorial designations and is treated accordingly. Hackensack Meadowlands undeveloped acreage is treated equivalent to Planning Areas 1 and 2 within growth areas, and equivalent to Planning Areas 4 and 5 in protected or open space areas.

Vacant land by municipality has been checked with an independent source of information, the New Jersey Department of Treasury.[18] This second source of information found LANDSAT to be an excellent and comprehensive source of land-use information. The LANDSAT data file, however, is the source of undeveloped land for every municipality in New Jersey. Its strengths and weaknesses apply to most municipalities alike and, accordingly, make it a very comprehensive and important source of undeveloped land information especially good for *relative* comparisons.

4. *Aggregate Income Difference*—This is an average of the following two measures:

a. Municipal share of the regional sum of the differences between median 1993 municipal household income and an income floor ($100 below the lowest average household income in the region)[19] [taken once], and

b. Municipal share of the regional sum of the differences between median 1993 municipal household incomes and an income floor ($100 below the lowest 1993 median household income in the region) weighted by the number of the households in the municipality [taken twice].

This procedure replaces the unaltered share of aggregate income that tended to give large middle-class municipalities an overabundance of low- and moderate-income housing need because they had a lot of households with reasonably healthy incomes. The new procedure employs not income but income differences (household) which exist in municipalities from the municipality with the lowest average household income in the state.

Since this new income measure is also skewed in certain municipalities, both the straight difference from the median of the lowest municipality to the median of each other municipality, as well as this difference weighted by the number of households in the municipality, are used. The latter factor taken twice tends to dampen the extremes of the straight-difference income allocation index.

A variety of procedures were tried (including no income variable) to make the income factor both more equitable and more responsive to

locations of existing income capacity. It is believed that this procedure achieves both equity and more incisive income targeting.

Reallocated Present Need and Prospective Need shall be distributed to municipalities unless the municipality received state aid pursuant to P.L. 1978, C.14 (C.52:27D-178 et seq.) and exhibits at least one of the following (see Attachment for a listing of selected Urban Aid Cities:[20]

1. Level of existing low- and moderate-income housing deficiency, according to the six housing deficiency criteria, that exceeds average regional low- and moderate-income housing deficiency for the region in which the Urban Aid municipality is located;

2. Population density of greater than 10,000 persons per square mile, or 14.1 per acre;

3. Population density of 6,000 to 10,000 persons per square mile or 9.4 to 14.1 per acre *plus* less than 5 percent of vacant, non-farm, municipal land as measured by the average of the percentage of vacant land valuation and vacant land parcels of all local land valuation/parcels in the *53rd Annual Report of the Division of Local Government Services 1990—Statements of Financial Condition of Counties and Municipalities* (Trenton, NJ: New Jersey Department of Community Affairs, 1991).

PROSPECTIVE NEED

Population Projections

Population projections are derived from two different models from the New Jersey Department of Labor. Both of these models project population by county (21 counties) and age cohort (13 declensions) for 30 years into the future. These population models are termed the Historic Migration Model and the Economic Demographic Model.[21] The major differences between these models are the overall levels of projected growth and the assumptions used for migration. Relatively, both the Economic Demographic Model and the Historic Migration Model project about the same level of statewide population. Their main difference is how this population is distributed to counties. In the Historic Migration Model, future migration is related to past employment growth; in the Economic Demographic Model, future migration is related to projected employment growth.

The Historic Migration Model allocates growth in a very purposeful way to places of historic growth. Counties like Bergen, Middlesex, Somerset, Ocean, and Gloucester tend to be overprojected. The Economic Demographic Model projects growth more evenly to the state's various locations, including an adequate share to the central-city counties.

The procedure employed in this analysis uses the output of both models and averages their results. Thus, the locational differences of their population distributions are dampened by the averaging procedure. Retrospectively, averaging has given the most accurate results over time. This is intuitively probable in that locations of growth depart from history in the direction of future projections but never seem quite to attain these directions. There is tug of war between historical locations of growth and new locations of growth: Neither appears to be dominant. The Historic Migration Model, by definition, represents history. The Economic Demographic Model captures the future. Their average is the reality of not achieving either, or in another view, partially achieving each. The averaged projection dampens the distribution of this growth by allocating shares to central-city counties as well as suburban and rural counties. Each of the individual models allocates growth too regularly in one direction. The averaged projection seems to be much more on target in terms of the distributional realities of growth.

The CUPR Econometric Model is used to control the averaged population projections at the Labor Area level. The national to regional, to state, to Labor Area population step-down of a macroeconomic model sets the bounds for Labor Area totals, which thus affect county population totals. National population growth is stepped down to the state of New Jersey and then to its Labor Areas. Each of these stepdowns is a zero-sum game. If one entity increases, another must decrease to meet the result of the projection. Within Labor Areas, the New Jersey Department of Labor model projections are adjusted and then taken to the county level. Projections at the county level are undertaken using eight different age cohorts. The projections employed here are purposefully chosen to be similar to those used for the New Jersey Department of Community Affairs Comprehensive Housing Affordability Strategy (CHAS), the Impact Assessment of the New Jersey State Development and Redevelopment Plan, and the most recent transportation modeling efforts of the New Jersey Department of Transportation.

Household Projections

Household projections follow from population projections by age cohort. Household projections are accomplished by applying a headship rate (the propensity to form a household) to population growth in an age grouping. Headship rates increase with age. The growth in headship rate, however, is greatest in the younger age groups. Household headship rates vary indirectly with household size. As household size decreases, headship rates increase. This relates directly to marriages and divorces, causing households to shrink in size by forming two smaller households from a single larger household. Household growth, like population, is projected by county. Headship rates are determined by age group and county in New Jersey in 1990 and extended into the future at one-half the rate of change observed from 1980 to 1990. The aggregate growth in low- and moderate-income households is summed at the county level and sent to a regional pool to be subsequently distributed to municipalities via allocation factors.

Prospective Need

Prospective Need is the share of the total projected households that will qualify for low- and moderate-income housing. Prospective low- and moderate-income housing need is derived by projecting the population by age cohort from 1993 to 1999 and converting this to households. This takes the following steps:

1. A 1993 base is established by bounding it at one end by the age cohort distributions of the 1990 U.S. Census for New Jersey. The other end is bounded by the distribution of the projected population for 1995 by age cohort under CUPR's use of the two averaged NJDOL projections for 1995. Three-fifths of the distance from 1990 to 1995 is used to establish the 1993 age cohort distribution.

2. A July 1, 1999 projection-year end is also arrayed by age distribution. This is done in the following way:

Population by age distribution for CUPR's Model projection to the year 2000 is modified, as explained herein. One-fifth of the population change from 1995 to 2000 is subtracted from year 2000 totals to obtain a new population projection by age cohort for 1999. The age cohorts are:

Less than 25 years
25-29 years
30-34 years
35-44 years
45-54 years
55-64 years
65-74 years
75 years and over

3. Both the population age cohorts for the base year (1993) and the projection-end year (1999) are multiplied by 1990 New Jersey county-specific headship rates by age cohort.[22] Two distributions of total households emerge: one for 1993 and another for 1999.

4. Total households for each period are converted to low- and moderate-income households by carrying forward the income characteristics of all households in 1990 to 1993 and 1999 by age cohort. Low- and moderate-income households are sorted by applying the Section 8 household size/income qualification criteria that were used in 1992 to a different number of households that exist in each cohort in 1993 and 1999. Thus, to the degree that age cohorts are differently composed and growing differently, the low- and moderate-income population will also change as it ages into the future.

5. Low- and moderate-income households for 1993 are subtracted from low- and moderate-income households in 1999 to obtain the change in low- and moderate-income households from 1993 to 1999. This is done for eight age cohorts specific to each of 21 counties.

6. As a change from the 1987-1993 procedure, the growth of households below age 65 is put into a statewide pool and allocated to regions of the state according to the proportional share of nonresidential ratable growth that took place in these regions from 1980 to 1990. Thus, growth in the working-age component of low- and moderate-income households was assigned to regions where jobs previously grew. On the other hand, growth in the elderly and presumably non-working population was retained in the original region where this growth took place. This procedure creates a demand to house low- and moderate-income families of working age in locations where jobs grew and a similar demand to house the elderly where their growth occurred naturally.

PROSPECTIVE NEED BY REGION

NORTHEAST	4,787
NORTHWEST	1,033
WEST CENTRAL	8,654
EAST CENTRAL	14,424
SOUTHWEST	8,993
SOUTH-SOUTHWEST	4,236
STATE TOTAL	42,127

TOTAL NEED

Total Need 1987-1999 is composed of Indigenous Need, Reallocated Present Need, and Prospective Need. It is the total municipal need number before demand increases for demolitions and demand reductions for secondary sources of supply are introduced. In a very few cases, negative Prospective Need in a community, reflective of reduced housing demand due to employment loss, lessens Present Need demand and, as such, reduces Total Need.

TOTAL NEED (PRESENT AND PROSPECTIVE) BY REGION

NORTHEAST	26,096
NORTHWEST	17,389
WEST CENTRAL	14,886
EAST CENTRAL	20,328
SOUTHWEST	15,076
SOUTH-SOUTHWEST	8,632
STATE TOTAL	102,408

PRIOR-CYCLE PROSPECTIVE NEED (1987-1993)

Affordable housing need of the prior cycle is composed of Indigenous Need, Reallocated Present Need, and Prospective Need. The 1990 U.S. Census provides the most current information on housing deficiency. Thus, Present Need, or deteriorated housing (as determined in 1993) is the actual need as it is viewed today; no need is carried over. This applies to Indigenous Need and Reallocated Present Need of the prior cycle.

In the case of Prospective Need, where the need has been projected for the forthcoming period, if it is not met people are forced into more crowded housing or are obliged to pay more than 28 percent of their income for housing. Housing need is falsely reduced, and simultaneously the affordable housing situation worsens if no new housing is built. A new calculation period could ignore the inactivity that characterized the prior cycle. This should not be allowed to happen. The current affordable housing method accounts for this by bringing forward Prior-cycle Prospective Need after it has been recalculated to reflect the most current projection information available, and after it has been netted down to true new construction need by altered secondary sources of supply, also reflecting the most current information available. The most current projection for that period allows 1990 U.S. Census figures to dampen the prior projection by 48 percent by providing a mid-period (1990) correction to prior 1987-1993 projections. Recalculated (1987-1993) demolitions are added to Prior-cycle Prospective Need before the sum is netted down by reduced secondary sources of housing supply. Secondary sources of supply, limiting prior Prospective Need, are scaled down accordingly by the ratio of lower new-period (1993-1999) to higher old-period (1987-1993) secondary source incidence rates.

PRIOR-CYCLE PROSPECTIVE NEED BY REGION

NORTHEAST	3,259
NORTHWEST	5,040
WEST CENTRAL	5,802
EAST CENTRAL	13,529
SOUTHWEST	5,865
SOUTH-SOUTHWEST	4,706
STATE TOTAL	38,202

SECONDARY SOURCES OF HOUSING SUPPLY AND DEMAND

Secondary sources of housing supply and demand reflect the adjustments of the housing market to the uneveness and spontaneity of primary supply and demand. As housing ages or as it falls prey to accident, natural disasters, or publicly/privately initiated changes in land use, it may become obsolete and be removed from the stock. The term for this selective pruning is *demolition.* Demolitions occur regularly and affect various markets differently. In strong markets, demolitions are low; in weaker markets, they are proportionally higher. In both situations, demolitions add to future housing demand.

As housing is added by private developers to the upper and middle price categories of the stock, a large share of consumers who already occupy housing within the market are attracted to this housing. When they occupy the new housing through purchase or rental agreements, they release sound housing within the local market that is inferior to the new housing that has been built. This causes the housing that they once occupied to be available to a lower round of consumers, often at a reduced price. The process is termed *filtering.* Filtering reduces future housing need as a greater proportion of formerly higher priced housing is now available at potentially lower prices. Filtering takes place in active housing markets, especially those receiving a significant influx of new housing.

In selected submarkets, a demand may exist for smaller units, and this need may not be responded to by normal market operations. The market adjusts to this need by creating additional smaller units from larger ones. This is termed *residential conversion* and most often occurs in housing stocks containing larger structures that can be adapted to smaller units yet not destroy or significantly alter the value of adjacent units in the process. The older, urban two- to four-family home is an ideal conversion unit. Four or six units may be created where only one-half this number may have existed in this type of structure previously. Often these units are termed illegal conversions, not because they are not safe, sound housing, but rather because the enlarged structure no longer conforms to the unit restrictions of the zoning ordinance.

Another characteristic of the housing market is for deficient units to be upgraded privately. This also lessens housing need as a deficient unit is replaced by a sound unit. This happens usually because a market exists for the renovated structure, usually at a higher occupancy cost than when the structure fell into disrepair. *Spontaneous rehabilitation,* as it is called, occurs in stronger (as measured by income), growing markets and affects only a very small proportion of the low- and moderate-income housing stock.

Procedures

In the earlier-discussed allocation and reallocation procedures, only non-Urban Aid municipalities participated. *In the reductions or increases to housing need due to secondary supply and demand, all muncipalities, including Urban Aid locations, participate.* This is true because all municipalities have some type of housing need, and reductions apply to housing need no matter how the need is generated. Thus, when demand reductions due to filtering are calculated, the reduction for a particular location is based on the share of *all* multifamily units in the region.

For Urban Aid Cities, the demand reductions are taken before these areas send excess need to the reallocation pool; for all other locations, demand reductions are taken after this point. This is to prevent other less-dense, less-deteriorated, inner-ring cities from receiving a large share of reallocated need without an equivalent chance to participate in secondary demand reductions due to specific characteristics of their housing stock.

Demolitions

Demolitions are a secondary source of housing demand in that demand is created by households requiring housing because units are lost from the stock. Housing units are lost due to fire, structure abandonment, road improvements, community renewal, land-use change, and other reasons.[23] It is estimated that units lost from the low- and moderate-income stock (both reported and unreported demolitions) are about on a par with those added to the stock due to conversion. For the *entire* housing stock, the ratio of demolitions to conversions may be even higher.[24] It is also true that the level of demolitions is falling in New Jersey. In 1980, total reported demolitions for New Jersey municipalities were 4,000-5,000 per year; in 1985 the total was above 3,000 annually; and by 1990, the total was just over 2,200.[25]

In order to estimate the scale of demolitions, reported demolitions for each municipality for the years 1988, 1989, and 1990 are averaged and multiplied by six to obtain a six-year demolition estimate by municipality. These are the three latest indicators of demolitions for communities.[26]

Demolitions are adjusted for each municipality to the share of all demolitions that affect the low- and moderate-income housing sector by 120 percent of the subregional share of low- and moderate-income housing. This percentage share of all demolitions that affects low- and moderate-income families is capped at 95 percent. Total demolitions are

thus tallied by individual community and the share affecting low- and moderate-income housing is estimated by a multiple of the subregional low- and moderate-income housing deficiency percentage. This latter factor recognizes that demolitions take place at a much higher rate in the low- and moderate-income housing sector than for all housing locally. Demolitions at a statewide level are essentially offset by conversions for low- and moderate-income households. This latter relationship is covered more fully in a subsequent section.

DEMOLITION HOUSING NEED BY REGION

NORTHEAST	1,986
NORTHWEST	1,976
WEST CENTRAL	343
EAST CENTRAL	1,369
SOUTHWEST	738
SOUTH-SOUTHWEST	1,625
STATE TOTAL	8,037

Filtering

Filtering is a downward adjustment of housing which recognizes that the housing requirements of lower-income groups can be served by supply additions to the higher-income sectors of the housing market.[27] During the course of normal market operations, middle- and upper-income households vacate existing housing for new, more desirable units, leaving their units vacant for households of lesser income. Filtering is predicated on the existence of housing surpluses, which cause housing prices to drop because of the excess of housing supply over demand.

Filtering is measured using the *American Housing Survey* over the four-year period 1985 to 1989. The *American Housing Survey* is particularly useful in that the same unit is measured at various intervals. By specifying HUD Section 8 income eligibility by household size for the years in question, two components of the household population can be specified: those that meet *Mount Laurel II* income requirements, and those that are above these requirements. Given these two income determinations at the two periods in time, a specific unit can be tracked according to the income of the household that occupied it. If it was not occupied by a *Mount Laurel* income-eligible family in the first period and was in the second period, it filtered down. If the reverse is true, it filtered up. If it was similarly occupied for both periods, it did not filter.

Viewing the same housing units, it is found that the net filtering (units moving down minus units moving up) to the lower-income population in New Jersey is about 1.1 percent over the course of the *four*-year observation period 1985-1989.[28] About 12.5 percent of the stock moves down, and 11.4 percent moves up. The gross figure for *six*-year net filtering is 1.65 percent of the non-deteriorated, non-low- and moderate-income housing stock, or 150 percent of the amount observed over the *four*-year period. A derivative 1.22 percent figure is the one used in the filtering calculation. It is determined by multiplying the 1.65 percent, six-year rate by 0.75. The latter accounts for those units that filtered down over the period and do not have the same range of affordability as those units that were continuously occupied by low- and moderate-income families. In other words, only three-quarters of the potential units available for filtering are counted, assuming that 25 percent of the units that filter down to low- and moderate-income households are beyond what these houdholds can reasonably afford. Further, by using the non-deteriorated portion of the housing stock, the units that are counted as moving downward are assumed to be of adequate housing quality. Thus, both affordability and housing condition of the resulting units are controlled for in the filtering estimate.

Through cross-tabulation analysis, and taking into account the dominance of single-family homes in New Jersey, filtering is found to be more active in those locations that have higher percentages of older multifamily units (five units or more in a structure), and much less active in locations where there are small percentages of multifamily units, or even newer multifamily units.[29] Even though filtering takes place to some degree in all locations, it is much more of an urban, or older suburban (i.e., locations of older and multifamily housing), than a new suburban or exurban housing phenomenon.

Filtering for the period 1993 to 1999 is estimated by taking 1.22 percent of the 1993 non-deteriorated, non-low- and moderate-income housing stock by region and assigning this need reduction to communities within the region according to a weighted average of: (1) their share of multifamily housing units (five or more units) of the region; and (2) their share of the pre-1940 units of the region. The former is weighted times two, and the latter times one, to avoid crediting excessive filtering to locations of older, predominantly single-family housing.

The use of multiple variables to assign the filtering credit is new for this round of numbers. It reflects more extensive analysis of the filtering phenomenon than was the case for the 1987-1993 period. The age of housing stock was added to the regression equation and showed considerable explanation power.

FILTERING HOUSING SUPPLY† BY REGION

NORTHEAST	-4,895
NORTHWEST	-4,535
WEST CENTRAL	-2,830
EAST CENTRAL	-3,550
SOUTHWEST	-2,993
SOUTH-SOUTHWEST	-1,382
STATE TOTAL	-20,185

†Seconddary supply sources are shown as negative demand contributors.

Residential Conversion

Conversion is the creation of dwelling units from already existing structures. Almost all conversion consists of additional dwelling units being created from other residential units, and very rarely from nonresidential units. This type, termed residential conversion, is a significant and recognized source of housing supply to low- and moderate-income families. According to the U.S. Department of Housing and Urban Development, as family size has decreased over the past two decades, residential conversion creating multiple smaller units from larger units has also increased.[30]

Converted units are measured using the *Decennial Census* over the period 1980 to 1990. Conversions are the difference between the net change in total housing units (end minus beginning of period), minus the net of housing units constructed and demolitions lost over the period. The housing stock is always characterized by having more units measured as present at the end state versus the beginning than can be accounted for by building permits minus demolitions. This unexplained difference is termed "conversion," most of which takes place from larger residential units.

U.S. Census information indicates that residential conversion is equivalent to 15 percent of total units constructed over the decade 1980-1990. On a percentage basis, a greater share of residential conversion units flows to the low- and moderate-income population than to the population as a whole.

Residential conversion is closely related and distributed to municipalities on the basis of their percentage of two- to four-family structures.[31] Residential conversions influence housing supply at the regional level according to an observed share of Indigenous Need. They are distributed to municipalities within regions according to the presence of structure types conducive to conversion, i.e., two- to four-family units.[32]

Residential conversions to low- and moderate-income housing in normal markets are often on a par with demolitions for the low- and moderate-income sector. In stronger markets, conversions are more than demolitions; in weaker markets, less.

RESIDENTIAL CONVERSION HOUSING SUPPLY BY REGION

NORTHEAST	-2,530
NORTHWEST	-2,180
WEST CENTRAL	- 930
EAST CENTRAL	- 847
SOUTHWEST	- 881
SOUTH-SOUTHWEST	- 775
STATE TOTAL	-8,143

Spontaneous Rehabilitation

Spontaneous rehabilitation is the unsolicited private market reduction of housing need by structure rehabilitation sufficient to render the unit free of deficiencies.[33] Using the *American Housing Survey,* over four interim years between 1985 and 1989, spontaneous rehabilitation can be measured by using as a surrogate more than $500 spent on each of three of four categories of additions, alterations, replacements, or repairs during the course of a single year.[34] This spontaneous rehabilitation happens to about 1.0 percent of the deficient units occupied by low-

and moderate-income households annually. For a six-year period, the figure is estimated to be 6.0 percent applied to Indigenous Need at the regional level.

The key factor associated with rehabilitation of deteriorated units is wealth of the area as interpreted through a combination of weighted and unweighted income measures. Reductions for spontaneous rehabilitation are given to each municipality according to the municipality's share of a regional average income measure. In this case it is the same measure used as one of the allocation factors.[35] Larger, less wealthy—and smaller, more affluent—communities will experience a larger incidence of rehabilitation because in the first case, there is more opportunity for it to happen, and in the second, there is more money to support it.[36]

Spontaneous rehabilitation at this juncture should not be confused with rehabilitation as a meliorative housing strategy once Calculated Need is determined. Spontaneous rehabilitation of low- and moderate-income need is a reduction before Calculated Need is tallied due to the workings of the private market. Public, publicly assisted, or private rehabilitation as a housing strategy, once need is determined, is one of several means of response to that need and has nothing to do with the need reduction determined here.

SPONTANEOUS REHABILITATION HOUSING SUPPLY BY REGION

NORTHEAST	- 701
NORTHWEST	- 580
WEST CENTRAL	- 249
EAST CENTRAL	- 235
SOUTHWEST	- 236
SOUTH-SOUTHWEST	- 208
STATE TOTAL	-2,208

PRE-CREDITED NEED

Pre-credited Need is Total Need plus Prior-cycle Prospective Need after being adjusted by secondary sources of supply and demand. It is thus the sum of Indigenous Need, Prospective Need, Prior-cycle Prospective Need, and demolitions; and net of filtering, residential conversion, and spontaneous rehabilitation. Pre-credited Need is municipal affordable housing need prior to the reduction, pre-1987 credits, and undeveloped land and 20-percent caps, to be discussed subsequently.

PRE-CREDITED NEED BY REGION

NORTHEAST	23,216
NORTHWEST	17,111
WEST CENTRAL	17,022
EAST CENTRAL	30,595
SOUTHWEST	17,569
SOUTH-SOUTHWEST	12,597
STATE TOTAL	118,111

REDUCTION FOR PRIOR-CYCLE ACTIVITIES

The Council on Affordable Housing (COAH) recognizes affordable housing efforts of communities before COAH or those affordable housing efforts that have resulted from court settlements. This recognition involves a one-for-one deduction for affordable housing units zoned or transferred by these communities. This procedure views a cumulative 1987-1999 need calculation for new housing accomplished by including prior-cycle Prospective Need, which must be decreased by prior-cycle affordable housing zoning or transfer activity. In order to estimate the level of zoning or transfer activity of the prior cycle, information has been obtained from COAH records via staff, county planning boards, and from court records via the assigned Masters (planners appointed by the courts to mediate and oversee the settlement).

The reduction for prior-cycle activities is subtracted from Pre-credited Need; it cannot reduce Pre-credited Need below zero. Any unexpended reduction is carried over to the next cycle.

REDUCTION BY REGION

NORTHEAST	- 3,065
NORTHWEST	- 5,397
WEST CENTRAL	- 7,718
EAST CENTRAL	- 8,075
SOUTHWEST	- 3,149
SOUTH-SOUTHWEST	- 437
STATE TOTAL	-27,841

PRE-1987 CREDITS

The *Fair Housing Act* provides that the Council on Affordable Housing determine municipal fair share after crediting on a one-for-one basis each current unit of low- and moderate-income housing of adequate standard constructed between April 1, 1980 and December 15, 1986, including any such housing constructed or acquired as part of a housing program specifically intended to provide housing for low- and moderate-income households.

A municipality may receive a one-for-one credit for each unit satisfying the criteria in *N.J.A.C. 5:92-3.1* and *3.2.* Pre-1987 credits are subtracted from municipal need after the reduction.

Pre-1987 credits cannot reduce an obligation below zero. Unexpended credits are carried over to the next affordable housing calculation cycle.

PRE-1987 CREDITS BY REGION

NORTHEAST	- 223
NORTHWEST	-1,046
WEST CENTRAL	- 611
EAST CENTRAL	- 212
SOUTHWEST	-1,070
SOUTH-SOUTHWEST	- 0
STATE TOTAL	-3,163

UNDEVELOPED LAND CAP—CURRENT CYCLE

There has always been a question regarding the 1987-1993 methodology as to why housing need is allocated to areas that cannot absorb it. In other words, they do not have enough undeveloped land to support additional residential growth. COAH has tried to address this problem by creating an undeveloped land factor to distribute housing need (see "Distribution of Low- and Moderate-Income Housing Need"). COAH has also tried to use its undeveloped land data to derive *estimated land capacity* and cap municipal housing obligations.

Undeveloped lands are adjusted to represent undeveloped residential land by multiplying their total by the averaged sum of residential and apartment parcels and equalized valuation, to total undeveloped parcels and equalized valuation. This information is obtained from tax records for each community (see below).

The undeveloped residential land in acres is multiplied by 1.5 to allow more land for residential purposes in the future and is capped at 95 percent of all undeveloped land. This is further multiplied by 6 units per acre and a 20-percent set-aside to determine the number of affordable housing units that can be accommodated in the locality in the future. This is termed a community's estimated land capacity. The difference between estimated land capacity and the need for new construction (if estimated land capacity is smaller than the need for new construction) is termed the undeveloped land cap. The undeveloped land cap reduces the need for new construction to the estimated land-capacity level. It is subtracted from municipal need after applying pre-1987 credits.

Municipalities that do not have enough land to develop their new construction need (after crediting secondary sources) will have their municipal need reduced to the new construction need they can accommodate (as determined by land capacity), plus their rehabilitation component.

It is important to note that this cap has been proposed to develop a better relationship between the municipal housing obligation and the municipal capacity to address the need. The cap and the data used to calculate the cap are not viewed by COAH as a substitute for COAH's adjustment process *(N.J.A.C. 5:92-4).* A municipality shall utilize the adjustment process whenever it believes that it lacks the land capacity to address its housing obligation (Calculated Need).

UNDEVELOPED LAND CAP BY REGION

NORTHEAST	-1,377
NORTHWEST	- 52
WEST CENTRAL	0
EAST CENTRAL	-1,495
SOUTHWEST	- 20
SOUTH-SOUTHWEST	- 125
STATE TOTAL	-3,068

TWENTY-PERCENT (20%) CAP

The 20-percent cap is a limitation of affordable housing activities for the period being projected for up to 20 percent of the existing (1993) occupied housing stock. This is termed the *community capacity.* The derivation of this limitation reflects a desire by COAH not to overwhelm local communities with affordable housing activities such that the community would experience "drastic alteration" from these activities. "Drastic alteration" has been defined as the doubling of a community's housing stock due to the presence of both inclusionary affordable housing units and simultaneously delivered market units at a ratio of 1:4. If the affordable housing component, or the "1", was more than 20 percent of existing housing units, the "4" would be more than 80 percent of existing housing units.

The sum of the inclusionary and market units would be greater than the 100 percent of existing housing units, and the community could more than double merely by meeting its affordable housing obligation through an inclusionary program.

To avoid this situation, the concept of community capacity has been instituted, which limits affordable housing production in a municipality to 20 percent of the existing local occupied housing stock. The percentage cap thus limits affordable housing differently according to the size of the community.

Community capacity is compared to municipal need for new construction,[37] and the difference (if community capacity is less than the municipal need for new construction), is the 20-percent cap. The 20-percent cap is subtracted from municipal need after the undeveloped land cap. If community capacity is more than the municipal need for new construction, the 20-percent cap is zero.

20-PERCENT CAP BY REGION

NORTHEAST	-158
NORTHWEST	0
WEST CENTRAL	0
EAST CENTRAL	- 76
SOUTHWEST	-329
SOUTH-SOUTHWEST	-162
STATE TOTAL	-725

CALCULATED NEED

Calculated Need is the municipality's estimated obligation under the *Mount Laurel* mandate for the period 1987 to 1999. It is municipal affordable housing need *after* the prior-cycle reduction, pre-1987 credits, the undeveloped land cap, and the 20-percent cap. Relative to other municipalities, and taking into account existing jobs and job growth, undeveloped land, aggregate income, what affordable housing activity has been undertaken, and the capacity of the community, this is the need that the municipality must address.

CALCULATED NEED BY REGION

NORTHEAST	18,393
NORTHWEST	10,616
WEST CENTRAL	8,693
EAST CENTRAL	20,737
SOUTHWEST	13,001
SOUTH-SOUTHWEST	11,873
STATE TOTAL	83,313

PRIOR-CYCLE VACANT LAND ADJUSTMENT COMMUNITIES

Communities that received a vacant land adjustment in the first affordable housing cycle (1987-1993) from COAH or the courts are indicated with both a Calculated Need number and a "VL" designation for the second round (1993-1999). The VL designation indicates that the Council has developed a streamlined process for these communities to receive certification. The Calculated Need is retained in the system as a goal for future affordable housing efforts as development and redevelopment occur in the community.

ATTACHMENT

URBAN AID CITIES BY COUNTY THAT MEET THE CRITERIA SPECIFIED UNDER DISTRIBUTION OF NEED*

(FISCAL YEAR 1993)

ATLANTIC

Pleasantville City

BERGEN

Garfield City
Lodi Borough

BURLINGTON

Mount Holly Township
Pemberton Township

CAMDEN

Camden City
Gloucester City
Pennsauken Township

CAPE MAY

Wildwood City

CUMBERLAND

Bridgeton City
Millville City
Vineland City

ESSEX

Belleville Township
Bloomfield Township
East Orange City
Irvington Township
Newark City
City of Orange Township

GLOUCESTER

Glassboro Borough
Paulsboro Borough
Woodbury City

HUDSON

Bayonne City
Hoboken City
Jersey City City
North Bergen Township
Union City City
West New York Town

HUNTERDON

None

MERCER

Trenton City

MIDDLESEX

Carteret Borough
New Brunswick City
Perth Amboy City

MONMOUTH

Asbury Park City
Keansburg Borough
Long Branch City
Neptune Township

MORRIS

None

OCEAN

Lakewood Township

PASSAIC

Passaic City
Paterson City

SALEM

Penns Grove Borough
Salem City

SOMERSET

None

SUSSEX

None

UNION

Elizabeth City
Hillside Township
Plainfield City
Roselle Borough

WARREN

Phillipsburg Town

*These 45 municipalities do not receive either Reallocated Present Need or Prospective Need.

NOTES

1. J. Douglas Carroll, Jr., "The Relation of Homes to Work Places and The Spatial Pattern of Cities," *Social Forces* 30 (1952): 271; and American Society of Planning Officials, *Relationships of the Journey to Work,* Planning Advisory Service Report No. 5 (Chicago: ASPO, April 1951).
2. U.S. Department of Housing and Urban Development, Federal Housing Administration, Economic and Market Analysis Division. *FHA Techniques of Housing Market Analysis* (Washington, D.C.: U.S. Government Printing Office, August 1970).
3. U.S. Department of Commerce, Bureau of the Census, *The 1990 Census of Population and Housing; Public Use Microdata Sample: New Jersey* (Washington, D.C.: U.S. Government Printing Office, 1982).
4. SPSS, Inc., *SPSS Users Guide* (New York: McGraw Hill, 1988); and SAS Institute, Inc., *SAS Users Guide* (Raleigh, NC: SAS Institute, 1989).
5. N.J.S.A. 52:27D-301 et seq.
6. United States Housing Act of 1937 (42 U.S.C. 1401 et seq.), Section 3(b)(2).
7. U.S. Department of Commerce, Bureau of the Census, *The 1990 Census of Population and Housing; Public Use Microdata Sample: New Jersey* (1982).
8. 42 U.S.C. 1401, Section 3(b)(2).
9. *See,* for example, U.S. Bureau of the Census, *Measuring the Quality of Housing: An Appraisal of Census Statistics and Methods* (Washington, D.C.: Government Printing Office, 1967); and U.S. Bureau of the Census, *A Preliminary Look at the Results of the Five City Survey* (Washington, D.C., July 9, 1975).
10. Beaton, W. Patrick, "The Use of Combinatorial Indices in Housing Quality Specification." Paper presented to the October 1984 meeting of the ACSP Conference, New York. Beaton, W. Patrick, "Quality Judgments, Quality Analysis, and Housing Policy Analysis" (unpublished paper). Beaton's data are derived from the probabilities of the *Five City Study* (see Note 34).
11. Burchell, Robert W. et al., *Mount Laurel II: Challenge and Delivery of Low-Cost Housing* (New Brunswick, N.J.: Center for Urban Policy Research, 1983), p. 112.
12. Data reflecting the lack of public sewer, septic tank, or cesspool have been retained in the *American Housing Survey.* So, too, are data reflecting the lack of city water or a drilled/dug well. The retention of these data points to their growing importance as surrogates of deteriorated housing.
13. U.S. Department of Commerce, Bureau of the Census, *The 1990 Census of Population and Housing, Public Use Microdata Sample: New Jersey* (1982).
14. U.S. Department of Commerce, Bureau of the Census, *The 1990 Census of Population and Housing* (Washington, D.C.: U.S. Government Printing office, 1982).
15. *See Countryside Properties, Inc. et al. v. Mayor and Council of the Borough of Ringwood and Planning Board of Ringwood et al.,* Law Division, Docket No. L-42095-81, July 24, 1984.
16. *See,* for example, New Jersey Department of Community Affairs, Division of State and Regional Planning, *A Revised Statewide Housing Allocation Report for New Jersey* (Trenton, NJ: Division of State and Regional Planning, 1978).
17. For discussion of fair share allocation criteria, *see* New Jersey Department of Community Affairs, "Fair Housing Act Issue Papers" (Trenton, NJ: Division of Housing and Development, January 10, 1986); New Jersey Department of Community Affairs, *Mount Laurel II: Methods of Calculating Municipal Fair Share* (Trenton, NJ: Division of Housing and Development, undated); Listokin, David, *Fair Share Housing Allocation* (New Brunswick, NJ: Center for Urban Policy Research, 1976); Brooks, Mary P., *Lower Income Housing: The Planner's Response* (Chicago: American Society of Planning Officials, 1972); and Burchell, Robert W. et al., *Mount Laurel II: Challenge and Delivery of Low-Cost Housing,* Chapter 7.
18. New Jersey Department of Treasury, Division of Taxation, Property Administration Branch. "Land by Categories of Use." Trenton, NJ: New Jersey Department of Treasury, 1990, 1991.
19. This is to ensure that all pool numbers on this variable are positive.
20. State of New Jersey, Department of Community Affairs, *A Revised Statewide Housing Allocation Report for New Jersey;* see also, Lerman, Carla L. et al., "Fair Share Report—*Urban League of Greater New Brunswick v. Carteret et al."*
21. State of New Jersey, Department of Labor, Division of Planning and Research, Office of Demographic and Economic Analysis, *Population Projections—New Jersey and Counties: 2000-2030* (Trenton, NJ: Division of Planning and Research, August 1992).
22. U.S. Department of Commerce, Bureau of the Census, *The 1990 Census of Population and Housing; Public Use Microdata Sample: New Jersey* (1982).
23. *See* Burchell, Robert W. and Listokin, David, *The Adaptive Reuse Handbook* (New Brunswick, NJ: Center for Urban Policy Research, 1981), Chapter 1, "Property Abandonment in the United States".
24. Center for Urban Policy Research, analysis, *American Housing Survey 1980-1987—Metropolitan Areas of New Jersey.*
25. State of New Jersey, Department of Labor, Division of Planning and Research, *Residential Building Permits* (series—annual 1990 and previous dates).
26. Ibid.
27. *See,* for example, Lansing, J.B. et al., "New Homes and Poor People—Study of Chains of Moves." *Geographical Analysis,* Vol. 6, No. 1 (1974), pp. 95-99; Kristof, F.S., "Federal Housing Policies—Subsidized Production, Filtration, and Objectives," *Land Economics,* Vol. 49, No. 2 (1983), pp. 163-174. *See also* Downs, Anthony, "New Jersey and Other Locations: The Filtering Process as a Source of Housing for Low-Income Households" (Trenton, NJ: New Jersey Council on Affordable Housing, October 1990).
28. Center for Urban Policy Research, analysis of *American (Annual) Housing Survey—1985-1989—Metropolitan Areas of New Jersey.*
29. Ibid.
30. U.S. Department of Housing and Urban Development, "Additions to the Housing Supply by Means Other Than New Construction" (December 1982). Paper prepared by the Division of Housing and Demographic Analysis, Office of Policy Development and Research. *See also* McGough, Duane, "A Second Look at Non-New Construction Additions to Housing Supply: The Implications for the New Jersey Housing Methodology" (Trenton, NJ: New Jersey Council on Affordable Housing), October 1990.
31. Center for Urban Policy Research, analysis, *American Housing Survey 1980-1987—Metropolitan Areas of New Jersey.*
32. 1990 rather than 1993 is used as a base to tabulate the share of multifamily units as demolitions over the period 1990-1992 are not available by structure type. It is possible to estimate total 1993 occupied housing units, but the distribution by structure type cannot accurately be determined without demolition information by structure type.
33. U.S. Department of Housing and Urban Development, "Additions to the Housing Supply by Means Other Than New Construction."
34. Burchell et al., *Mount Laurel II, op. cit.,* Chapter 5, Part IV.
35. The regional share of the summed differences from lowest statewide median household income (weighted and unweighted averages) is used to allocate the spontaneous rehabilitation credit.
36. Black, J. Thomas, "Private-Market Housing Restoration in Central Cities: A ULI Survey." *Urban Land,* November 1975, p. 3; Schaaf, A.H., "Economic Feasibility Analysis for Urban Renewal Housing Rehabilitation," *Journal of the American Institute of Planners,* Vol. 35, No. 6 (November 1969), p. 399.
37. The municipal need for new construction may be different at this point than when used earlier for the undeveloped land cap depending upon whether need was reduced at the prior point.

EXHIBIT 1

BASE DATA FOR MUNICIPAL HOUSING NEED CALCULATION BY MUNICIPALITY

(Part I)

EXHIBIT 1
NEW JERSEY
COUNCIL ON AFFORDABLE HOUSING
BASE DATA FOR MUNICIPAL LOW & MODERATE INCOME
HOUSING NEED CALCULATION
3-FEB-93

COUNTY	NAME	SUBREG MULTI INDEX NEED (1)	MUNIC. SINGLE INDEX NEED (2)	SUBREG SINGLE INDEX NEED (3)	1993 OCCUPIED HOUSING EST. (4)	% REG. VACANT AREA (5)	% REG. EQUAL. NON-RESID VALUE (6)	REG. INCOME DIFF. (7)	% REG. EQUAL. NONRES VALUE CHANGE (8)	PRES. NEED ALLOCA FACTOR (9)	PROS. NEED ALLOCA FACTOR (10)	1990 LOW- MOD INCOME SUBREG PERCENT (11)
	JOHNSONVILLE	364	410	4544	12695	4.109	8.293	3.840	10.987	5.414	6.312	24.0
ATLANTIC												
	ABSECON CITY	1832	462	20838	2664	1.569	.846	2.582	.871	1.666	1.674	43.0
	ATLANTIC CITY	1832	7357	20838	15612	1.012	58.768	1.583	63.973	20.454	22.189	43.0
	BRIGANTINE CITY	1832	362	20838	5064	0.000	.525	3.135	.211	1.220	1.115	43.0
	BUENA BORO.	1832	408	20838	1700	.302	.283	.820	.189	.468	.437	43.0
	BUENA VISTA TWP.	1832	631	20838	2717	.001	.247	1.180	.163	.476	.448	43.0
	CORBIN CITY	1832	47	20838	172	0.000	.019	.549	.016	.189	.188	43.0
	EGG HARBOR TWP.	1832	997	20838	9616	15.990	4.857	5.862	5.450	8.903	9.101	43.0
	EGG HARBOR CITY	1832	746	20838	1706	1.307	.311	.921	.253	.846	.827	43.0
	ESTELL MANOR CITY	1832	137	20838	462	0.000	.025	1.078	.009	.368	.362	43.0
	FOLSOM BORO.	1832	134	20838	703	0.000	.173	1.154	.083	.442	.412	43.0
	GALLOWAY TWP.	1832	1041	20838	8440	9.477	1.406	6.312	1.189	5.731	5.659	43.0
	HAMILTON TWP.	1832	794	20838	5947	6.954	3.226	4.448	4.277	4.876	5.226	43.0
	HAMMONTON TOWN	1832	1319	20838	4523	4.185	1.523	2.636	1.338	2.781	2.720	43.0
	LINWOOD CITY	1832	313	20838	2430	.715	.743	3.617	.698	1.691	1.676	43.0
	LONGPORT BORO.	1832	75	20838	600	.027	.071	.831	.005	.310	.288	43.0
	MARGATE CITY	1832	733	20838	3885	.094	.656	3.159	.561	1.303	1.272	43.0
	MULLICA TWP.	1832	438	20838	2009	.182	.178	1.671	.144	.677	.666	43.0
	NORTHFIELD CITY	1832	483	20838	2694	1.412	1.107	2.821	.790	1.780	1.674	43.0
	PLEASANTVILLE CITY	1832	1793	20838	6065	.	.	.	.	.	0.000	43.0
	PORT REPUBLIC CITY	1832	116	20838	357	.009	.035	1.177	.015	.407	.400	43.0
	SOMERS POINT CITY	1832	521	20838	4918	.452	1.299	2.397	1.124	1.383	1.324	43.0
	VENTNOR CITY	1832	1735	20838	4900	.201	.600	2.599	.277	1.133	1.026	43.0
	WEYMOUTH TWP.	1832	195	20838	742	0.000	.065	.893	.068	.319	.320	43.0
BERGEN												
	ALLENDALE BORO.	314	447	9239	1863	1.474	.469	1.018	.514	.987	1.002	17.7
	ALPINE BORO.	226	71	11300	542	3.777	.166	.969	.192	1.637	1.646	23.9
	BERGENFIELD BORO.	226	2152	11300	8626	.660	.719	1.293	.716	.891	.889	23.9
	BOGOTA BORO.	342	1490	13266	2771	.024	.158	.580	.120	.254	.242	38.1
	CARLSTADT BORO.	498	701	13568	2147	.439	3.575	.382	3.330	1.465	1.384	40.1
	CLIFFSIDE PARK BORO.	273	2642	13045	8978	.012	.462	1.083	.379	.519	.492	38.8
	CLOSTER BORO.	226	553	11300	2665	.656	.444	.908	.478	.669	.681	23.9
	CRESSKILL BORO.	226	499	11300	2559	.252	.333	.842	.260	.475	.451	23.9
	DEMAREST BORO.	226	316	11300	1542	.447	.082	.772	.080	.434	.433	23.9
	DUMONT BORO.	226	1562	11300	6208	.036	.256	1.108	.272	.467	.472	23.9

EAST RUTHERFORD BORO	498	1078	13568	3267	.346	1.963	.358	2.355	.889	1.019	40.1
EDGEWATER BORO.	273	743	13045	2386	.080	.746	.494	.651	.440	.408	38.8
ELMWOOD PARK BORO.	217	1005	14469	6676	.139	.901	.762	.603	.601	.501	36.8
EMERSON BORO.	226	253	11300	2208	.179	.331	.796	.277	.435	.417	23.9
ENGLEWOOD CITY	342	3097	13266	8958	1.301	1.867	1.385	1.888	1.518	1.525	38.1
ENGLEWOOD CLIFFS BOR	226	90	11300	1837	.133	2.534	1.097	2.334	1.255	1.188	23.9
FAIR LAWN BORO.	217	2080	14469	11391	.182	1.542	1.870	1.256	1.198	1.103	36.8
FAIRVIEW BORO.	273	1640	13045	4283	.001	.670	.398	.686	.356	.362	38.8
FORT LEE BORO.	273	1895	13045	15338	.217	2.997	2.171	3.358	1.795	1.915	38.8
FRANKLIN LAKES BORO.	314	253	9239	3122	4.174	1.168	1.875	1.464	2.406	2.504	17.7
GARFIELD CITY	217	4694	14469	10876	.	.	.	.	.	0.000	36.8
GLEN ROCK BORO.	314	1143	9239	3833	.762	.453	1.230	.516	.815	.836	17.7
HACKENSACK CITY	342	4106	13266	16558	.164	3.878	1.703	4.075	1.915	1.981	38.1
HARRINGTON PARK BORO	226	318	11300	1480	.256	.065	.873	.010	.398	.380	23.9
HASBROUCK HEIGHTS BO	498	1285	13568	4327	.019	.840	.735	.814	.531	.523	40.1
HAWORTH BORO.	226	274	11300	1122	.432	.210	.730	.204	.457	.455	23.9
HILLSDALE BORO.	226	645	11300	3314	1.120	.223	1.026	.174	.789	.773	23.9
HOHOKUS BORO.	314	348	9239	1373	.791	.092	1.057	.090	.647	.646	17.7
LEONIA BORO.	273	1168	13045	3208	.188	.293	.766	.370	.416	.441	38.8
LITTLE FERRY BORO.	498	750	13568	4140	.023	.627	.719	.609	.456	.450	40.1
LODI BORO.	217	2034	14469	8948	.	.	.	.	.	0.000	36.8
LYNDHURST TWP.	498	2545	13568	7104	.249	2.209	.913	2.182	1.124	1.115	40.1
MAHWAH TWP.	314	791	9239	7035	5.933	2.036	1.533	1.973	3.168	3.146	17.7
MAYWOOD BORO.	217	978	14469	3679	.014	.434	.682	.360	.377	.352	36.8
MIDLAND PARK BORO.	314	891	9239	2522	.200	.425	.653	.410	.426	.421	17.7
MONTVALE BORO.	226	230	11300	2383	1.740	2.263	1.002	2.622	1.668	1.788	23.9
MOONACHIE BORO.	498	133	13568	1086	.015	1.550	.268	1.604	.611	.629	40.1
NEW MILFORD BORO.	217	854	14469	6107	.091	.189	.942	.170	.407	.401	36.8
NORTH ARLINGTON BORO	498	1479	13568	5565	.030	.379	.704	.367	.371	.367	40.1
NORTHVALE BORO.	226	279	11300	1511	.181	.733	.586	.529	.500	.432	23.9
NORWOOD BORO.	226	278	11300	1557	1.285	.454	.707	.446	.815	.813	23.9
OAKLAND BORO.	314	295	9239	3895	2.365	.801	1.175	.751	1.447	1.430	17.7
OLD TAPPAN BORO.	226	103	11300	1317	.879	.278	.826	.277	.661	.661	23.9
ORADELL BORO.	217	598	14469	2764	.295	.437	1.198	.346	.643	.613	36.8
PALISADES PARK BORO.	273	1601	13045	5809	.004	.706	.607	.741	.439	.451	38.8
PARAMUS BORO.	217	611	14469	7739	5.249	6.410	1.764	6.067	4.475	4.360	36.8
PARK RIDGE BORO.	226	507	11300	2953	.675	.662	.905	.816	.748	.799	23.9
RAMSEY BORO.	314	635	9239	4700	.712	1.379	1.405	1.427	1.165	1.181	17.7
RIDGEFIELD BORO.	273	1014	13045	3861	.083	.978	.649	.679	.570	.470	38.8
RIDGEFIELD PK VILLAG	273	2344	13045	4936	.138	.773	.738	.959	.550	.612	38.8
RIDGEWOOD VILLAGE	314	3059	9239	8310	1.508	1.012	2.621	1.078	1.713	1.735	17.7
RIVER EDGE BORO.	217	649	14469	4049	.493	.325	.903	.287	.574	.561	36.8
RIVER VALE TWP.	226	180	11300	3175	1.393	.222	1.100	.185	.905	.893	23.9
ROCHELLE PARK TWP.	217	536	14469	2057	.110	.772	.418	.758	.433	.429	36.8
ROCKLEIGH BORO.	226	11	11300	62	.759	.679	.484	.646	.641	.630	23.9
RUTHERFORD BORO.	498	3030	13568	6619	.031	.961	1.076	.892	.690	.666	40.1
SADDLE BROOK TWP.	217	431	14469	4902	.324	1.936	.846	1.885	1.035	1.018	36.8
SADDLE RIVER BORO.	314	139	9239	1002	1.764	.037	1.537	.041	1.113	1.114	17.7
SOUTH HACKENSACK TWP	498	153	13568	736	.007	.956	.253	.764	.405	.341	40.1
TEANECK TWP.	342	4573	13266	12908	1.232	1.330	2.550	1.409	1.704	1.731	38.1
TENAFLY BORO.	226	1580	11300	4702	1.221	.596	1.500	.530	1.106	1.084	23.9
TETERBORO BORO.	498	2	13568	9	.010	.782	.388	.609	.393	.335	40.1
UPPER SADDLE RIV BOR	314	113	9239	2331	1.956	.457	1.448	.577	1.287	1.327	17.7
WALDWICK BORO.	314	485	9239	3298	.419	.329	.951	.291	.566	.554	17.7
WALLINGTON BORO.	498	1278	13568	4696	.069	.370	.409	.289	.283	.256	40.1
WASHINGTON TWP.	226	114	11300	3100	.606	.048	1.120	.012	.591	.579	23.9
WESTWOOD BORO.	226	1089	11300	4111	.777	.672	.769	.636	.739	.727	23.9
WOODCLIFF LAKE BORO.	226	194	11300	1654	1.108	1.022	1.127	1.235	1.086	1.157	23.9

	WOOD-RIDGE BORO.	498	1132	13568	2891	.178	.454	.714	-.034	.449	.286	40.1
	WYCKOFF TWP.	314	640	9239	5072	2.361	.494	1.811	.437	1.555	1.536	17.7
BURLINGTON												
	BASS RIVER TWP.	918	244	7618	568	0.000	.156	.284	.135	.147	.140	45.8
	BEVERLY CITY	585	537	10838	1031	.018	.100	.300	.081	.139	.133	37.5
	BORDENTOWN CITY	585	945	10838	1828	.058	.663	.629	.793	.450	.493	37.5
	BORDENTOWN TWP.	585	317	10838	2944	1.982	1.469	1.030	1.388	1.494	1.466	37.5
	BURLINGTON CITY	585	1582	10838	3892	.483	1.412	.569	1.155	.821	.736	37.5
	BURLINGTON TWP.	585	704	10838	4612	4.102	3.118	1.141	3.022	2.787	2.755	37.5
	CHESTERFIELD TWP.	918	272	7618	984	.023	.180	.768	.167	.324	.319	45.8
	CINNAMINSON TWP.	585	444	10838	4877	1.203	2.386	1.800	2.306	1.796	1.770	37.5
	DELANCO TWP.	585	499	10838	1216	.658	.491	.482	.407	.544	.516	37.5
	DELRAN TWP.	585	512	10838	4537	1.232	1.372	1.480	1.294	1.361	1.335	37.5
	EASTAMPTON TWP.	918	145	7618	2001	.643	.109	.777	.057	.509	.492	45.8
	EDGEWATER PARK TWP.	585	417	10838	3256	.311	.550	.972	.464	.611	.582	37.5
	EVESHAM TWP.	364	344	4544	13405	1.683	3.935	4.127	5.119	3.249	3.643	24.0
	FIELDSBORO BORO.	585	98	10838	189	.057	.088	.353	.084	.166	.165	37.5
	FLORENCE TWP.	585	1575	10838	3904	.751	.825	.933	.576	.836	.753	37.5
	HAINESPORT TWP.	918	268	7618	1196	2.027	.611	.508	.600	1.049	1.045	45.8
	LUMBERTON TWP.	918	371	7618	2713	2.203	1.004	.858	1.036	1.355	1.366	45.8
	MANSFIELD TWP.	918	309	7618	1591	1.295	.330	.559	.292	.728	.715	45.8
	MAPLE SHADE TWP.	364	1044	4544	8830	.147	1.552	1.319	1.383	1.006	.950	24.0
	MEDFORD TWP.	364	559	4544	7283	2.542	1.684	3.065	1.897	2.430	2.501	24.0
	MEDFORD LAKES BORO.	364	148	4544	1569	.022	.049	1.195	.039	.422	.419	24.0
	MOORESTOWN TWP.	364	1556	4544	6002	3.148	5.082	2.328	4.542	3.519	3.339	24.0
	MOUNT HOLLY TWP.	918	1441	7618	3691	.	.	.	.	.	0.000	45.8
	MOUNT LAUREL TWP.	364	410	4544	12695	4.109	8.293	3.840	10.987	5.414	6.312	24.0
	NEW HANOVER TWP.	918	145	7618	864	.003	.106	.295	.092	.135	.130	45.8
	NORTH HANOVER TWP.	918	540	7618	3280	0.000	.285	.494	.270	.260	.255	45.8
	PALMYRA BORO.	585	1105	10838	2909	.335	.361	.761	.295	.486	.464	37.5
	PEMBERTON BORO.	918	229	7618	497	0.000	.072	.285	.059	.119	.115	45.8
	PEMBERTON TWP.	918	1539	7618	10530	.	.	.	.	.	0.000	45.8
	RIVERSIDE TWP.	585	1478	10838	3070	.137	.546	.563	.560	.415	.420	37.5
	RIVERTON BORO.	585	626	10838	1068	.018	.108	.648	.109	.258	.258	37.5
	SHAMONG TWP.	918	120	7618	1898	.282	.113	1.137	.117	.511	.512	45.8
	SOUTHAMPTON TWP.	918	586	7618	4595	.307	.383	.746	.316	.479	.457	45.8
	SPRINGFIELD TWP.	918	261	7618	1039	.003	.218	.644	.228	.288	.292	45.8
	TABERNACLE TWP.	918	194	7618	2404	.489	.111	1.276	.098	.625	.621	45.8
	WASHINGTON TWP.	918	123	7618	302	0.000	.065	.295	-.004	.120	.097	45.8
	WESTAMPTON TWP.	918	133	7618	2204	3.019	.477	1.119	.537	1.538	1.558	45.8
	WILLINGBORO TWP.	364	484	4544	11255	.448	.678	3.078	.422	1.401	1.316	24.0
	WOODLAND TWP.	918	117	7618	425	0.000	.143	.435	.156	.193	.197	45.8
	WRIGHTSTOWN BORO.	918	581	7618	1268	0.000	.104	.119	.043	.075	.054	45.8
CAMDEN												
	AUDUBON BORO.	468	1750	11634	3600	.017	.574	.849	.379	.480	.415	42.2
	AUDUBON PARK BORO.	468	50	11634	495	.007	.001	.137	-.072	.048	.024	42.2
	BARRINGTON BORO.	468	487	11634	2678	.067	.462	.689	.234	.406	.330	42.2
	BELLMAWR BORO.	468	512	11634	4665	.292	1.323	.907	1.125	.841	.775	42.2
	BERLIN BORO.	492	335	7425	1980	.698	.790	.699	.892	.729	.763	38.1
	BERLIN TWP.	492	318	7425	1783	.405	.981	.609	1.425	.665	.813	38.1
	BROOKLAWN BORO.	468	391	11634	705	.059	.218	.290	.185	.189	.178	42.2
	CAMDEN CITY	1563	16363	20247	26016	.	.	.	.	.	0.000	62.6
	CHERRY HILL TWP.	251	975	6279	24903	1.872	16.950	7.804	18.197	8.875	9.291	29.5
	CHESILHURST BORO.	492	80	7425	492	.272	.024	.292	.020	.196	.195	38.1
	CLEMENTON BORO.	492	732	7425	2307	.085	.249	.429	.187	.255	.234	38.1
	COLLINGSWOOD BORO.	251	3100	6279	6350	.079	.781	1.019	.629	.626	.576	29.5
	GIBBSBORO BORO.	492	133	7425	751	.568	.449	.630	.662	.549	.620	38.1
	GLOUCESTER TWP.	492	1370	7425	19255	4.213	1.635	3.970	1.479	3.273	3.221	38.1
	GLOUCESTER CITY	468	2481	11634	4577	.	.	.	.	.	0.000	42.2
	HADDON TWP.	251	1788	6279	6209	.131	1.140	1.204	1.046	.825	.794	29.5

	HADDONFIELD BORO.	468	2210	11634	4484	.118	1.335	1.969	1.152	1.141	1.080	42.2
	HADDON HEIGHTS BORO.	468	1279	11634	3025	.049	.442	.847	.407	.446	.434	42.2
	HI-NELLA BORO.	492	81	7425	467	.028	.044	.150	.024	.074	.067	38.1
	LAUREL SPRINGS BORO.	492	349	7425	820	.006	.137	.436	.114	.193	.185	38.1
	LAWNSIDE BORO.	468	141	11634	1043	.140	.382	.333	.338	.285	.270	42.2
	LINDENWOLD BORO.	492	874	7425	8202	.372	.466	1.150	.420	.662	.647	38.1
	MAGNOLIA BORO.	468	450	11634	1768	.022	.241	.435	.176	.233	.211	42.2
	MERCHANTVILLE BORO.	1563	861	20247	1573	.005	.224	.473	.185	.234	.221	62.6
	MOUNT EPHRAIM BORO.	468	365	11634	1773	.014	.273	.530	.199	.272	.248	42.2
	OAKLYN BORO.	468	795	11634	1844	.019	.222	.459	.209	.233	.229	42.2
	PENNSAUKEN TWP.	1563	3023	20247	12423	.	.	.	.	.	0.000	62.6
	PINE HILL BORO.	492	620	7425	3961	.680	.098	.731	.083	.503	.498	38.1
	PINE VALLEY BORO.	492	7	7425	10	.202	.041	.924	.064	.389	.397	38.1
	RUNNEMEDE BORO.	468	490	11634	3418	.076	.534	.657	.471	.422	.401	42.2
	SOMERDALE BORO.	468	233	11634	2069	.064	.561	.548	.663	.391	.425	42.2
	STRATFORD BORO.	492	340	7425	2698	.046	.713	.862	.649	.540	.519	38.1
	TAVISTOCK BORO.	468	0	11634	11	.097	.022	2.000	.024	.706	.707	42.2
	VOORHEES TWP.	492	409	7425	9602	1.603	4.932	3.102	5.483	3.212	3.396	38.1
	WATERFORD TWP.	492	534	7425	3600	.552	.340	1.139	.288	.677	.660	38.1
	WINSLOW TWP.	492	1243	7425	10187	4.852	1.100	2.145	1.047	2.699	2.681	38.1
	WOODLYNNE BORO.	251	417	6279	884	.004	.042	.202	.018	.083	.075	29.5
CAPE MAY												
	AVALON BORO.	1105	100	15825	868	0.000	.856	1.095	.423	.650	.506	41.5
	CAPE MAY CITY	1105	494	15825	1914	0.000	1.840	.879	2.016	.906	.965	41.5
	CAPE MAY POINT BORO.	1105	55	15825	145	0.000	.011	.225	.013	.079	.080	41.5
	DENNIS TWP.	1105	503	15825	1856	1.623	.318	2.017	.373	1.319	1.338	41.5
	LOWER TWP.	1105	1205	15825	8777	3.187	1.628	2.583	1.496	2.466	2.422	41.5
	MIDDLE TWP.	1105	1287	15825	5549	5.078	1.778	2.422	1.861	3.093	3.120	41.5
	NORTH WILDWOOD CITY	1105	493	15825	2205	0.000	1.624	.524	.469	.716	.331	41.5
	OCEAN CITY CITY	1105	1685	15825	7315	0.000	2.424	3.385	1.789	1.936	1.725	41.5
	SEA ISLE CITY CITY	1105	246	15825	1230	0.000	.538	.980	.354	.506	.445	41.5
	STONE HARBOR BORO.	1105	104	15825	544	0.000	.899	.881	.823	.593	.568	41.5
	UPPER TWP.	1105	564	15825	3915	6.968	.962	3.750	.926	3.893	3.881	41.5
	WEST CAPE MAY BORO.	1105	175	15825	473	0.000	.105	.333	.120	.146	.151	41.5
	WEST WILDWOOD BORO.	1105	47	15825	215	0.000	.022	.147	.019	.056	.055	41.5
	WILDWOOD CITY	1105	738	15825	1896	.	.	.	.	.	0.000	41.5
	WILDWOOD CREST BORO.	1105	311	15825	1641	0.000	2.431	.960	1.368	1.130	.776	41.5
	WOODBINE BORO.	1105	274	15825	702	3.089	.153	.334	.164	1.192	1.196	41.5
CUMBERLAND												
	BRIDGETON CITY	1459	3167	14996	6715	.	.	.	.	.	0.000	45.0
	COMMERCIAL TWP.	1459	560	14996	1781	0.000	.126	.885	.124	.337	.336	45.0
	DEERFIELD TWP.	1459	315	14996	1012	0.000	.091	.789	.073	.294	.287	45.0
	DOWNE TWP.	1459	335	14996	636	0.000	.068	.467	.052	.178	.173	45.0
	FAIRFIELD TWP.	1459	545	14996	1869	2.911	.097	.807	.071	1.272	1.263	45.0
	GREENWICH TWP.	1459	181	14996	331	0.000	.026	.596	.017	.207	.204	45.0
	HOPEWELL TWP.	1459	335	14996	1413	4.285	.088	1.503	.100	1.959	1.963	45.0
	LAWRENCE TWP.	1459	348	14996	810	.000	.067	.772	.053	.280	.275	45.0
	MAURICE RIVER TWP.	1459	472	14996	1257	0.000	.129	.890	.066	.340	.319	45.0
	MILLVILLE CITY	1459	3118	14996	9806	.	.	.	.	.	0.000	45.0
	SHILOH BORO.	1459	87	14996	150	0.000	.010	.463	.010	.158	.158	45.0
	STOW CREEK TWP.	1459	176	14996	500	0.000	.025	.907	.021	.310	.309	45.0
	UPPER DEERFIELD TWP.	1459	505	14996	2422	10.536	.582	1.847	.348	4.322	4.244	45.0
	VINELAND CITY	1459	4851	14996	19045	.	.	.	.	.	0.000	45.0
ESSEX												
	BELLEVILLE TWP.	737	4462	25506	13280	.	.	.	.	.	0.000	39.1
	BLOOMFIELD TWP.	737	7699	25506	18158	.	.	.	.	.	0.000	39.1
	CALDWELL BORO. TWP.	45	1137	7759	3190	.009	.347	.661	.314	.339	.328	21.0
	CEDAR GROVE TWP.	45	494	7759	4114	.534	.782	1.062	.788	.793	.795	21.0
	EAST ORANGE CITY	1100	12252	21021	26603	.	.	.	.	.	0.000	53.8

	ESSEX FELLS TWP.	45	267	7759	722	.322	.040	1.112	.039	.491	.491	21.0
	FAIRFIELD TWP.	45	197	7759	2315	2.041	4.525	.949	5.254	2.505	2.748	21.0
	GLEN RIDGE BORO. TWP	737	1554	25506	2388	.016	.141	1.221	.151	.459	.462	39.1
	IRVINGTON TOWN	977	8521	15607	21674	.	.	.	.	.	0.000	48.2
	LIVINGSTON TWP.	45	768	7759	8687	2.154	3.561	2.890	3.600	2.869	2.881	21.0
	MAPLEWOOD TWP.	977	4365	15607	7780	.800	.675	1.803	.679	1.093	1.094	48.2
	MILLBURN TWP.	45	2252	7759	6792	2.096	2.718	2.778	2.087	2.531	2.320	21.0
	MONTCLAIR TWP.	737	8011	25506	14247	.319	1.204	2.567	1.315	1.363	1.400	39.1
	NEWARK CITY	6803	48278	48278	87711	.	.	.	.	.	0.000	63.3
	NORTH CALDWELL TWP.	45	176	7759	1927	.410	.074	1.421	.072	.635	.634	21.0
	NUTLEY TWP.	737	3781	25506	10425	.040	1.908	1.375	1.826	1.108	1.080	39.1
	ORANGE CITY TWP.	1100	4529	21021	11331	.	.	.	.	.	0.000	53.8
	ROSELAND BORO.	45	186	7759	1821	1.610	2.289	.752	2.812	1.550	1.725	21.0
	SOUTH ORANGE VILL TW	977	2722	15607	5084	.079	.511	1.552	.494	.714	.708	48.2
	VERONA TWP.	45	1686	7759	5453	.089	.490	1.286	.411	.621	.595	21.0
	WEST CALDWELL TWP.	45	594	7759	3501	1.417	1.502	1.251	1.427	1.390	1.365	21.0
	WEST ORANGE TWP.	1100	4239	21021	14644	3.499	2.231	2.403	2.434	2.711	2.779	53.8
GLOUCESTER												
	CLAYTON BORO.	1442	506	15315	2109	1.120	.321	.444	.216	.628	.593	41.1
	DEPTFORD TWP.	1442	891	15315	8716	4.445	3.120	1.746	2.577	3.104	2.922	41.1
	EAST GREENWICH TWP.	1442	388	15315	1767	4.560	.360	.891	.376	1.937	1.942	41.1
	ELK TWP.	1442	337	15315	1313	2.011	.089	.427	.121	.843	.853	41.1
	FRANKLIN TWP.	1442	1009	15315	4832	2.800	.483	1.043	.459	1.442	1.434	41.1
	GLASSBORO BORO.	1442	1040	15315	5126	.	.	.	.	.	0.000	41.1
	GREENWICH TWP.	1442	377	15315	1849	2.011	4.896	.639	4.031	2.515	2.227	41.1
	HARRISON TWP.	1442	417	15315	1671	3.920	.110	.790	.086	1.606	1.599	41.1
	LOGAN TWP.	1442	294	15315	1748	5.943	1.985	.794	2.590	2.907	3.109	41.1
	MANTUA TWP.	1442	761	15315	3524	4.289	.624	1.088	.518	2.000	1.965	41.1
	MONROE TWP.	1442	1262	15315	9529	4.901	1.439	1.642	1.403	2.660	2.648	41.1
	NATIONAL PARK BORO.	1442	330	15315	1115	.179	.052	.378	.038	.203	.198	41.1
	NEWFIELD BORO.	1442	193	15315	567	0.000	.168	.377	.133	.182	.170	41.1
	PAULSBORO BORO.	1442	1178	15315	2418	.	.	.	.	.	0.000	41.1
	PITMAN BORO.	1442	1378	15315	3399	.191	.554	.951	.461	.565	.534	41.1
	SOUTH HARRISON TWP.	1442	152	15315	647	.403	.015	.523	.013	.314	.313	41.1
	SWEDESBORO BORO.	1442	453	15315	731	.094	.164	.290	.116	.182	.166	41.1
	WASHINGTON TWP.	1442	490	15315	13805	3.874	2.595	4.213	3.059	3.561	3.715	41.1
	WENONAH BORO.	1442	343	15315	833	.096	.028	.761	.021	.295	.293	41.1
	WEST DEPTFORD TWP.	1442	807	15315	7670	3.740	5.009	1.586	3.513	3.445	2.946	41.1
	WESTVILLE BORO.	1442	699	15315	1837	.066	.392	.422	.313	.293	.267	41.1
	WOODBURY CITY	1442	1664	15315	4158	.	.	.	.	.	0.000	41.1
	WOODBURY HEIGHTS BOR	1442	236	15315	1115	.107	.373	.725	.231	.402	.354	41.1
	WOOLWICH TWP.	1442	112	15315	477	3.797	.269	.436	.206	1.501	1.480	41.1
HUDSON												
	BAYONNE CITY	1033	11522	21266	25950	.	.	.	.	.	0.000	50.2
	EAST NEWARK BORO.	1033	321	21266	743	.001	.132	.149	.142	.094	.097	50.2
	GUTTENBERG TOWN	5526	1015	39657	3695	.006	.195	.556	.168	.253	.243	63.3
	HARRISON TOWN	1033	2248	21266	5041	.135	1.136	.482	1.236	.584	.618	50.2
	HOBOKEN CITY	5526	9007	39657	15403	.	.	.	.	.	0.000	63.3
	JERSEY CITY	5632	47248	47248	83838	.	.	.	.	.	0.000	63.3
	KEARNY TOWN	1033	6107	21266	12746	4.978	3.159	1.276	2.889	3.137	3.047	50.2
	NORTH BERGEN TWP.	5526	7098	39657	19541	.	.	.	.	.	0.000	63.3
	SECAUCUS TOWN	1033	1069	21266	5659	4.392	6.269	1.137	7.270	3.933	4.266	50.2
	UNION CITY	5526	12307	39657	21076	.	.	.	.	.	0.000	63.3
	WEEHAWKEN TWP.	5526	3223	39657	5180	.216	1.555	.516	2.143	.762	.958	63.3
	WEST NEW YORK TOWN	5526	7007	39657	14736	.	.	.	.	.	0.000	63.3
HUNTERDON												
	ALEXANDRIA TWP.	2979	307	21228	1244	0.000	.041	.776	.033	.272	.269	40.3
	BETHLEHEM TWP.	2979	273	21228	1078	0.000	.086	.945	.090	.344	.345	40.3
	BLOOMSBURY BORO.	2979	178	21228	333	0.000	.060	.289	.048	.116	.112	40.3
	CALIFON BORO.	2979	143	21228	403	0.000	.045	.669	.048	.238	.239	40.3
	CLINTON TOWN	2979	247	21228	807	.152	.272	.663	.291	.362	.369	40.3

	CLINTON TWP.	2979	441	21228	3520	4.008	1.590	1.973	1.518	2.524	2.500	40.3
	DELAWARE TWP.	2979	613	21228	1609	.001	.093	.962	.056	.352	.340	40.3
	EAST AMWELL TWP.	2979	458	21228	1538	0.000	.145	1.075	.172	.407	.416	40.3
	FLEMINGTON BORO.	2979	683	21228	1809	.020	.721	.247	.684	.329	.317	40.3
	FRANKLIN TWP.	2979	294	21228	1024	.063	.131	.801	.123	.332	.329	40.3
	FRENCHTOWN BORO.	2979	326	21228	580	0.000	.092	.306	.088	.133	.131	40.3
	GLEN GARDNER BORO.	2979	179	21228	750	0.000	.024	.545	.024	.189	.189	40.3
	HAMPTON BORO.	2979	218	21228	577	0.000	.019	.306	.018	.108	.108	40.3
	HIGH BRIDGE BORO.	2979	508	21228	1447	0.000	.070	.674	.061	.248	.245	40.3
	HOLLAND TWP.	2979	405	21228	1764	0.000	.136	.593	.065	.243	.220	40.3
	KINGWOOD TWP.	2979	449	21228	1178	0.000	.106	.653	.102	.253	.252	40.3
	LAMBERTVILLE CITY	2979	1096	21228	1727	0.000	.281	.405	.294	.229	.233	40.3
	LEBANON BORO.	2979	152	21228	427	.170	.129	.576	.141	.292	.296	40.3
	LEBANON TWP.	2979	552	21228	1976	0.000	.182	.902	.199	.361	.367	40.3
	MILFORD BORO.	2979	202	21228	516	0.000	.113	.303	.044	.139	.116	40.3
	RARITAN TWP.	2979	504	21228	5781	3.570	1.304	2.289	1.085	2.388	2.315	40.3
	READINGTON TWP.	2979	782	21228	4781	6.019	1.208	2.071	1.451	3.099	3.180	40.3
	STOCKTON BORO.	2979	121	21228	261	0.000	.024	.257	.021	.094	.093	40.3
	TEWKSBURY TWP.	2979	398	21228	1702	.697	.189	2.025	.186	.970	.969	40.3
	UNION TWP.	2979	224	21228	1426	1.087	.400	1.017	.500	.835	.868	40.3
	WEST AMWELL TWP.	2979	235	21228	849	0.000	.115	.521	.105	.212	.208	40.3
MERCER												
	EAST WINDSOR TWP.	542	378	7340	8853	1.878	2.303	2.183	1.953	2.122	2.005	29.5
	EWING TWP.	542	1665	7340	12167	2.296	3.917	2.191	3.417	2.801	2.635	29.5
	HAMILTON TWP.	1793	5277	25835	32967	3.195	5.544	5.123	5.095	4.621	4.471	48.4
	HIGHTSTOWN BORO.	542	738	7340	2007	.049	.390	.709	.350	.383	.369	29.5
	HOPEWELL BORO.	542	392	7340	774	0.000	.172	.561	.154	.244	.238	29.5
	HOPEWELL TWP.	542	688	7340	3974	4.834	1.795	1.873	1.750	2.834	2.819	29.5
	LAWRENCE TWP.	1793	1104	25835	9342	1.856	7.767	2.373	7.278	3.999	3.835	48.4
	PENNINGTON BORO.	542	360	7340	931	.036	.195	.921	.194	.384	.384	29.5
	PRINCETON BORO.	542	1623	7340	3248	.033	1.819	.827	1.742	.893	.867	29.5
	PRINCETON TWP.	542	749	7340	5226	1.539	1.159	2.091	1.384	1.596	1.671	29.5
	TRENTON CITY	1793	19454	25835	30325	.	.	.	.	.	0.000	48.4
	WASHINGTON TWP.	542	241	7340	2482	2.940	.507	.781	.489	1.409	1.403	29.5
	WEST WINDSOR TWP.	542	506	7340	5547	5.346	4.195	2.948	4.800	4.163	4.365	29.5
MIDDLESEX												
	CARTERET BORO.	1409	1569	15810	6606	.	.	.	.	.	0.000	46.0
	CRANBURY TWP.	647	265	3720	892	1.635	.946	1.039	.821	1.207	1.165	37.6
	DUNELLEN BORO.	523	1024	7804	2447	.006	.257	.658	.198	.307	.287	34.4
	EAST BRUNSWICK TWP.	1302	797	12043	15448	.984	4.160	4.581	4.292	3.242	3.286	43.1
	EDISON TWP.	523	2530	7804	32872	2.844	12.438	6.479	13.251	7.254	7.525	34.4
	HELMETTA BORO.	647	120	3720	463	.092	.050	.351	.027	.164	.156	37.6
	HIGHLAND PARK BORO.	1302	2113	12043	5847	.059	.348	.790	.291	.399	.380	43.1
	JAMESBURG BORO.	647	421	3720	2034	.034	.134	.511	.135	.226	.227	37.6
	METUCHEN BORO.	523	1150	7804	4964	.086	.878	1.547	.832	.837	.822	34.4
	MIDDLESEX BORO.	523	781	7804	4785	.235	.920	1.173	.693	.776	.700	34.4
	MILLTOWN BORO.	1302	543	12043	2543	.054	.280	1.071	.227	.469	.451	43.1
	MONROE TWP.	647	483	3720	9889	12.031	1.947	1.444	2.115	5.141	5.197	37.6
	NEW BRUNSWICK CITY	1302	5925	12043	12762	.	.	.	.	.	0.000	43.1
	NORTH BRUNSWICK TWP.	1302	934	12043	12100	1.818	3.729	2.642	3.352	2.730	2.604	43.1
	OLD BRIDGE TWP.	647	1320	3720	20591	6.530	1.354	3.723	1.326	3.869	3.859	37.6
	PERTH AMBOY CITY	1409	6915	15810	14354	.	.	.	.	.	0.000	46.0
	PISCATAWAY TWP.	523	1659	7804	14376	3.179	7.026	3.134	6.338	4.447	4.217	34.4
	PLAINSBORO TWP.	647	265	3720	7326	2.064	3.103	1.528	3.810	2.232	2.467	37.6
	SAYREVILLE BORO.	1409	1402	15810	13087	2.965	2.346	2.322	2.022	2.544	2.436	46.0
	SOUTH AMBOY CITY	1409	1328	15810	2960	.116	.321	.438	.249	.292	.268	46.0
	SOUTH BRUNSWICK TWP.	647	589	3720	9866	7.445	6.338	2.688	7.600	5.490	5.911	37.6
	SOUTH PLAINFIELD BOR	523	661	7804	6821	.700	4.243	1.781	3.704	2.241	2.062	34.4
	SOUTH RIVER BORO.	1302	1731	12043	5127	.086	.329	.620	.281	.345	.329	43.1

	SPOTSWOOD BORO.	647	257	3720	2991	.035	.245	.668	.208	.316	.303	37.6
	WOODBRIDGE TWP.	1409	4595	15810	34085	2.090	11.644	5.306	11.045	6.347	6.147	46.0
MONMOUTH												
	ABERDEEN TWP.	423	555	8798	6035	.272	1.087	1.660	.951	1.006	.961	31.5
	ALLENHURST BORO.	731	216	13980	299	.006	.128	.573	.123	.236	.234	42.5
	ALLENTOWN BORO.	757	187	5476	671	.000	.069	.513	.106	.194	.207	27.0
	ASBURY PARK CITY	731	2989	13980	6925	.	.	.	.	.	0.000	42.5
	ATL. HIGHLANDS BORO.	423	713	8798	1791	.029	.258	.649	.234	.312	.304	31.5
	AVON BY THE SEA BORO	731	488	13980	1006	.009	.154	.326	.146	.163	.161	42.5
	BELMAR BORO.	731	1073	13980	2780	.037	.555	.371	.496	.321	.301	42.5
	BRADLEY BEACH BORO.	731	868	13980	2051	.009	.209	.278	.230	.165	.172	42.5
	BRIELLE BORO.	731	242	13980	1785	.084	.555	.884	.602	.508	.523	42.5
	COLTS NECK TWP.	757	274	5476	2738	.080	.356	1.818	.307	.752	.735	27.0
	DEAL BORO.	731	181	13980	467	.052	.113	.506	.109	.224	.222	42.5
	EATONTOWN BORO.	531	531	9889	5585	.715	4.013	.854	4.135	1.861	1.901	39.8
	ENGLISHTOWN BORO.	757	134	5476	453	.061	.109	.409	.168	.193	.213	27.0
	FAIR HAVEN BORO.	531	590	9889	1903	.035	.217	1.015	.216	.422	.422	39.8
	FARMINGDALE BORO.	757	122	5476	581	.006	.148	.372	.155	.175	.177	27.0
	FREEHOLD BORO.	757	1383	5476	3899	.034	.934	.812	.866	.593	.571	27.0
	FREEHOLD TWP.	757	450	5476	8607	5.413	2.739	2.786	2.816	3.646	3.672	27.0
	HAZLET TWP.	423	321	8798	7309	.239	1.198	1.932	1.132	1.123	1.101	31.5
	HIGHLANDS BORO.	423	664	8798	2356	.017	.296	.361	.282	.225	.220	31.5
	HOLMDEL TWP.	423	175	8798	3533	1.464	3.671	2.455	3.088	2.530	2.336	31.5
	HOWELL TWP.	757	1280	5476	13357	5.259	1.949	2.870	2.080	3.359	3.403	27.0
	INTERLAKEN BORO.	731	198	13980	380	.014	0.000	.645	0.000	.220	.220	42.5
	KEANSBURG BORO.	423	1294	8798	3878	.	.	.	.	.	0.000	31.5
	KEYPORT BORO.	423	1186	8798	3235	.031	.535	.403	.392	.323	.275	31.5
	LITTLE SILVER BORO.	531	278	9889	2048	.222	.400	1.253	.406	.625	.627	39.8
	LOCH ARBOUR VILLAGE	731	92	13980	139	.008	.018	.552	.015	.193	.191	42.5
	LONG BRANCH CITY	531	4233	9889	11651	.	.	.	.	.	0.000	39.8
	MANALAPAN TWP.	757	473	5476	8920	5.119	1.449	2.812	1.706	3.126	3.212	27.0
	MANASQUAN BORO.	731	702	13980	2262	.065	.568	.563	.490	.399	.373	42.5
	MARLBORO TWP.	757	328	5476	8579	5.622	1.340	3.602	1.473	3.521	3.565	27.0
	MATAWAN BORO.	423	444	8798	3594	.048	.512	.999	.485	.520	.510	31.5
	MIDDLETOWN TWP.	423	2808	8798	23379	2.971	6.043	5.783	7.414	4.932	5.389	31.5
	MILLSTONE TWP.	757	362	5476	1648	.016	.256	.936	.395	.403	.449	27.0
	MONMOUTH BEACH BORO.	531	250	9889	1557	.038	.129	.966	.139	.378	.381	39.8
	NEPTUNE TWP.	731	2847	13980	10574	.	.	.	.	.	0.000	42.5
	NEPTUNE CITY BORO.	731	502	13980	2154	.006	.443	.359	.384	.269	.250	42.5
	OCEAN TWP.	731	1119	13980	9575	1.419	2.529	2.090	2.324	2.013	1.945	42.5
	OCEANPORT BORO.	531	317	9889	2114	.391	.683	1.005	.348	.693	.582	39.8
	RED BANK BORO.	531	1831	9889	4688	.010	1.848	.756	1.828	.871	.865	39.8
	ROOSEVELT BORO.	757	128	5476	330	0.000	.017	.582	.017	.200	.200	27.0
	RUMSON BORO.	531	754	9889	2423	.758	.440	1.354	.450	.851	.854	39.8
	SEA BRIGHT BORO.	531	209	9889	931	0.000	.353	.467	.274	.273	.247	39.8
	SEA GIRT BORO.	731	203	13980	881	.103	.185	.791	.187	.360	.360	42.5
	SHREWSBURY BORO.	531	124	9889	1107	.187	1.317	.945	2.032	.816	1.054	39.8
	SHREWSBURY TWP.	531	75	9889	509	0.000	0.000	.203	0.000	.068	.068	39.8
	SOUTH BELMAR BORO.	731	199	13980	675	.002	.094	.222	.099	.106	.108	42.5
	SPRING LAKE BORO.	731	644	13980	1392	.073	.461	.838	.458	.457	.456	42.5
	SPRING LAKE HGTS BOR	731	326	13980	2608	.113	.396	.533	.419	.347	.355	42.5
	TINTON FALLS BORO.	531	282	9889	4650	3.470	1.683	1.452	1.537	2.201	2.153	39.8
	UNION BEACH BORO.	423	638	8798	2001	.136	.340	.519	.286	.332	.313	31.5
	UPPER FREEHOLD TWP.	757	355	5476	1117	.002	.146	.777	.133	.308	.304	27.0
	WALL TWP.	731	1091	13980	7558	7.359	3.478	1.693	3.717	4.177	4.256	42.5
	WEST LONG BRANCH BOR	531	417	9889	2514	.153	.779	.854	.713	.595	.573	39.8

MORRIS											
	BOONTON TOWN	213	1314	5306	3163	.099	.449	.619	.452	.389	.390	23.8
	BOONTON TWP.	213	146	5306	1278	.005	.072	.648	.015	.242	.223	23.8
	BUTLER BORO.	444	749	6103	2732	.136	.367	.700	.335	.401	.390	29.5
	CHATHAM BORO.	357	1010	8275	3123	.376	.636	1.065	.652	.692	.698	24.4
	CHATHAM TWP.	357	351	8275	3680	1.264	.210	1.573	.196	1.016	1.011	24.4
	CHESTER BORO.	975	136	6713	459	0.000	.404	.438	.431	.281	.290	28.7
	CHESTER TWP.	975	256	6713	1980	.027	.158	1.244	.167	.476	.479	28.7
	DENVILLE TWP.	444	1019	6103	4984	7.276	.979	1.365	1.030	3.207	3.224	29.5
	DOVER TOWN	975	2287	6713	5220	.255	.819	.639	.880	.571	.591	28.7
	EAST HANOVER TWP.	213	251	5306	3142	3.401	2.925	1.135	3.039	2.487	2.525	23.8
	FLORHAM PARK BORO.	357	240	8275	2992	4.549	2.928	1.200	2.873	2.892	2.874	24.4
	HANOVER TWP.	213	421	5306	3887	5.491	4.052	1.180	3.773	3.574	3.482	23.8
	HARDING TWP.	357	309	8275	1406	.029	.340	1.443	.348	.604	.607	24.4
	JEFFERSON TWP.	444	932	6103	6547	.005	.308	1.196	.290	.503	.497	29.5
	KINNELON BORO.	444	220	6103	2860	.969	.165	1.343	.154	.826	.822	29.5
	LINCOLN PARK BORO.	444	435	6103	4003	1.378	.511	.991	.550	.960	.973	29.5
	MADISON BORO.	357	1518	8275	5490	.502	1.212	1.339	1.265	1.018	1.035	24.4
	MENDHAM BORO.	357	288	8275	1755	0.000	.275	1.153	.335	.476	.496	24.4
	MENDHAM TWP.	357	220	8275	1648	.002	.060	1.522	.050	.528	.525	24.4
	MINE HILL TWP.	975	288	6713	1235	1.616	.067	.492	.087	.725	.732	28.7
	MONTVILLE TWP.	213	727	5306	5068	3.752	1.677	1.928	1.808	2.453	2.496	23.8
	MORRIS TWP.	357	1031	8275	7314	4.283	3.383	2.506	3.863	3.391	3.551	24.4
	MORRIS PLAINS BORO.	357	426	8275	1963	.502	1.476	.878	1.596	.952	.992	24.4
	MORRISTOWN TOWN	357	2211	8275	6787	.394	3.070	.953	3.547	1.472	1.631	24.4
	MOUNTAIN LAKES BORO.	213	467	5306	1254	1.158	.289	1.452	.362	.966	.991	23.8
	MOUNT ARLINGTON BORO	975	194	6713	1320	0.000	.119	.433	.155	.184	.196	28.7
	MOUNT OLIVE TWP.	975	986	6713	8434	.002	1.193	1.296	1.637	.830	.978	28.7
	NETCONG BORO.	975	389	6713	1337	0.000	.123	.310	.107	.144	.139	28.7
	PAR-TROY HILLS TWP.	213	1980	5306	18686	9.547	9.547	3.060	11.485	7.385	8.031	23.8
	PASSAIC TWP.	357	672	8275	2817	.000	.273	1.114	.187	.463	.434	24.4
	PEQUANNOCK TWP.	444	517	6103	4354	2.386	.558	1.086	.469	1.343	1.314	29.5
	RANDOLPH TWP.	975	532	6713	7215	5.776	.937	2.021	1.039	2.912	2.945	28.7
	RIVERDALE BORO.	444	225	6103	866	1.568	.385	.349	.434	.767	.783	29.5
	ROCKAWAY BORO.	444	622	6103	2338	.465	.551	.560	.528	.525	.518	29.5
	ROCKAWAY TWP.	444	699	6103	7100	4.466	1.779	1.638	1.486	2.628	2.530	29.5
	ROXBURY TWP.	975	885	6713	6714	4.178	1.128	1.603	1.124	2.303	2.302	28.7
	VICTORY GARDENS BORO	975	88	6713	496	.005	.010	.188	.002	.068	.065	28.7
	WASHINGTON TWP.	975	672	6713	5167	0.000	.293	1.725	.305	.673	.677	28.7
	WHARTON BORO.	444	686	6103	2085	1.223	.300	.495	.219	.673	.646	29.5
OCEAN												
	BARNEGAT TWP.	570	357	6808	4377	1.838	.252	.704	.257	.931	.933	53.3
	BARNEGAT LIGHT BORO.	570	35	6808	346	0.000	.210	.297	.212	.169	.170	53.3
	BAY HEAD BORO.	557	226	7368	549	.047	.195	.639	.187	.294	.291	46.4
	BEACH HAVEN BORO.	570	171	6808	677	0.000	.527	.208	.426	.245	.211	53.3
	BEACHWOOD BORO.	570	397	6808	3224	.259	.116	.731	.112	.369	.367	53.3
	BERKELEY TWP.	570	640	6808	19083	3.341	1.086	.342	1.675	1.590	1.786	53.3
	BRICK TWP.	557	1320	7368	26502	1.198	3.507	3.514	3.617	2.740	2.776	46.4
	DOVER TWP.	557	1377	7368	28872	5.433	7.190	4.217	6.398	5.614	5.349	46.4
	EAGLESWOOD TWP.	570	183	6808	560	0.000	.152	.199	.169	.117	.122	53.3
	HARVEY CEDARS BORO.	570	39	6808	183	0.000	.070	.243	.047	.105	.097	53.3
	ISLAND HEIGHTS BORO.	557	188	7368	574	.052	.077	.366	.065	.165	.161	46.4
	JACKSON TWP.	570	973	6808	11794	12.914	1.773	2.276	1.862	5.654	5.684	53.3
	LACEY TWP.	570	499	6808	8579	1.331	1.570	1.221	1.566	1.374	1.373	53.3
	LAKEHURST BORO.	570	273	6808	1049	.068	.142	.143	.159	.117	.123	53.3
	LAKEWOOD TWP.	557	2256	7368	17207	.	.	.	.	.	0.000	46.4
	LAVALLETTE BORO.	557	153	7368	1125	0.000	.208	.249	.320	.152	.190	46.4
	LITTLE EGG HARBOR TW	570	383	6808	5342	0.000	.370	.679	.388	.350	.356	53.3
	LONG BEACH TWP.	570	189	6808	1726	0.000	.645	.295	.392	.314	.229	53.3
	MANCHESTER TWP.	570	431	6808	20023	3.032	.767	.300	.637	1.366	1.323	53.3
	MANTOLOKING BORO.	557	55	7368	172	0.000	.050	.641	.055	.231	.232	46.4
	OCEAN TWP.	570	222	6808	2216	1.373	.242	.304	.251	.640	.643	53.3
	OCEAN GATE BORO.	570	244	6808	883	.012	.024	.159	.022	.065	.064	53.3
	PINE BEACH BORO.	570	126	6808	771	.038	.039	.378	.024	.152	.147	53.3

	PLUMSTED TWP.	570	380	6808	2187	.013	.123	.597	.119	.244	.243	53.3
	POINT PLEASANT BORO.	557	590	7368	7251	.062	1.103	1.288	1.116	.818	.822	46.4
	PT PLEASANT BEACH BO	557	674	7368	2130	.076	1.352	.414	2.086	.614	.859	46.4
	SEASIDE HEIGHTS BORO	557	280	7368	1072	0.000	.744	.021	.510	.255	.177	46.4
	SEASIDE PARK BORO.	557	249	7368	854	0.000	.338	.247	.271	.195	.173	46.4
	SHIP BOTTOM BORO.	570	148	6808	678	0.000	.443	.166	.353	.203	.173	53.3
	SOUTH TOMS RIVER BOR	570	153	6808	1097	.094	.129	.292	.097	.171	.161	53.3
	STAFFORD TWP.	570	585	6808	5499	2.662	1.166	.575	1.253	1.468	1.497	53.3
	SURF CITY BORO.	570	79	6808	690	0.000	.292	.144	.270	.145	.138	53.3
	TUCKERTON BORO.	570	301	6808	1312	0.000	.134	.170	.117	.101	.096	53.3
PASSAIC												
	BLOOMINGDALE BORO.	755	587	12245	2789	3.388	.114	.652	.092	1.384	1.377	29.2
	CLIFTON CITY	1969	8770	19507	29174	1.419	7.102	2.998	6.769	3.840	3.729	51.8
	HALEDON BORO.	755	911	12245	2536	.201	.216	.350	.161	.256	.238	29.2
	HAWTHORNE BORO.	755	2277	12245	6865	.412	.815	.973	.649	.733	.678	29.2
	LITTLE FALLS TWP.	755	1030	12245	4273	.820	.764	.737	.858	.774	.805	29.2
	NORTH HALEDON BORO.	755	517	12245	2548	1.268	.125	.672	.119	.688	.686	29.2
	PASSAIC CITY	1969	10737	19507	18727	.	.	.	.	.	0.000	51.8
	PATERSON CITY	3714	22560	22560	43743	.	.	.	.	.	0.000	63.3
	POMPTON LAKES BORO.	755	613	12245	4003	1.547	.336	.809	.307	.897	.887	29.2
	PROSPECT PARK BORO.	755	1064	12245	1795	0.000	.095	.286	.087	.127	.125	29.2
	RINGWOOD BORO.	755	475	12245	4056	.017	.132	1.118	.114	.422	.416	29.2
	TOTOWA BORO.	755	718	12245	3491	2.529	2.252	.676	2.331	1.819	1.845	29.2
	WANAQUE BORO.	755	666	12245	3197	7.482	.203	.682	.157	2.789	2.774	29.2
	WAYNE TWP.	755	1283	12245	15974	14.166	6.076	3.297	6.542	7.846	8.002	29.2
	WEST MILFORD TWP.	755	1609	12245	8680	.011	.388	1.636	.322	.679	.657	29.2
	WEST PATERSON BORO.	755	495	12245	4316	2.265	.883	.741	.961	1.296	1.322	29.2
SALEM												
	ALLOWAY TWP.	1105	375	15825	959	0.000	.037	1.241	.027	.426	.423	41.5
	CARNEYS POINT TWP.	1105	716	15825	3156	6.737	.549	2.114	.549	3.133	3.133	41.5
	ELMER BORO.	1105	307	15825	545	0.000	.110	.751	.094	.287	.282	41.5
	ELSINBORO TWP.	1105	198	15825	490	0.000	.028	.958	.046	.329	.335	41.5
	LOWER ALLOWAYS CR TW	1105	290	15825	663	0.000	.708	.980	.503	.563	.494	41.5
	MANNINGTON TWP.	1105	206	15825	527	0.000	.362	.816	.355	.393	.390	41.5
	OLDMANS TWP.	1105	233	15825	571	6.405	.382	1.031	.283	2.606	2.573	41.5
	PENNS GROVE BORO.	1105	820	15825	1896	.	.	.	.	.	0.000	41.5
	PENNSVILLE TWP.	1105	1070	15825	5310	5.292	3.061	3.602	2.445	3.985	3.780	41.5
	PILESGROVE TWP.	1105	272	15825	1090	.000	.163	1.764	.134	.642	.633	41.5
	PITTSGROVE TWP.	1105	672	15825	2733	.002	.335	1.840	.360	.726	.734	41.5
	QUINTON TWP.	1105	287	15825	952	0.000	.087	.766	.060	.285	.276	41.5
	SALEM CITY	1105	1252	15825	2585	.	.	.	.	.	0.000	41.5
	UPPER PITTSGROVE TWP	1105	347	15825	1073	0.000	.126	1.167	.107	.431	.425	41.5
	WOODSTOWN BORO.	1105	500	15825	1276	0.000	.190	1.107	.182	.432	.429	41.5
SOMERSET												
	BEDMINSTER TWP.	673	321	7780	3629	.172	1.579	1.738	1.532	1.163	1.148	30.8
	BERNARDS TWP.	673	599	7780	6599	4.412	2.820	3.157	2.139	3.463	3.236	30.8
	BERNARDSVILLE BORO.	673	605	7780	2485	.389	.590	1.659	.593	.879	.880	30.8
	BOUND BROOK BORO.	673	1502	7780	3699	.085	.308	.455	.172	.283	.237	30.8
	BRANCHBURG TWP.	277	272	6230	3907	2.978	1.257	2.098	1.185	2.111	2.087	32.0
	BRIDGEWATER TWP.	673	1087	7780	11563	6.299	5.648	4.142	5.731	5.363	5.390	30.8
	FAR HILLS BORO.	673	116	7780	251	.001	.098	.623	.111	.241	.245	30.8
	FRANKLIN TWP.	277	1414	6230	16763	4.558	5.946	4.039	7.259	4.848	5.285	32.0
	GREEN BROOK TWP.	673	180	7780	1447	.997	.658	.977	.666	.877	.880	30.8
	HILLSBOROUGH TWP.	277	663	6230	10780	7.040	1.157	3.416	1.147	3.871	3.868	32.0
	MANVILLE BORO.	277	812	6230	4152	.075	.459	.521	.258	.352	.285	32.0
	MILLSTONE BORO.	277	48	6230	170	.102	.011	.541	.010	.218	.218	32.0
	MONTGOMERY TWP.	277	303	6230	3216	3.728	1.345	2.134	1.247	2.402	2.370	32.0

	NORTH PLAINFIELD BOR	673	2294	7780	7333	.041	.559	1.118	.474	.573	.544	30.8
	PEAPACK GLADSTONE BO	673	325	7780	784	0.000	1.272	.852	1.104	.708	.652	30.8
	RARITAN BORO.	277	777	6230	2305	.339	1.130	.419	.953	.629	.570	32.0
	ROCKY HILL BORO.	277	90	6230	281	.111	.030	.644	.024	.261	.259	32.0
	SOMERVILLE BORO.	277	1417	6230	4557	.092	1.019	.670	.889	.594	.551	32.0
	SOUTH BOUND BROOK BO	277	435	6230	1617	.001	.087	.443	.065	.177	.170	32.0
	WARREN TWP.	673	552	7780	3633	6.164	2.350	2.237	3.133	3.583	3.844	30.8
	WATCHUNG BORO.	673	198	7780	1764	1.537	1.065	1.780	1.044	1.461	1.454	30.8
SUSSEX												
	ANDOVER BORO.	810	139	9373	269	0.000	.042	.180	.041	.074	.074	31.3
	ANDOVER TWP.	810	285	9373	1799	0.000	.223	.598	.212	.274	.270	31.3
	BRANCHVILLE BORO.	810	178	9373	364	0.000	.151	.192	.147	.114	.113	31.3
	BYRAM TWP.	810	385	9373	2792	0.000	.124	.809	.140	.311	.317	31.3
	FRANKFORD TWP.	810	507	9373	1768	0.000	.128	.521	.148	.216	.223	31.3
	FRANKLIN BORO.	810	661	9373	1906	0.000	.197	.310	.193	.169	.168	31.3
	FREDON TWP.	810	166	9373	946	0.000	.040	.509	.041	.183	.183	31.3
	GREEN TWP.	810	158	9373	887	0.000	.037	.499	.037	.179	.179	31.3
	HAMBURG BORO.	810	223	9373	993	0.000	.086	.340	.069	.142	.136	31.3
	HAMPTON TWP.	810	187	9373	1695	0.000	.180	.463	.202	.215	.222	31.3
	HARDYSTON TWP.	810	273	9373	2008	0.000	.117	.493	.105	.203	.199	31.3
	HOPATCONG BORO.	810	865	9373	5655	0.000	.105	1.013	.108	.373	.374	31.3
	LAFAYETTE TWP.	810	207	9373	668	0.000	.186	.426	.221	.204	.216	31.3
	MONTAGUE TWP.	810	194	9373	1061	0.000	.080	.272	.063	.117	.111	31.3
	NEWTON TOWN	810	1084	9373	3032	0.000	.334	.315	.329	.216	.214	31.3
	OGDENSBURG BORO.	810	199	9373	907	0.000	.040	.354	-.039	.131	.105	31.3
	SANDYSTON TWP.	810	224	9373	691	0.000	.040	.220	.037	.087	.086	31.3
	SPARTA TWP.	810	760	9373	5469	0.000	.364	1.483	.379	.616	.621	31.3
	STANHOPE BORO.	810	283	9373	1336	0.000	.052	.429	.041	.161	.157	31.3
	STILLWATER TWP.	810	474	9373	1537	0.000	.037	.441	.035	.160	.159	31.3
	SUSSEX BORO.	810	407	9373	880	0.000	.082	.104	.089	.062	.064	31.3
	VERNON TWP.	810	918	9373	7258	0.000	.561	1.344	.494	.635	.612	31.3
	WALPACK TWP.	810	22	9373	37	0.000	.003	.001	.004	.001	.001	31.3
	WANTAGE TWP.	810	575	9373	3125	0.000	.229	.655	.261	.295	.306	31.3
UNION												
	BERKELEY HEIGHTS TWP	565	329	11555	3874	1.094	2.752	1.612	2.880	1.819	1.862	32.9
	CLARK TWP.	470	429	10892	5508	.815	1.034	1.097	.854	.982	.922	28.8
	CRANFORD TWP.	470	2620	10892	8144	.505	1.490	1.709	1.174	1.234	1.129	28.8
	ELIZABETH CITY	1659	19331	19331	38889	.	.	.	.	.	0.000	59.8
	FANWOOD BORO.	565	428	11555	2454	.004	.156	.893	.158	.351	.352	32.9
	GARWOOD BORO.	470	520	10892	1666	.016	.391	.368	.327	.258	.237	28.8
	HILLSIDE TWP.	434	2644	14263	7077	.	.	.	.	.	0.000	38.8
	KENILWORTH BORO.	434	423	14263	2763	.620	1.489	.450	1.415	.853	.828	38.8
	LINDEN CITY.	434	3311	14263	14352	2.701	7.564	1.201	4.665	3.822	2.856	38.8
	MOUNTAINSIDE BORO.	470	221	10892	2395	1.551	.867	1.196	.738	1.205	1.162	28.8
	NEW PROVIDENCE BORO.	565	485	11555	4248	.409	1.213	1.308	1.093	.977	.937	32.9
	PLAINFIELD CITY	565	6670	11555	15065	.	.	.	.	.	0.000	32.9
	RAHWAY CITY	470	2707	10892	9581	.294	1.766	1.139	1.674	1.067	1.036	28.8
	ROSELLE BORO.	434	2392	14263	7585	.	.	.	.	.	0.000	38.8
	ROSELLE PARK BORO.	434	1852	14263	5057	.007	.299	.788	.251	.365	.349	38.8
	SCOTCH PLAINS TWP.	565	918	11555	7650	2.893	.618	1.810	.543	1.774	1.749	32.9
	SPRINGFIELD TWP.	470	663	10892	5778	1.694	1.622	1.079	1.435	1.465	1.403	28.8
	SUMMIT CITY	565	2726	11555	7643	.732	2.015	2.217	2.018	1.654	1.655	32.9
	UNION TWP.	434	3641	14263	18877	.892	4.556	2.254	4.413	2.568	2.520	38.8
	WESTFIELD TOWN	470	3650	10892	10256	.470	1.241	2.835	1.244	1.515	1.516	28.8
	WINFIELD TWP.	470	82	10892	691	.005	.003	.100	.003	.036	.036	28.8
WARREN												
	ALLAMUCHY TWP.	2979	175	21228	1557	0.000	.057	.634	.047	.230	.227	40.3
	ALPHA BORO.	2979	389	21228	971	.180	.095	.197	.097	.157	.158	40.3
	BELVIDERE TOWN	2979	518	21228	1038	0.000	.188	.203	.163	.130	.122	40.3
	BLAIRSTOWN TWP.	2979	417	21228	1852	0.000	.173	.607	.166	.260	.258	40.3
	FRANKLIN TWP.	2979	384	21228	848	0.000	.069	.373	.062	.148	.145	40.3
	FRELINGHUYSEN TWP.	2979	226	21228	625	0.000	.028	.346	.016	.125	.121	40.3

GREENWICH TWP.	2979	317	21228	669	.131	.131	.302	.158	.188	.197	40.3
HACKETTSTOWN TOWN	2979	844	21228	3030	0.000	.636	.458	.660	.364	.373	40.3
HARDWICK TWP.	2979	134	21228	406	0.000	.021	.295	.029	.105	.108	40.3
HARMONY TWP.	2979	314	21228	960	.360	.649	.334	1.001	.448	.565	40.3
HOPE TWP.	2979	197	21228	621	0.000	.031	.411	.034	.148	.148	40.3
INDEPENDENCE TWP.	2979	283	21228	1499	0.000	.062	.425	.060	.163	.162	40.3
KNOWLTON TWP.	2979	345	21228	907	0.000	.084	.294	.090	.126	.128	40.3
LIBERTY TWP.	2979	222	21228	878	0.000	.024	.404	.025	.143	.143	40.3
LOPATCONG TWP.	2979	399	21228	2026	1.799	.303	.304	.351	.802	.818	40.3
MANSFIELD TWP.	2979	376	21228	2849	0.000	.180	.455	.167	.212	.207	40.3
OXFORD TWP.	2979	326	21228	690	0.000	.051	.215	.051	.089	.089	40.3
PAHAQUARRY TWP.	2979	6	21228	9	0.000	0.000	.092	0.000	.031	.031	40.3
PHILLIPSBURG TOWN	2979	3186	21228	6183	.	.	.	.	.	0.000	40.3
POHATCONG TWP.	2979	426	21228	1323	.309	.212	.324	.256	.282	.296	40.3
WASHINGTON BORO.	2979	954	21228	2637	0.000	.281	.355	.240	.212	.198	40.3
WASHINGTON TWP.	2979	408	21228	1875	0.000	.161	.618	.180	.260	.266	40.3
WHITE TWP.	2979	396	21228	1337	0.000	.459	.330	.290	.263	.207	40.3

EXHIBIT 2

BASE DATA FOR MUNICIPAL HOUSING NEED CALCULATION BY REGION

Exhibit 2
BASE DATA BY HOUSING REGION

COAH Region	COLUMN A Percent Deficient	COLUMN B Excess Deficient Housing Units	COLUMN C 1993-1999 Regional Prospective Need	COLUMN D 1993-1999 Filtering Projections	COLUMN E 1990 Multifamily (5 Units or More) Unit Total	COLUMN F 1990 Pre-1940 Units
Northeast	.0290	7,002	4,787	4,895	193,286	255,434
Northwest	.0250	5,306	1,033	4,535	156,893	206,403
West Central	.0180	1,477	8,654	2,830	70,199	61,647
East Central	.0120	1,329	14,424	3,550	74,459	93,848
Southwest	.0150	1,751	8,993	2,994	63,582	80,208
South-Southwest	.0220	676	4,236	1,382	41,231	58,521
New Jersey		17,542	42,127	20,185	599,650	756,061

COAH Region	COLUMN G 1993-1999 Conversion Projections	COLUMN H 1990 2-4 Family Unit Totals	COLUMN I 1993-1999 Spontaneous Rehabilitation Projections	COLUMN J 1989 Regional Household Income Floor ($)	COLUMN K 1989 Weighted Regional Income Differences ($)	COLUMN L 1989 Unweighted Regional Income Differences ($)
Northeast	2,649	218,392	710	20,515	19,234,394,000	4,393,888
Northwest	2,229	150,817	597	23,705	16,299,646,900	3,698,545
West Central	930	44,103	249	31,008	8,828,753,140	1,835,119
East Central	886	45,844	237	22,719	11,539,122,100	2,526,644
Southwest	881	27,265	236	19,015	10,120,912,300	2,557,328
South-Southwest	775	40,576	207	18,343	3,422,312,000	1,234,261
New Jersey	8,351	526,997	2,237	—	69,445,140,000	16,245,786

EXHIBIT 3

BASE DATA FOR MUNICIPAL HOUSING NEED CALCULATION BY MUNICIPALITY

(Part II)

EXHIBIT 3
NEW JERSEY
COUNCIL ON AFFORDABLE HOUSING
BASE DATA FOR MUNICIPAL LOW & MODERATE INCOME
HOUSING NEED CALCULATION
3-FEB-93

COUNTY	NAME	ADJUSTED PRIOR CYCLE PROSPECTIVE NEED (1)	AVERAGE DEMOLITIONS 1988-1990 (2)	1990 MULTI-FAMILY UNITS (3)	1990 PRE-1940 UNITS (4)	1990 2-4 FAMILY UNITS (5)	1993 MEDIAN HSLD. INCOME (6)	REDUCTION (1987-1993) (7)	PRE-1987 CREDITS (8)	UNDEVELOPED RESIDENTIAL LAND (9)
	JOHNSONVILLE	248	5.00	2719	272	490	55927	439	101	5937
ATLANTIC										
	ABSECON CITY	66	1.67	154	495	121	46696	0	0	2010
	ATLANTIC CITY	1538	71.00	10725	7942	3945	22340	0	0	3387
	BRIGANTINE CITY	74	23.00	1690	425	1870	39588	0	0	1745
	BUENA BORO.	29	.67	87	416	350	30335	0	0	3715
	BUENA VISTA TWP.	1	.33	6	420	64	31123	0	0	23992
	CORBIN CITY	2	.67	0	41	7	35291	0	0	4683
	EGG HARBOR TWP.	327	8.00	1096	568	304	41353	0	0	32195
	EGG HARBOR CITY	18	.33	229	724	345	31794	0	0	6263
	ESTELL MANOR CITY	2	.67	0	74	3	45834	0	0	32282
	FOLSOM BORO.	0	0.00	0	51	8	44038	0	0	4718
	GALLOWAY TWP.	103	0.00	1813	745	370	46138	221	0	44329
	HAMILTON TWP.	113	4.00	948	632	241	44759	0	0	64124
	HAMMONTON TOWN	146	3.67	494	1392	624	37895	0	0	22707
	LINWOOD CITY	64	0.00	103	363	82	60618	0	0	1199
	LONGPORT BORO.	27	8.33	241	197	61	37910	0	0	15
	MARGATE CITY	58	10.00	1396	1235	726	44714	0	0	52
	MULLICA TWP.	5	1.67	5	253	36	40438	0	0	33478
	NORTHFIELD CITY	104	3.33	65	531	62	49086	0	0	843
	PLEASANTVILLE CITY	0	10.00	1585	1566	988	33041	0	0	1307
	PORT REPUBLIC CITY	0	0.00	0	103	12	50366	0	0	4341
	SOMERS POINT CITY	79	3.33	1781	420	454	34972	0	0	802
	VENTNOR CITY	34	11.67	1610	2791	1870	36432	0	0	384
	WEYMOUTH TWP.	1	.33	45	150	26	37840	0	0	7201
BERGEN										
	ALLENDALE BORO.	24	.33	8	537	87	86197	111	0	359
	ALPINE BORO.	18	1.67	0	95	8	116964	0	0	919
	BERGENFIELD BORO.	32	3.00	1356	2320	1444	50284	0	0	161
	BOGOTA BORO.	9	0.00	460	1773	523	50677	0	0	6
	CARLSTADT BORO.	66	5.67	136	875	1303	43408	0	0	86
	CLIFFSIDE PARK BORO.	50	19.33	4445	3180	3307	44660	0	0	3
	CLOSTER BORO.	27	6.33	15	654	219	68810	0	0	315
	CRESSKILL BORO.	17	2.33	42	531	113	66319	0	0	61
	DEMAREST BORO.	14	2.00	2	340	41	74966	0	0	112
	DUMONT BORO.	13	0.00	714	1842	923	53654	0	0	9
	EAST RUTHERFORD BORO	23	.67	920	1405	1744	37306	0	0	80
	EDGEWATER BORO.	13	1.33	1435	816	734	48496	41	0	19
	ELMWOOD PARK BORO.	24	5.00	663	1026	2629	42073	0	0	34
	EMERSON BORO.	25	1.00	16	288	115	67559	0	0	44
	ENGLEWOOD CITY	53	1.00	2606	3211	1536	51434	0	0	317
	ENGLEWOOD CLIFFS BOR	51	14.67	14	88	40	91805	0	0	32
	FAIR LAWN BORO.	55	1.67	633	2396	1483	54624	0	0	44
	FAIRVIEW BORO.	20	6.67	1144	1713	2488	36131	0	0	0
	FORT LEE BORO.	128	22.00	11080	1567	2345	51034	0	0	53

	FRANKLIN LAKES BORO.	62	7.67	0	239	42	111091	0	0	1031
	GARFIELD CITY	0	4.67	1394	5521	7538	34814	0	0	8
	GLEN ROCK BORO.	30	2.00	87	1388	103	72574	0	0	185
	HACKENSACK CITY	143	26.33	11174	3701	2575	42874	0	0	40
	HARRINGTON PARK BORO	13	.33	6	375	43	83282	0	0	88
	HASBROUCK HEIGHTS BO	25	.67	710	1528	732	49139	0	0	5
	HAWORTH BORO.	11	.67	0	315	8	79235	0	0	188
	HILLSDALE BORO.	24	2.33	150	785	149	68243	0	0	273
	HOHOKUS BORO.	10	.33	5	428	49	98957	0	0	196
	LEONIA BORO.	7	0.00	679	1370	557	56908	0	10	46
	LITTLE FERRY BORO.	14	2.33	1646	611	1198	49395	0	0	5
	LODI BORO.	0	8.33	1985	1932	4782	36642	0	0	2
	LYNDHURST TWP.	37	2.67	854	3109	3472	45100	0	0	61
	MAHWAH TWP.	7	6.00	1623	856	354	62115	368	0	6848
	MAYWOOD BORO.	15	.33	377	1108	843	50160	0	0	3
	MIDLAND PARK BORO.	18	1.33	189	1089	438	56354	0	0	49
	MONTVALE BORO.	55	3.00	221	236	179	77299	0	0	424
	MOONACHIE BORO.	25	0.00	6	122	138	42300	0	0	3
	NEW MILFORD BORO.	12	0.00	706	851	1547	49060	0	0	23
	NORTH ARLINGTON BORO	14	3.00	1139	2000	2459	43376	0	0	7
	NORTHVALE BORO.	32	1.67	2	296	243	62210	0	0	44
	NORWOOD BORO.	19	5.00	120	301	116	70213	119	0	344
	OAKLAND BORO.	48	3.67	20	273	89	69722	222	0	848
	OLD TAPPAN BORO.	21	0.00	6	119	27	82909	95	0	347
	ORADELL BORO.	22	0.00	132	695	105	82856	0	0	72
	PALISADES PARK BORO.	15	1.00	1902	1571	2448	39621	0	0	1
	PARAMUS BORO.	185	0.00	2	602	399	64894	697	0	1278
	PARK RIDGE BORO.	27	4.33	300	597	373	65758	33	36	164
	RAMSEY BORO.	59	7.33	496	789	333	72149	202	0	173
	RIDGEFIELD BORO.	13	3.00	418	1169	1803	47827	0	0	20
	RIDGEFIELD PK VILLAG	15	.67	1322	2780	1670	46710	0	40	34
	RIDGEWOOD VILLAGE	69	2.33	774	3776	750	82743	0	137	367
	RIVER EDGE BORO.	20	2.00	377	693	663	57339	0	0	120
	RIVER VALE TWP.	22	0.00	253	188	105	73125	0	0	359
	ROCHELLE PARK TWP.	21	.67	218	646	228	46144	9	0	27
	ROCKLEIGH BORO.	9	0.00	0	14	0	80543	11	0	154
	RUTHERFORD BORO.	68	5.67	1550	3734	1566	51149	0	0	8
	SADDLE BROOK TWP.	29	.33	540	514	944	50690	0	0	79
	SADDLE RIVER BORO.	24	6.00	1	155	3	149228	0	0	449
	SOUTH HACKENSACK TWP	10	.67	0	157	450	43835	0	0	1
	TEANECK TWP.	57	4.00	1992	5428	870	62258	0	0	300
	TENAFLY BORO.	43	6.00	381	1852	451	75616	0	0	297
	TETERBORO BORO.	63	0.00	0	3	2	69990	0	0	0
	UPPER SADDLE RIV BOR	45	6.00	2	131	13	103620	117	0	534
	WALDWICK BORO.	19	1.67	3	493	293	64924	0	0	102
	WALLINGTON BORO.	20	5.00	1259	1474	2488	35565	0	0	17
	WASHINGTON TWP.	16	1.00	14	106	33	74847	0	0	154
	WESTWOOD BORO.	27	2.67	868	1365	698	51553	0	0	189
	WOODCLIFF LAKE BORO.	34	3.67	0	231	35	97537	0	0	270
	WOOD-RIDGE BORO.	8	1.67	362	1392	464	56684	0	0	43
	WYCKOFF TWP.	45	1.00	9	768	184	83495	232	0	575
BURLINGTON										
	BASS RIVER TWP.	1	.33	1	196	8	35100	0	0	45199
	BEVERLY CITY	20	0.00	28	643	223	33333	0	0	26
	BORDENTOWN CITY	12	1.67	276	1091	425	42625	0	0	84
	BORDENTOWN TWP.	75	1.00	562	218	160	48804	175	0	3178
	BURLINGTON CITY	45	6.33	512	1834	450	32789	0	100	697
	BURLINGTON TWP.	208	2.67	1566	535	333	43580	0	0	6205
	CHESTERFIELD TWP.	24	.33	0	287	36	56270	0	0	12875
	CINNAMINSON TWP.	149	.67	90	483	63	56242	0	0	1733
	DELANCO TWP.	17	.33	23	577	150	40660	35	0	948
	DELRAN TWP.	100	1.33	905	448	186	51230	0	0	1777
	EASTAMPTON TWP.	16	0.00	352	103	222	46882	0	0	2774
	EDGEWATER PARK TWP.	14	.33	1148	338	244	45413	0	0	448
	EVESHAM TWP.	240	3.33	2521	242	424	56844	0	0	10652
	FIELDSBORO BORO.	2	.67	0	113	16	42625	0	0	82
	FLORENCE TWP.	79	.33	479	1776	332	41540	144	0	4657
	HAINESPORT TWP.	38	1.33	0	282	28	41974	0	0	3409
	LUMBERTON TWP.	28	3.33	890	281	74	45056	0	0	5876
	MANSFIELD TWP.	42	0.00	6	291	35	41412	89	0	11940
	MAPLE SHADE TWP.	51	2.00	4006	1025	785	36250	0	0	212
	MEDFORD TWP.	181	3.33	713	627	185	65817	0	0	19074
	MEDFORD LAKES BORO.	17	0.00	0	168	7	67220	0	0	128
	MOORESTOWN TWP.	311	.33	567	1850	370	60317	648	16	5548
	MOUNT HOLLY TWP.	0	2.33	351	1449	409	36880	53	0	412
	MOUNT LAUREL TWP.	248	5.00	2719	272	490	55927	839	0	5937
	NEW HANOVER TWP.	0	0.00	72	71	204	33931	0	0	1134
	NORTH HANOVER TWP.	1	.33	638	246	163	32364	0	0	9241
	PALMYRA BORO.	28	1.00	460	1312	354	41167	0	0	483
	PEMBERTON BORO.	2	1.00	92	237	97	35621	0	0	232
	PEMBERTON TWP.	0	6.00	859	651	413	39006	0	0	29230
	RIVERSIDE TWP.	8	0.00	281	1726	528	34890	0	0	198
	RIVERTON BORO.	5	0.00	92	769	170	49533	0	0	26

	SHAMONG TWP.	24	2.00	0	88	15	60903	0	0	26497
	SOUTHAMPTON TWP.	40	1.00	1	465	39	35113	112	0	24110
	SPRINGFIELD TWP.	23	1.33	25	245	41	49662	43	0	16643
	TABERNACLE TWP.	37	1.33	2	101	28	60536	0	0	28972
	WASHINGTON TWP.	1	.33	1	107	9	37715	0	0	59790
	WESTAMPTON TWP.	53	2.00	104	90	16	57182	0	0	5379
	WILLINGBORO TWP.	123	2.67	39	67	12	51833	0	0	656
	WOODLAND TWP.	0	0.00	0	68	27	45178	0	0	56226
	WRIGHTSTOWN BORO.	9	4.00	395	157	112	24288	0	0	124
CAMDEN										
	AUDUBON BORO.	8	0.00	454	2061	532	40627	0	0	25
	AUDUBON PARK BORO.	2	0.00	0	39	5	27015	0	0	10
	BARRINGTON BORO.	2	.67	495	548	296	40080	0	0	97
	BELLMAWR BORO.	59	0.00	743	377	232	38376	0	0	421
	BERLIN BORO.	87	0.00	36	335	284	44251	174	0	1099
	BERLIN TWP.	27	3.33	173	277	82	42145	0	0	810
	BROOKLAWN BORO.	12	.33	49	491	45	34547	0	0	86
	CAMDEN CITY	0	57.67	4357	12673	3310	19125	0	0	961
	CHERRY HILL TWP.	987	1.67	3734	868	761	59875	0	0	2699
	CHESILHURST BORO.	8	0.00	0	47	16	36062	0	0	785
	CLEMENTON BORO.	27	.33	657	677	153	33309	0	0	123
	COLLINGSWOOD BORO.	33	2.67	1850	3604	1318	36329	0	0	113
	GIBBSBORO BORO.	47	.67	6	135	20	52250	100	0	819
	GLOUCESTER TWP.	168	5.00	4001	1059	958	45346	0	338	6073
	GLOUCESTER CITY	0	4.00	532	2871	486	31898	0	0	307
	HADDON TWP.	31	1.33	1200	2017	676	39836	0	0	189
	HADDONFIELD BORO.	127	1.33	277	2748	424	62243	0	0	170
	HADDON HEIGHTS BORO.	18	.33	308	1608	421	43099	0	0	71
	HI-NELLA BORO.	1	0.00	363	38	22	27872	0	0	41
	LAUREL SPRINGS BORO.	9	0.00	137	393	107	41447	0	0	9
	LAWNSIDE BORO.	11	0.00	111	111	79	34834	35	0	202
	LINDENWOLD BORO.	57	9.00	4317	509	517	34972	0	0	536
	MAGNOLIA BORO.	16	.67	356	427	98	35628	0	0	31
	MERCHANTVILLE BORO.	7	.67	296	1087	325	38079	0	0	8
	MOUNT EPHRAIM BORO.	21	0.00	132	426	185	39214	0	0	20
	OAKLYN BORO.	6	.33	313	956	278	36156	0	0	27
	PENNSAUKEN TWP.	0	3.33	999	3159	1155	39707	0	0	1791
	PINE HILL BORO.	21	1.33	1437	463	180	36497	0	0	1000
	PINE VALLEY BORO.	5	0.00	0	12	0	86535	0	0	545
	RUNNEMEDE BORO.	29	2.00	772	500	258	36313	13	0	109
	SOMERDALE BORO.	69	.33	403	239	126	38344	0	0	92
	STRATFORD BORO.	42	0.00	726	263	91	45259	0	0	66
	TAVISTOCK BORO.	4	0.00	0	0	0	165001	0	0	59
	VOORHEES TWP.	186	6.33	3146	284	201	56847	0	0	2311
	WATERFORD TWP.	42	.67	43	521	148	48040	0	0	19560
	WINSLOW TWP.	127	7.00	1170	873	325	43908	0	404	30742
	WOODLYNNE BORO.	2	0.00	22	472	163	29160	0	0	6
CAPE MAY										
	AVALON BORO.	123	38.00	290	564	929	40807	0	0	1114
	CAPE MAY CITY	47	1.33	761	1187	715	30316	0	0	516
	CAPE MAY POINT BORO.	17	5.33	2	210	85	25437	0	0	24
	DENNIS TWP.	152	2.00	2	375	17	46346	0	0	35687
	LOWER TWP.	188	14.33	464	1283	265	29335	0	0	12283
	MIDDLE TWP.	312	1.67	86	1019	324	33576	0	0	37712
	NORTH WILDWOOD CITY	83	21.67	1023	1695	2634	24873	0	0	193
	OCEAN CITY CITY	280	97.33	2176	4158	8601	35220	0	0	1521
	SEA ISLE CITY CITY	77	24.00	833	604	2035	35440	0	0	65
	STONE HARBOR BORO.	72	22.67	402	495	737	39755	0	0	127
	UPPER TWP.	133	.67	1	493	244	49458	0	0	34548
	WEST CAPE MAY BORO.	5	0.00	6	349	139	26788	0	0	394
	WEST WILDWOOD BORO.	18	6.00	20	141	240	22734	0	0	61
	WILDWOOD CITY	0	75.33	2032	2631	2368	18452	0	0	83
	WILDWOOD CREST BORO.	39	7.33	718	975	1858	32675	0	0	80
	WOODBINE BORO.	31	1.00	102	196	69	25793	0	0	4033
CUMBERLAND										
	BRIDGETON CITY	0	0.00	1118	2923	1094	24087	0	0	1017
	COMMERCIAL TWP.	16	5.33	3	495	51	30937	0	0	17821
	DEERFIELD TWP.	28	.67	1	313	58	33474	0	0	10008
	DOWNE TWP.	2	.67	0	356	15	29118	0	0	29342
	FAIRFIELD TWP.	16	1.33	2	343	42	29496	0	0	23800
	GREENWICH TWP.	2	.67	1	189	5	34834	0	0	10581
	HOPEWELL TWP.	21	0.00	3	346	59	42746	0	0	16835
	LAWRENCE TWP.	0	0.00	8	364	23	34637	0	0	22180
	MAURICE RIVER TWP.	5	1.67	3	383	40	33702	0	0	54184
	MILLVILLE CITY	0	6.33	1707	3054	1257	34393	216	0	21965

	SHILOH BORO.	0	0.00	0	120	10	32875	0	0	666
	STOW CREEK TWP.	0	0.00	0	161	8	40944	0	0	10990
	UPPER DEERFIELD TWP.	43	0.00	265	361	63	39985	0	0	16496
	VINELAND CITY	0	13.67	2718	3921	2079	33806	0	0	32788
ESSEX										
	BELLEVILLE TWP.	0	5.00	3576	4803	4772	42358	0	0	67
	BLOOMFIELD TWP.	0	2.33	3966	9278	6931	43804	0	0	151
	CALDWELL BORO. TWP.	19	0.00	1226	1368	644	51038	0	0	5
	CEDAR GROVE TWP.	39	.67	565	578	393	61010	0	67	607
	EAST ORANGE CITY	0	15.33	15025	10046	8021	29491	0	0	14
	ESSEX FELLS TWP.	11	.33	1	329	13	111182	0	0	186
	FAIRFIELD TWP.	157	2.00	5	208	72	70876	0	0	3003
	GLEN RIDGE BORO. TWP	17	.33	202	1887	107	83403	25	0	9
	IRVINGTON TOWN	0	22.00	8823	7137	10683	33582	0	0	14
	LIVINGSTON TWP.	200	.33	15	848	61	81841	0	0	3092
	MAPLEWOOD TWP.	50	1.33	508	5329	1581	63325	11	0	446
	MILLBURN TWP.	141	2.00	632	2792	547	91602	0	0	2121
	MONTCLAIR TWP.	2	1.00	3875	9627	3668	57686	0	110	220
	NEWARK CITY	0	237.00	43615	36014	43398	23815	0	0	1546
	NORTH CALDWELL TWP.	23	1.00	3	212	36	101317	0	0	246
	NUTLEY TWP.	63	1.00	2342	4438	2000	47489	0	0	22
	ORANGE CITY TWP.	0	10.67	5664	3673	3669	30031	0	0	12
	ROSELAND BORO.	90	.33	307	228	72	65919	162	0	1171
	SOUTH ORANGE VILL TW	64	2.00	1089	3316	476	70772	53	0	44
	VERONA TWP.	37	.33	1521	1988	540	60773	0	0	235
	WEST CALDWELL TWP.	97	18.00	227	727	119	72512	0	0	1326
	WEST ORANGE TWP.	167	2.33	2220	4906	2936	54755	0	0	2285
GLOUCESTER										
	CLAYTON BORO.	38	3.67	213	501	174	34528	0	0	3535
	DEPTFORD TWP.	226	14.33	1454	752	254	42075	0	150	6406
	EAST GREENWICH TWP.	53	0.00	25	462	97	53006	163	0	8177
	ELK TWP.	39	.33	0	284	36	37623	0	0	11511
	FRANKLIN TWP.	13	5.00	59	742	145	40732	0	0	32562
	GLASSBORO BORO.	0	2.00	1296	951	668	37640	0	0	3297
	GREENWICH TWP.	73	0.00	12	436	129	42875	0	0	3914
	HARRISON TWP.	33	2.67	192	458	79	49972	93	0	11198
	LOGAN TWP.	126	1.00	5	299	33	49463	0	0	11769
	MANTUA TWP.	92	1.67	112	811	104	47125	217	0	8034
	MONROE TWP.	164	13.67	839	986	375	39161	0	0	23268
	NATIONAL PARK BORO.	12	1.00	8	399	99	36557	0	0	258
	NEWFIELD BORO.	0	0.00	2	224	51	40382	0	0	797
	PAULSBORO BORO.	0	1.33	172	1273	440	25650	0	0	443
	PITMAN BORO.	23	1.33	278	1709	470	44150	12	0	275
	SOUTH HARRISON TWP.	0	0.00	0	126	18	47682	0	0	9644
	SWEDESBORO BORO.	17	0.00	8	546	138	34406	0	0	143
	WASHINGTON TWP.	173	1.33	1724	350	225	56653	0	0	5583
	WENONAH BORO.	6	0.00	11	410	64	57934	0	0	143
	WEST DEPTFORD TWP.	113	2.00	1821	663	330	42251	204	0	5390
	WESTVILLE BORO.	27	.33	290	765	339	34826	0	0	95
	WOODBURY CITY	0	2.67	655	1941	777	31892	0	62	142
	WOODBURY HEIGHTS BOR	20	.33	15	289	52	52635	0	0	155
	WOOLWICH TWP.	49	.67	0	134	8	44647	0	0	12782
HUDSON										
	BAYONNE CITY	0	15.00	7353	13219	14398	35149	0	0	446
	EAST NEWARK BORO.	2	0.00	62	341	562	34222	0	0	0
	GUTTENBERG TOWN	33	6.00	2709	929	1314	44638	0	0	1
	HARRISON TOWN	16	4.33	1148	2135	3231	37366	0	0	33
	HOBOKEN CITY	0	9.00	11329	11000	5163	38360	0	0	26
	JERSEY CITY	0	125.67	39547	46091	37932	31959	0	0	1459
	KEARNY TOWN	6	2.33	2253	7369	6940	41624	0	0	1212
	NORTH BERGEN TWP.	0	32.33	8552	7675	8243	36837	0	0	586
	SECAUCUS TOWN	157	2.33	1250	1258	2189	56995	634	0	1051
	UNION CITY	0	1.33	11090	11173	9394	28220	0	0	11
	WEEHAWKEN TWP.	0	0.00	2300	3964	2635	38188	0	0	53
	WEST NEW YORK TOWN	0	.33	9329	6632	4958	28997	0	0	68
HUNTERDON										
	ALEXANDRIA TWP.	0	0.00	4	293	38	58915	0	0	16826
	BETHLEHEM TWP.	10	0.00	0	193	18	66621	0	0	12332
	BLOOMSBURY BORO.	8	.67	16	217	37	44868	0	0	409
	CALIFON BORO.	0	0.00	8	166	28	62294	0	0	345
	CLINTON TOWN	23	.33	105	298	135	58136	64	0	245
	CLINTON TWP.	91	3.00	329	436	138	74710	0	0	16842
	DELAWARE TWP.	0	0.00	13	615	73	62479	0	0	21937
	EAST AMWELL TWP.	3	1.33	22	443	87	66800	0	0	17045
	FLEMINGTON BORO.	45	0.00	579	790	571	38687	0	0	55
	FRANKLIN TWP.	9	0.00	1	308	51	61692	14	0	13771
	FRENCHTOWN BORO.	0	0.00	73	391	142	44496	0	0	408

	GLEN GARDNER BORO.	0	0.00	280	182	86	53693	0	0	617
	HAMPTON BORO.	0	0.00	81	270	120	44481	0	0	671
	HIGH BRIDGE BORO.	15	0.00	40	535	167	53976	19	0	587
	HOLLAND TWP.	0	0.00	10	283	66	49692	0	0	13902
	KINGWOOD TWP.	1	.33	3	390	92	54949	0	0	20905
	LAMBERTVILLE CITY	0	0.00	174	1379	346	43879	0	0	184
	LEBANON BORO.	8	.33	13	186	76	57713	0	0	254
	LEBANON TWP.	0	0.00	3	458	99	58040	0	0	18721
	MILFORD BORO.	0	0.00	29	238	116	44631	0	0	434
	RARITAN TWP.	141	1.00	328	421	168	67676	358	0	20611
	READINGTON TWP.	91	1.00	240	702	184	68803	183	0	27087
	STOCKTON BORO.	0	0.00	4	145	49	43683	0	0	186
	TEWKSBURY TWP.	28	0.00	1	426	23	95745	57	0	18872
	UNION TWP.	0	0.00	183	186	70	65846	7	0	10980
	WEST AMWELL TWP.	0	0.00	10	230	45	52021	0	0	12844
MERCER										
	EAST WINDSOR TWP.	169	1.33	3468	180	524	54834	0	0	6014
	EWING TWP.	164	2.67	2149	1810	772	47510	0	0	3543
	HAMILTON TWP.	284	7.00	5905	5933	2425	46390	0	0	11706
	HIGHTSTOWN BORO.	21	1.00	639	790	284	50129	0	0	74
	HOPEWELL BORO.	0	.33	12	468	180	53453	0	0	48
	HOPEWELL TWP.	86	1.00	36	733	97	72074	200	0	33254
	LAWRENCE TWP.	362	2.67	1866	1222	624	56138	623	161	8195
	PENNINGTON BORO.	0	0.00	39	439	68	70603	0	0	107
	PRINCETON BORO.	236	1.00	818	1949	671	47401	3	0	49
	PRINCETON TWP.	108	2.00	738	828	541	68517	217	0	6363
	TRENTON CITY	0	45.33	6403	20094	6251	28291	0	0	496
	WASHINGTON TWP.	90	.67	470	232	57	49855	152	51	10912
	WEST WINDSOR TWP.	259	2.00	1318	432	122	84598	569	0	11880
MIDDLESEX										
	CARTERET BORO.	0	5.00	312	1540	1806	44295	0	0	533
	CRANBURY TWP.	93	4.33	9	341	63	72395	143	0	7344
	DUNELLEN BORO.	4	0.00	151	1253	672	48812	0	0	8
	EAST BRUNSWICK TWP.	391	1.33	2216	639	491	64646	723	0	5477
	EDISON TWP.	525	.67	9597	1661	1758	55082	324	0	5180
	HELMETTA BORO.	14	1.00	151	147	15	47082	0	0	254
	HIGHLAND PARK BORO.	27	1.67	2262	2413	1452	43563	0	0	79
	JAMESBURG BORO.	7	.33	346	388	375	46128	0	0	46
	METUCHEN BORO.	55	1.67	457	1350	485	58549	82	1	141
	MIDDLESEX BORO.	71	.67	609	856	484	52407	0	0	317
	MILLTOWN BORO.	34	.67	52	644	317	59424	0	0	74
	MONROE TWP.	75	.67	682	433	1111	46406	127	0	21386
	NEW BRUNSWICK CITY	0	8.33	4230	5082	5081	31118	0	0	582
	NORTH BRUNSWICK TWP.	244	3.67	3458	647	1100	54890	489	0	2538
	OLD BRIDGE TWP.	213	6.33	5194	871	1430	52230	152	203	14890
	PERTH AMBOY CITY	0	3.67	3574	5904	6358	31215	0	0	263
	PISCATAWAY TWP.	420	7.00	3348	1273	1096	55496	623	109	4277
	PLAINSBORO TWP.	88	4.33	4850	128	434	51606	247	0	5019
	SAYREVILLE BORO.	127	1.33	2820	1482	936	50663	0	0	4386
	SOUTH AMBOY CITY	17	0.00	260	1617	845	41726	0	0	157
	SOUTH BRUNSWICK TWP.	305	4.00	1876	533	369	59735	575	94	17963
	SOUTH PLAINFIELD BOR	173	6.00	10	748	422	56318	375	0	1150
	SOUTH RIVER BORO.	20	0.00	485	2013	1036	41798	0	0	151
	SPOTSWOOD BORO.	31	1.00	408	230	96	47244	0	0	64
	WOODBRIDGE TWP.	618	11.67	7235	4568	2986	50068	0	0	2811
MONMOUTH										
	ABERDEEN TWP.	152	3.00	881	521	342	55493	237	0	671
	ALLENHURST BORO.	14	1.33	25	315	43	60071	0	0	10
	ALLENTOWN BORO.	1	.67	88	214	42	51820	0	0	11
	ASBURY PARK CITY	0	5.33	3892	2731	1773	22829	0	0	75
	ATL. HIGHLANDS BORO.	62	0.00	341	823	188	49175	0	0	43
	AVON BY THE SEA BORO	14	0.00	188	822	178	39263	0	0	14
	BELMAR BORO.	62	5.67	974	1802	746	34834	0	0	55
	BRADLEY BEACH BORO.	28	6.67	846	1481	521	33373	0	0	13
	BRIELLE BORO.	83	1.33	24	336	255	58833	0	0	127
	COLTS NECK TWP.	103	1.67	12	247	52	82631	149	0	18145
	DEAL BORO.	25	.33	50	423	45	53625	0	0	80
	EATONTOWN BORO.	296	.33	2327	464	657	40550	0	0	1076
	ENGLISHTOWN BORO.	36	0.00	7	155	81	47819	0	0	93
	FAIR HAVEN BORO.	73	1.67	3	708	21	62972	0	0	53
	FARMINGDALE BORO.	0	0.00	192	141	75	44516	0	0	12
	FREEHOLD BORO.	141	6.33	818	1454	573	44360	0	0	52
	FREEHOLD TWP.	488	7.00	1099	352	246	64632	923	0	17812
	HAZLET TWP.	246	2.33	392	278	135	55752	0	0	360
	HIGHLANDS BORO.	29	.33	840	772	396	35600	0	0	37
	HOLMDEL TWP.	391	4.33	11	164	34	92372	626	0	8212
	HOWELL TWP.	427	12.33	436	1007	276	52703	827	0	30472
	INTERLAKEN BORO.	8	0.00	0	244	0	63411	0	0	22
	KEANSBURG BORO.	0	10.00	577	1382	815	34946	0	0	105

KEYPORT BORO.	14	2.00	1088	1327	530	34767	0	0	48
LITTLE SILVER BORO.	104	.33	33	350	45	70709	0	0	334
LOCH ARBOUR VILLAGE	2	0.00	6	129	2	61146	0	0	11
LONG BRANCH CITY	0	9.67	5109	4556	2793	33762	0	0	108
MANALAPAN TWP.	241	7.00	1429	378	160	63831	765	0	13902
MANASQUAN BORO.	107	2.33	96	1173	359	43242	0	0	98
MARLBORO TWP.	455	6.67	155	242	89	77043	670	0	12944
MATAWAN BORO.	103	3.67	1131	530	389	50763	0	0	128
MIDDLETOWN TWP.	828	6.33	2186	3221	726	59458	0	0	9471
MILLSTONE TWP.	7	4.33	1	313	22	62320	6	0	22227
MONMOUTH BEACH BORO.	36	1.67	793	336	87	64585	0	0	87
NEPTUNE TWP.	0	2.33	1733	3602	1489	41702	0	0	1459
NEPTUNE CITY BORO.	22	.67	628	545	201	36127	0	0	9
OCEAN TWP.	672	1.00	2725	1216	400	51573	0	0	2135
OCEANPORT BORO.	65	.33	119	395	94	60637	0	0	589
RED BANK BORO.	339	17.67	1600	2039	1108	40567	0	0	19
ROOSEVELT BORO.	0	0.00	3	153	15	60204	0	0	938
RUMSON BORO.	130	6.00	2	967	69	70370	0	0	1173
SEA BRIGHT BORO.	18	.67	483	294	151	46995	0	0	122
SEA GIRT BORO.	51	4.33	22	395	19	64525	0	0	155
SHREWSBURY BORO.	116	0.00	2	151	6	69214	0	0	282
SHREWSBURY TWP.	10	0.00	212	52	49	34907	0	0	0
SOUTH BELMAR BORO.	17	2.00	75	401	101	35281	0	0	3
SPRING LAKE BORO.	71	2.00	49	1057	94	60708	0	0	109
SPRING LAKE HGTS BOR	50	.33	715	431	162	40766	0	0	170
TINTON FALLS BORO.	296	4.33	617	283	174	57187	550	0	6496
UNION BEACH BORO.	41	1.33	1	678	105	42819	0	0	204
UPPER FREEHOLD TWP.	0	.33	2	338	61	60840	0	0	28025
WALL TWP.	415	8.67	556	1281	213	50931	722	0	14226
WEST LONG BRANCH BOR	139	.67	128	482	157	52177	0	0	230
MORRIS									
BOONTON TOWN	16	.33	300	1525	909	49454	0	0	61
BOONTON TWP.	7	0.00	0	191	17	66084	23	0	4647
BUTLER BORO.	8	.33	287	860	480	55462	0	0	76
CHATHAM BORO.	41	6.33	291	1253	317	68342	23	0	210
CHATHAM TWP.	39	.33	853	369	99	83157	89	0	3816
CHESTER BORO.	0	0.00	15	169	33	61803	3	0	546
CHESTER TWP.	2	1.00	7	235	27	90750	0	0	17216
DENVILLE TWP.	123	6.33	271	1146	150	65696	388	0	5333
DOVER TOWN	22	0.00	796	2197	1380	42704	0	0	142
EAST HANOVER TWP.	106	.33	5	270	38	71078	266	0	1915
FLORHAM PARK BORO.	143	2.33	43	273	100	75295	280	0	2546
HANOVER TWP.	132	2.33	53	441	126	66757	245	0	3063
HARDING TWP.	46	1.00	3	372	16	114515	0	0	11741
JEFFERSON TWP.	35	7.33	168	823	244	53778	0	0	19740
KINNELON BORO.	22	0.00	1	237	16	83029	81	0	10198
LINCOLN PARK BORO.	29	3.33	866	476	227	59159	100	0	1720
MADISON BORO.	59	2.33	840	1764	875	62126	0	0	280
MENDHAM BORO.	0	0.00	48	340	114	89560	0	16	2304
MENDHAM TWP.	10	0.00	5	260	27	113186	18	0	10568
MINE HILL TWP.	17	1.00	23	313	62	56321	76	0	901
MONTVILLE TWP.	111	3.33	206	755	134	82307	280	0	7429
MORRIS TWP.	99	5.00	731	1251	492	81536	283	0	5143
MORRIS PLAINS BORO.	90	.67	178	526	62	71243	0	0	280
MORRISTOWN TOWN	225	2.00	2531	2464	1970	47023	0	0	220
MOUNTAIN LAKES BORO.	23	0.00	0	568	8	119335	0	0	650
MOUNT ARLINGTON BORO	9	1.67	216	238	116	51665	0	0	627
MOUNT OLIVE TWP.	61	4.00	3435	823	411	50411	182	0	15228
NETCONG BORO.	3	0.00	418	466	239	43604	0	0	71
PAR-TROY HILLS TWP.	339	2.33	6928	1312	791	55522	497	230	7182
PASSAIC TWP.	44	0.00	99	757	229	73358	85	0	5250
PEQUANNOCK TWP.	60	.33	207	586	197	60428	166	0	1873
RANDOLPH TWP.	108	2.33	1314	432	569	70843	221	106	8228
RIVERDALE BORO.	13	0.00	11	245	130	49775	59	0	874
ROCKAWAY BORO.	24	1.00	359	720	287	51413	0	0	259
ROCKAWAY TWP.	178	22.67	662	717	264	62384	412	0	17830
ROXBURY TWP.	114	4.67	111	953	374	63232	375	0	8053
VICTORY GARDENS BORO	2	0.00	207	27	79	39875	0	0	3
WASHINGTON TWP.	30	2.33	247	652	142	75410	149	4	23660
WHARTON BORO.	17	.33	198	811	545	49720	43	0	682
OCEAN									
BARNEGAT TWP.	173	3.67	16	224	130	40116	0	0	18374
BARNEGAT LIGHT BORO.	38	6.33	39	72	187	41750	0	0	68
BAY HEAD BORO.	22	1.67	18	569	55	60580	0	0	93
BEACH HAVEN BORO.	44	6.00	333	555	681	34508	0	0	72
BEACHWOOD BORO.	60	2.67	11	340	71	44642	0	0	589
BERKELEY TWP.	327	7.33	506	431	108	25331	0	0	15837
BRICK TWP.	537	19.33	2566	1122	659	42616	0	0	3989
DOVER TWP.	1319	57.00	2819	1152	953	44774	835	0	11379
EAGLESWOOD TWP.	10	2.67	3	169	17	34448	0	0	9274
HARVEY CEDARS BORO.	19	3.67	1	96	140	39359	0	0	48

	ISLAND HEIGHTS BORO.	10	0.00	25	288	15	44229	0	0	78
	JACKSON TWP.	344	11.67	734	596	336	49159	0	0	49577
	LACEY TWP.	345	6.33	17	355	55	41137	0	0	47104
	LAKEHURST BORO.	48	1.67	37	245	160	29872	0	0	197
	LAKEWOOD TWP.	0	7.33	4005	1263	1768	32132	0	0	7669
	LAVALLETTE BORO.	60	4.33	128	503	597	34899	0	0	28
	LITTLE EGG HARBOR TW	131	5.00	275	132	82	37357	0	0	25925
	LONG BEACH TWP.	45	2.67	92	482	2193	34952	0	0	589
	MANCHESTER TWP.	218	5.00	625	155	2837	24914	0	0	37818
	MANTOLOKING BORO.	22	1.00	2	186	4	66780	0	0	13
	OCEAN TWP.	123	4.00	28	231	19	33923	0	0	11465
	OCEAN GATE BORO.	8	.33	23	350	103	31134	0	0	19
	PINE BEACH BORO.	21	0.00	2	180	39	43450	0	0	58
	PLUMSTED TWP.	7	2.67	35	281	174	44879	0	0	11585
	POINT PLEASANT BORO.	215	10.67	582	682	480	44878	0	0	94
	PT PLEASANT BEACH BO	64	2.33	462	1078	429	38279	0	0	115
	SEASIDE HEIGHTS BORO	23	0.00	827	529	1094	23782	0	0	32
	SEASIDE PARK BORO.	36	6.67	276	910	692	35903	0	0	71
	SHIP BOTTOM BORO.	46	4.67	120	513	558	32125	0	0	39
	SOUTH TOMS RIVER BOR	27	.33	43	58	15	37149	0	0	165
	STAFFORD TWP.	301	8.00	54	378	307	34858	0	0	25098
	SURF CITY BORO.	27	4.67	2	185	823	30810	0	0	10
	TUCKERTON BORO.	49	4.00	170	277	83	30603	0	0	1458
PASSAIC										
	BLOOMINGDALE BORO.	16	1.67	379	631	341	54237	117	0	4118
	CLIFTON CITY	174	6.00	4040	10012	10950	43895	0	0	345
	HALEDON BORO.	4	0.00	244	1033	1481	39684	0	0	49
	HAWTHORNE BORO.	26	2.00	536	2696	2519	47420	0	0	100
	LITTLE FALLS TWP.	32	4.00	902	1196	776	49467	0	0	200
	NORTH HALEDON BORO.	17	.67	68	536	276	57188	0	0	311
	PASSAIC CITY	0	12.00	8891	8923	6935	29336	0	0	49
	PATERSON CITY	0	56.00	12435	17518	23879	29656	0	0	407
	POMPTON LAKES BORO.	18	.33	801	679	347	53750	0	0	510
	PROSPECT PARK BORO.	1	0.00	10	1275	1435	39316	0	0	0
	RINGWOOD BORO.	3	1.33	2	536	48	66029	0	0	12828
	TOTOWA BORO.	44	1.67	79	858	795	50940	0	0	616
	WANAQUE BORO.	13	2.00	85	742	550	52991	0	0	3802
	WAYNE TWP.	231	18.33	1572	1357	740	65219	0	0	5041
	WEST MILFORD TWP.	27	2.67	166	1376	220	58007	0	0	40551
	WEST PATERSON BORO.	18	3.33	876	547	1253	49426	0	0	551
SALEM										
	ALLOWAY TWP.	0	0.00	0	343	38	42718	0	0	20361
	CARNEYS POINT TWP.	47	2.33	605	826	210	38933	0	0	7877
	ELMER BORO.	1	.67	2	369	105	36584	0	0	112
	ELSINBORO TWP.	9	.67	0	226	14	42363	0	0	7430
	LOWER ALLOWAYS CR TW	2	.67	0	284	10	40628	0	0	26861
	MANNINGTON TWP.	1	.33	1	189	15	38375	0	0	17026
	OLDMANS TWP.	56	1.00	1	219	31	43030	0	0	11596
	PENNS GROVE BORO.	0	8.00	353	693	365	23573	0	0	33
	PENNSVILLE TWP.	54	4.67	586	1041	289	41827	0	0	10213
	PILESGROVE TWP.	4	1.33	22	278	39	51005	0	0	20827
	PITTSGROVE TWP.	23	1.33	6	518	32	38196	0	0	26663
	QUINTON TWP.	2	.67	9	233	37	33444	0	0	14349
	SALEM CITY	0	0.00	616	1110	473	18810	0	0	615
	UPPER PITTSGROVE TWP	5	1.67	1	385	31	40120	0	0	24233
	WOODSTOWN BORO.	0	.33	209	569	254	37299	0	0	325
SOMERSET										
	BEDMINSTER TWP.	67	1.33	903	369	153	68799	177	0	14770
	BERNARDS TWP.	216	.67	909	644	336	77000	475	0	9595
	BERNARDSVILLE BORO.	50	3.00	102	733	257	75522	82	0	6799
	BOUND BROOK BORO.	4	2.33	437	1653	1418	40795	0	0	134
	BRANCHBURG TWP.	93	2.00	55	290	106	74616	197	0	9605
	BRIDGEWATER TWP.	220	1.33	1047	1076	510	69886	493	0	10857
	FAR HILLS BORO.	13	1.00	4	137	35	61806	20	0	2862
	FRANKLIN TWP.	362	7.00	3735	1145	1085	58630	492	182	18801
	GREEN BROOK TWP.	63	1.33	0	202	31	64304	154	0	1821
	HILLSBOROUGH TWP.	116	5.00	1587	559	323	64976	182	0	27994
	MANVILLE BORO.	2	1.00	182	859	1213	41430	0	0	326
	MILLSTONE BORO.	0	0.00	0	59	17	58616	0	0	315
	MONTGOMERY TWP.	63	6.33	163	331	85	80827	315	0	18098
	NORTH PLAINFIELD BOR	35	.33	2084	2555	1754	46062	0	13	56
	PEAPACK GLADSTONE BO	23	1.00	30	402	128	66082	28	9	3301
	RARITAN BORO.	55	1.00	97	905	866	42671	75	0	475
	ROCKY HILL BORO.	1	.33	10	111	35	62498	0	0	152
	SOMERVILLE BORO.	170	3.00	1412	1408	959	43634	10	0	199
	SOUTH BOUND BROOK BO	4	.67	288	429	400	45460	0	0	4
	WARREN TWP.	161	3.67	7	606	97	79606	333	0	9445
	WATCHUNG BORO.	59	2.00	6	232	52	87042	123	0	2085

SUSSEX

	ANDOVER BORO.	0	0.00	32	168	49	40734	0	0	873
	ANDOVER TWP.	26	.67	140	244	52	59749	0	0	10845
	BRANCHVILLE BORO.	1	.67	35	215	58	41164	0	0	134
	BYRAM TWP.	0	0.00	14	440	42	62371	0	0	11393
	FRANKFORD TWP.	6	3.00	7	400	57	55000	0	0	19991
	FRANKLIN BORO.	0	0.00	161	772	259	40305	0	0	1510
	FREDON TWP.	9	.33	0	165	35	63936	0	0	10624
	GREEN TWP.	0	0.00	0	148	21	64038	0	0	9422
	HAMBURG BORO.	2	1.00	169	224	127	49041	0	0	377
	HAMPTON TWP.	17	1.33	3	172	21	51814	0	0	14165
	HARDYSTON TWP.	0	0.00	240	219	46	51163	0	0	18524
	HOPATCONG BORO.	26	13.00	24	652	143	53023	0	0	4535
	LAFAYETTE TWP.	2	1.00	0	188	50	60819	0	0	10834
	MONTAGUE TWP.	0	.33	145	173	137	42797	0	0	26209
	NEWTON TOWN	27	.67	842	1340	579	35996	41	0	700
	OGDENSBURG BORO.	1	.33	27	227	87	51190	0	0	736
	SANDYSTON TWP.	2	1.00	1	232	17	41156	0	0	25001
	SPARTA TWP.	6	3.33	24	961	268	69335	17	0	19537
	STANHOPE BORO.	0	.33	90	286	157	52731	0	0	702
	STILLWATER TWP.	0	0.00	37	421	43	51693	0	0	17244
	SUSSEX BORO.	0	.33	314	455	245	29590	0	0	48
	VERNON TWP.	4	1.67	905	622	149	56086	0	0	37734
	WALPACK TWP.	0	0.00	0	31	0	20625	0	0	13138
	WANTAGE TWP.	3	1.33	105	445	112	52165	0	0	39802

UNION

	BERKELEY HEIGHTS TWP	70	.67	8	375	73	82634	190	0	627
	CLARK TWP.	51	.67	771	434	251	55104	23	0	455
	CRANFORD TWP.	114	3.67	655	3128	990	59916	0	0	281
	ELIZABETH CITY	0	25.33	15326	16862	16971	30394	0	0	1052
	FANWOOD BORO.	24	1.33	5	532	79	66739	0	0	2
	GARWOOD BORO.	17	.67	86	643	693	45208	0	0	9
	HILLSIDE TWP.	0	1.67	327	2882	2372	45306	0	0	163
	KENILWORTH BORO.	39	1.00	8	453	591	43971	0	0	346
	LINDEN CITY.	99	6.67	2200	3438	5002	39502	0	0	1506
	MOUNTAINSIDE BORO.	49	0.00	4	245	23	82092	0	0	865
	NEW PROVIDENCE BORO.	91	.33	421	499	474	68662	65	0	266
	PLAINFIELD CITY	0	5.00	3740	5872	4230	42309	0	153	75
	RAHWAY CITY	80	4.00	1807	3002	1921	44854	0	0	164
	ROSELLE BORO.	0	4.33	1685	2450	1713	44474	0	0	69
	ROSELLE PARK BORO.	16	.33	1356	2057	982	47701	0	0	4
	SCOTCH PLAINS TWP.	88	4.33	689	1015	528	64013	218	0	1613
	SPRINGFIELD TWP.	80	0.00	1118	754	706	53512	0	0	944
	SUMMIT CITY	121	5.33	1423	3296	1074	73110	0	0	515
	UNION TWP.	157	11.00	1457	4235	3899	46931	94	233	498
	WESTFIELD TOWN	98	4.00	672	4480	1179	73436	0	0	262
	WINFIELD TWP.	1	0.00	4	72	488	31682	0	0	3

WARREN

	ALLAMUCHY TWP.	1	.33	72	135	60	61926	0	0	11902
	ALPHA BORO.	10	0.00	109	475	117	37938	0	0	683
	BELVIDERE TOWN	0	0.00	139	554	173	38052	0	0	302
	BLAIRSTOWN TWP.	0	0.00	5	362	148	57511	0	0	18413
	FRANKLIN TWP.	5	0.00	0	391	51	51802	7	0	14321
	FRELINGHUYSEN TWP.	0	0.00	0	223	27	51938	0	0	13955
	GREENWICH TWP.	32	0.00	1	333	72	47936	56	0	6131
	HACKETTSTOWN TOWN	66	.33	775	952	445	43238	0	0	980
	HARDWICK TWP.	0	0.00	0	118	9	49912	0	0	10538
	HARMONY TWP.	18	.67	0	357	40	47905	36	21	13581
	HOPE TWP.	0	0.00	0	208	17	57314	0	0	11043
	INDEPENDENCE TWP.	8	0.00	260	272	107	49775	0	40	11420
	KNOWLTON TWP.	8	.33	3	327	45	45375	0	0	13809
	LIBERTY TWP.	0	0.00	12	214	39	53801	0	0	6950
	LOPATCONG TWP.	18	0.00	477	368	69	39895	22	40	3721
	MANSFIELD TWP.	12	1.33	1173	303	134	43850	0	0	16799
	OXFORD TWP.	0	0.00	19	325	56	40810	0	18	3356
	PAHAQUARRY TWP.	0	0.00	0	26	4	33459	0	0	.
	PHILLIPSBURG TOWN	0	.33	855	3780	1270	30018	0	0	447
	POHATCONG TWP.	33	0.00	7	439	65	44620	0	0	7439
	WASHINGTON BORO.	11	0.00	666	1176	479	40153	0	9	96
	WASHINGTON TWP.	35	.33	51	402	63	57942	91	0	9891
	WHITE TWP.	3	1.33	167	390	53	44924	0	0	15944

TECHNICAL APPENDIX B

Estimating Undeveloped Land in New Jersey Using
Thematic Mapper Satellite Data, 1990
Census Data and the TIGER Files

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Introduction

The Council on Affordable Housing (COAH) has been required to develop fair share housing allocations for low and moderate income families for municipalities state-wide. The development of these allocations is based upon a number of factors including the amount of undeveloped land available within each region.

The conversion of land in New Jersey from undeveloped to developed status is a complex, dynamic process. Traditional methods of estimating land cover that rely on extensive field survey and mapping and the manual interpretation of aerial photography are both extremely expensive and time consuming. Developing reliable state-wide estimates of land cover, including land categorized as developed or undeveloped, in an extremely short time frame required the use of automated and computerized techniques.

Given these constraints, the Cook College Remote Sensing Center (CCRSC), Rutgers University, served as a consultant to COAH to develop these state-wide estimates. A number of types of digital information were used in this process. The analysis relied upon a combination of image processing and geographic information system (GIS) techniques to generate estimates of the amount of undeveloped and developed land present in the state of New Jersey. Simply put, geographic information systems are: computer hardware and software systems that allow the efficient, rapid development of a spatial data base and that permit the analysis of this information in an objective, automated manner.

Overview of the Methods Used in the Analysis

As stated above, image processing and GIS techniques were used to generate land cover estimates for the state of New Jersey. The ERDAS image processing and ARC/INFO and GRASS GIS software packages were used in the development of the data base and subsequent analysis. The following represents an overview of the methods that were used and provides a description of key terms and concepts. A more extensive, technical description of the process is provided in the **Methods and Procedures** section of this report.

The GIS data base that was developed for this analysis contained the following data layers:

(1) Landsat Thematic Mapper digital data providing 30 meter coverage of the entire state;

(2) US Department of Commerce 1990 Census of Population and Housing information and the associate digital TIGER files;

(3) Municipal, county, and state digital boundary files obtained from the NJ DEPE;

(4) Planning area digital boundary files obtained from the State Planning Commission; and

(5) Pineland Management Area digital boundary files obtained from the NJ DEPE.

Satellite digital information has been used extensively in this country and throughout the world to monitor the environment in a cost effective, timely fashion. Landsat data has been used for a number of applications, including: identification and monitoring of agricultural crops, forest monitoring and disease detection, coastal zone monitoring, and for the generation of land cover information. Satellite data is the only spatial data providing complete coverage of New Jersey that is collected in a regular, systematic manner and that can be used in an unbiased way to generate consistent land cover information.

Landsat Thematic Mapper (TM) satellite data was selected by COAH as the best available information for the development of the fundamental land cover data layer for the GIS data base used in this analysis. TM data is acquired by a U.S. satellite system operated under the control of the EOSAT Corporation and is available in digital format. The digital data consists of spectral information that represent the amount of light (i.e. electromagnetic energy) reflected from a portion of the earth's surface in 6 narrow spectral bands and a 7th channel or band that represents radiated heat.

This spectral information is collected for pixels having a 30 meter ground resolution, with the exception of the thermal channel which has a 120 meter ground resolution. Thus, the satellite data used in this analysis has an inherent spatial resolution of 30 meters; however, each 30 meter pixel is classified into a land cover class based upon its spectral signature.

The processing of Landsat TM data to yield a thematic land cover map required a number of steps. The digital data was first formatted to provide coverage of the entire state and then processed to generate a desired classification map. The classification map produced through this process aggregates land cover into two classes—undeveloped and developed. Undeveloped land was defined for the purpose of this study as land presently vacant, being forested, open, or in an agricultural use. Developed land was defined as land that is either presently developed or land that may comprise a surface water body.

It is important to understand that the information derived from the TM satellite data represents land cover estimates and not land use estimates. The crucial difference between these two concepts relates to the inherent use of satellite data to generate land cover information (eg. existing land cover, such as forest, grassland, built-up, or water classes) and not land use information (eg. existing commercial land uses, such as a shopping center, versus an office building complex, or a manufacturing complex). Implicit in this distinction is the fact that the roof of a large commercial building may have the same spectral signature as that of the roof of an industrial plant, manufacturing facility, or warehouse. Consequently, the machine processing of the satellite data cannot be used to make these types of distinctions between land cover types at this level of analysis.

This distinction is of great importance in interpreting the results of this analysis. One of the problems associated with generating land cover estimates for New Jersey was the discrimination of residentially developed land from undeveloped land. This problem was most apparent in urban and suburban areas where either street tree and residential landscape plantings have created a landscape that has essentially a closed forest canopy or where residential housing units have been constructed in forested areas and the forest canopy remains substantially intact.

Given the 30 meter spatial resolution of the TM data, these areas would have been subject to misclassification as being forested or undeveloped if this were the only information available. This problem was addressed through the use of the 1990 census data and the TIGER files to identify areas that, although they may appear forested or undeveloped based upon their spectral properties as determined using TM data alone, can be considered to be developed based upon the density of housing units present. A more complete description of the processing of the census data and the use of the TIGER file spatial information is provided below.

Following the generation of a land cover data layer using the TM digital satellite data and a housing density data layer derived from the 1990 US Census data and associated TIGER files, the GRASS GIS software was used to determine the amount of developed and undeveloped land present state-wide. The tables that were developed provide estimates by county and by municipality and were cross classified by both the State Planning Commission's Planning Areas and the COAH housing regions. The results represent repeatable, unbiased estimates of undeveloped land throughout the state and multi-county regions.

Methods and Procedures

Landsat TM Image Processing

In order to generate land cover estimates for New Jersey, relatively cloud free Landsat Thematic Mapper (TM) data was required. The Thematic Mapper sensor onboard the LANDSAT platform acquired three cloud free images for Path 14, Rows 31, 32, and 33 on March 17, 1991. These scenes were acquired from EOSAT and provided data for the entire state. The ERDAS image processing and GIS software package was used for the satellite image processing and classification procedures.

Digital data providing complete coverage of the state was extracted from the delivered computer compatible tapes (CCTs) and stored in ERDAS format. The entire digital satellite data set for New Jersey had an approximate size of 300 Megabytes (Mbs), which would have been difficult to process as one file. A decision was made to divide the state into upper and lower regions to facilitate storage and processing. This division also corresponded to the approximate physiographic boundaries for the state with the upper region covering the Highlands, Ridge and

Valley, and Piedmont provinces to the north, and the lower region covering the Coastal Plain to the south. It was also felt that this division would aid in the determination of land cover classes, since vegetation and landscape types vary significantly between these groups of provinces.

The upper and lower subsets were created through the merger of the three corresponding scenes. Thematic Mapper scenes contain a certain amount of overlap to assure that continuous coverage of a specific geographic area is potentially available for analysis. To accomplish this edge-matching, the file coordinates in the images were changed so that the northern and southern edges of each scene corresponded to the edge or edges of the adjacent scene. An ERDAS utility was then used to patch the files together and remove areas of overlap which produced two seamless subsets.

Display of the upper image revealed that snow cover was present at higher elevations. Visual interpretation of the snow covered areas in the imagery, as well as an examination of existing maps and orthophotography, revealed that many of these areas were primarily forested, but this observation had to be verified using digital data. The Center image library contained cloud free Thematic Mapper imagery that was collected on August 15, 1988. It was determined that this data would be acceptable for generating the land cover for areas covered by snow in the March 17, 1991 imagery.

In order to eliminate the snow covered areas in the 1991 imagery and substitute the data from the 1988 imagery, a file was created that served as a mask for both data sets. The 1991 scene was displayed on the graphics device, and the analyst, using an ERDAS utility, visually interpreted the spatial distribution of the snow covered areas, digitized the boundaries directly on the screen, and then stored these results in a vector file format. The 1988 data was then coregistered to the 1991 data, so that file sizes between the two scenes would be identical and have matching pixel coordinates. Since the digitized snow boundaries were stored in vector format, this file was converted to a raster file for use as a mask for each data set. This mask was then used to cut out and eliminate the snow covered areas in the 1991 scene, which were then replaced with the corresponding data from the 1988 image.

A classification was performed independently on each of the three data sets: the masked upper region of the 1991 scene, the masked "replacement" portion of the 1988 imagery, and the lower region of the 1991 scene. Through an iterative process, the number of clusters, or training samples, that were derived from each data set varied between 50 and 100. These cluters were then input into a maximum-likelihood classification algorithm. The land cover types that each of the classes represented were then determined using a combination of visual interpretation of the satellite image as well as 7½ minute quadrangle maps and orthophotography. Each class was collapsed into one of six possible land cover types for this application: forest, nonforest vegetation, developed, bare or barren, water, and cloud.

An accuracy assessment was then developed for each of the classified data sets. An ERDAS utility was used to generate 100 random points for each file, which were then displayed on top of the corresponding image. The land cover category for each random point was then interpreted using the raw digital image and the associated aerial and orthophotography. The results of the interpretation from each of the three files were combined and then compared to the results obtained from the computer classification in the form of an error matrix.

Analysis of the results indicated that the classification produced a map having an overall accuracy of approximately 86 percent. Within each land cover class the results varied from 100 percent for the barren and water categories to 78 percent for the built-up/developed category, 81 percent for the vegetated non-forested category, and 88 percent for the forested category.

Analysis of the US 1990 Census Data and Use of the TIGER Files

The definitional problems of land cover versus land use were described above and in this project were most readily apparent when mapping residentially developed land. Residential land is frequently a mixture of different land cover types (i.e. forest, agriculture, and built-up categories). When the spatial resolution (i.e. pixel size) of the digital information that is being used to produce a land cover classification is relatively course (i.e. 30 meters), the fine scale combination of intermixed land cover types common to a residential neighborhood produces a mixed spectral response, and makes different types of residential land difficult to detect using satellite data alone.

The U.S. Census Bureau released the post-census TIGER files and the congressional redistricting (PL94-171) data early in 1991. The PL94-171 data contained the total number of persons and housing units for each census block. By linking these two data items and their spatial distribution, the CCRSC processed and developed in a georeferenced, digital format, a file containing the population and housing unit densities for each census block for the state of New Jersey. This file was then used to develop a housing density data layer or mask that was used to map areas having a housing density greater than a specific density threshold. In order to develop a suitable masking file using the housing density information available from the census data, housing density masks having densities of 0.5 units per acre (i.e. 1 unit per 2 acres), 1 unit per acre, and 2 units per acre were created and evaluated.

Selection of the Housing Density Mask Threshold

Selection of an appropriate threshold residential housing density for this study involved an evaluation of the use of a range of housing densities. As indicated above, the TIGER files and the 1990 census block data were used to calculate housing density by block for the entire state at densities of 0.5, 1, and 2 units per acre. The effectiveness of these housing density thresholds was evaluated for municipalities throughout the state. As an illustration of the methods that were developed, the results obtained for Highland Park and Piscataway Township, Middlesex County, are discussed below.

Highland Park is a typical, relatively small (i.e. 1,236 acre), older suburban community retaining little undeveloped land, but one having a relatively high population and housing density. Residential landscaping and street tree plantings have over time created a community that from the perspective of space and using the information available from the Thematic Mapper satellite system appears substantially forested. Piscataway Township, in contrast, is a relatively larger (i.e. 12,185 acres), developing municipality containing a greater diversity of land use activities including residential areas of varying housing density, commercial areas, agricultural land, forested land, and a portion of the Rutgers University campus.

Table 1, Developed versus Undeveloped Land Cover Estimates Using Housing Density Information, provides a summary of the results of this analysis. The results clearly indicate that the TM digital data, if used alone, would result in an under estimation of the amount of land classified as being developed in residential areas where tree cover is an important component of the spectral information that is recorded by the satellite. In contrast, the results indicate that census data can be effectively used to derive residential housing density information that can greatly reduce this potential problem of misclassification.

The results (see Table 1) indicate that the undeveloped land cover estimates derived from the TM data are significantly reduced through the use of the housing density information. In the case of Highland Park, the percentage of land classified as being undeveloped decreases from 31.9 percent when using the TM information to a low of 6.8 percent when using the 0.5 unit per acre density mask. This pattern is repeated for Piscataway where the estimated percentage of undeveloped land decreases from 56.8 percent when using the TM information to a low of 37.1 percent when the 0.5 unit per acre density mask is used.

The results reflect the degree to which Highland Park is in fact a highly developed community with little land remaining for potential development and within which residential development has taken place at a relatively high density. In contrast, the results for Piscataway reflect a different pattern of development within this community and the existence of a significant amount of undeveloped land even when housing density information is used to improve the accuracy of the estimate of remaining undeveloped land. After examining the data for these and other municipalities, it was decided that the 0.5 unit per acre density threshold yielded the most accurate estimates of undeveloped land.

Processing of the Remaining Digital Boundary Files

Digital boundary files for municipalities or minor civil divisions (MCDs), the term used for municipalities in New Jersey by the US Census, counties, and the state were obtained from the NJ Department of Environmental Protection and Energy (DEPE). These files were used to maintain consistency with existing estimates of the total amount of land within the State, counties, and MCDs. The vector boundary files were converted to raster format as an additional data layer in the GIS data base used to develop the estimates of land cover.

Digital boundary files for the state planning areas were obtained from the State Planning Commission and converted from vector to raster format and also added as a data layer to the GIS data base. Digital boundary files for the Pinelands management areas were obtained from

the Pinelands Commission for land within the Pinelands region and converted from vector to raster format.

Calculation of Adjusted Developed and Undeveloped Land

Following the processing of the TM digital data, the 1990 US Census data and TIGER files, the MCD, county, and state boundary files, the state planning region boundary files, and the Pineland management area boundary files; the GIS data base required to estimate developed and undeveloped land was completed. Following the development of this data base, the GRASS GIS software package was used to calculate the amount of developed and undeveloped land within each MCD by planning area. The results were output in machine readable format and used in the calculation of housing allocation numbers by COAH and its consultants.

Summary and Conclusions

Estimates of developed and undeveloped land were calculated for New Jersey using land cover information derived from Landsat TM digital data. Further refinement of the estimates of undeveloped land was accomplished through the use of the 1990 US Census data to eliminate land that could be characterized as developed based upon existing housing density at the block level.

The estimates that were derived through this process were designed to be consistent state-wide estimates that could be used to establish reasonable regional shares within each housing region for each New Jersey municipality. It is believed that the resulting estimates are the best available and the data created represent a valuable planning tool for government, non-profit, and private sector entities at the state, county, and local levels.

Table 1. Developed versus Undeveloped Land Cover Estimates Using Housing Density Information.

	Municipality			
	Highland Park		Piscataway	
	acres	% total	acres	% total
TM land cover				
undeveloped	394	31.9%	6,921	56.8%
developed	842	68.1%	5,264	43.2%
TM with a 2 unit/acre mask				
undeveloped	200	16.2%	6,009	49.3%
developed	1,036	83.8%	6,176	50.7%
TM with 1 unit/acre mask				
undeveloped	91	7.4%	5,309	43.6%
developed	1,145	92.6%	6,876	56.4%
TM with 0.5 unit/acre mask				
undeveloped	85	6.8%	4,515	37.1%
developed	1,151	93.2%	7,670	62.9%
Total land cover	1,236	100.0%	12,185	100.0%

Note: The TM land cover estimates include the total acreage of land classified as vacant using the digital satellite data.

APPENDIX C

STRUCTURAL CONDITIONS SURVEY

The Council on Affordable Housing (COAH) has estimated the number of substandard housing units occupied by low and moderate income households in each municipality, by employing census data. This estimate is called the municipal indigenous need. COAH recognizes that its estimates may be high or low. Therefore, COAH has devised a survey for any party in COAH's process to present data to COAH that may be used to alter the census-generated indigenous need estimates.

The survey requires an exterior inspection to determine if a housing unit is substandard. It then provides for the use of census data to estimate the number of substandard units occupied by low or moderate income households.

In developing the exterior survey, COAH has divided the exterior structure of a building into seven components: (1) foundation; (2) rails, steps, stairs, porch; (3) siding and walls; (4) windows and doors; (5) eaves, soffets, gutters, leaders; (6) roof and chimney; and (7) fire escape. The foundation, siding and walls and roof and chimney are considered major systems. The remaining components are considered minor systems. Each system is to be ranked as good/excellent or fair/poor. Definitions are provided to guide the exterior inspection in Appendix A.

If one major system is determined to be fair/poor, the structure and all housing units within it are considered substandard. If two or more minor systems are determined to be fair/poor, the structure and all, the units within the structure are considered substandard.

The survey can be conducted from the street, and, in most cases, there will be no need to step on to the property. A view of the front of the structure, its two sides (one side of it is semi-detached) and a portion of the roof should provide sufficient information to complete the survey.

The Structural Conditions Survey shall be performed by individuals who are licensed to perform building and/or housing inspections who have received training from COAH on the implementation of the survey. Additional COAH training may be substituted for a building and/or housing inspection license. COAH will offer training periodically on how to conduct this survey.

There may be some areas of a municipality which can be excluded from the survey. Subdivisions constructed after 1980, areas of very expensive homes, and neighborhoods that the local housing/building inspector believes are trouble free are examples of such areas. All surveys submitted to COAH will be checked by COAH staff with special attention paid to areas of the municipality not surveyed.

The exterior survey should yield an estimate of substandard units within the municipality. To estimate the number of substandard units occupied by low and moderate income households, the Council will rely on census information that is available from the Public Use Micro-Data Sample (PUMS). This data allows COAH to match household income to the census information COAH uses to estimate the indigenous need. The census has divided New Jersey into over 50 PUMS areas. Therefore, the data are sensitive to the different housing stocks found within the State.

As an example, let us assume that a municipality performs the exterior survey and finds 100 substandard units. Let us also assume that the PUMS data indicates that 82 percent of substandard units (within the geographic area defined by the PUMS) are occupied by low and moderate income households. Therefore, the survey results indicate that 82 low or moderate income households are living in substandard housing units.

DEFINITIONS FOR STRUCTURAL CONDITIONS

The following relates to structural components of a residential building. Refer to the attached diagram for component identification.

Excellent to Good—The condition of the component is like new or requires standard maintenance.

Examples:

Foundation—The component may need minor re-pointing and/or paint or the removal of shrubs or vines to protect it from deterioration.

Handrails, Steps, Stairs, Porch—A component or components may need paint and/or re-nailing or tightening.

Siding and Walls—The components may need light scraping and painting and/or re-nailing of loose siding.

Windows and Doors—The components may need light scraping and painting and appear to be operational.

Eaves, Soffets, Gutters, Leaders—The components may need light scraping and painting. Gutters may need realignment. Leaders may need re-attachment.

Roof and Chimney—No immediate repair is needed on the roof. The chimney is straight but may need minor re-pointing.

Fire Escape—The component may need scraping and painting and is properly functioning.

Fair to Poor—The condition of the component requires immediate maintenance, repair or replacement. Further deterioration may adversely affect other exterior and/or interior components.

Examples:

Foundation—The component needs re-pointing, replacement of some stones, brick or blocks or some rebuilding due to: loose, broken or missing bricks or block; missing mortar; excessive cracks in the masonry*; deterioration of masonry surface; pargeting pulling away; sinking; or being out-of-plumb.

Handrails, Steps, Stairs, Porch—The components need replacement of boards, risers, joists, rafters, and/or beams, etc. due to: sagging; broken or unsound supports; a sinking or structurally unsound foundation; broken, missing or rotted boards; missing or unsound railings or balusters; broken or missing trim; missing mortar in the masonry or the masonry being generally deteriorated; excessive cracks in the masonry*; or worn steps.

Siding and Walls

Brick—The component needs re-pointing, spot replacement, re-construction, etc. due to: sagging; bowing; being out-of-plumb; excessive cracks in the masonry*; missing bricks or missing mortar.

Stucco—The component needs patching, spot replacement, or re-construction and painting due to deteriorated surface, cracks, holes, water damage, or bowing.

Wood—The component needs patching, spot replacement, or re-construction and painting due to sagging, bowing, being out-of-plumb, rot, water damage, loose boards, cracked or broken boards.

Siding—The component needs spot, area or total replacement due to broken or missing siding.

Windows and Doors and Related Trim (Exclusive of Storm Doors and Windows)

Windows—The component needs putty or new glass. Other indicators of a fair/poor component include: missing or broken trim; missing or broken sill; a frame or sash out of square; rotted wood; and/or inoperable windows.

Doors—Indicators of a fair/poor door include: broken glass; a frame out of square; missing or broken trims; interior grade doors being used as exterior doors; rotted wood.

Eaves, Soffets, Gutters, Leaders—Indicators of a fair/poor component include: broken or hanging sections; holes, rot leakage and/or missing sections; significant deterioration; or animal infestation.

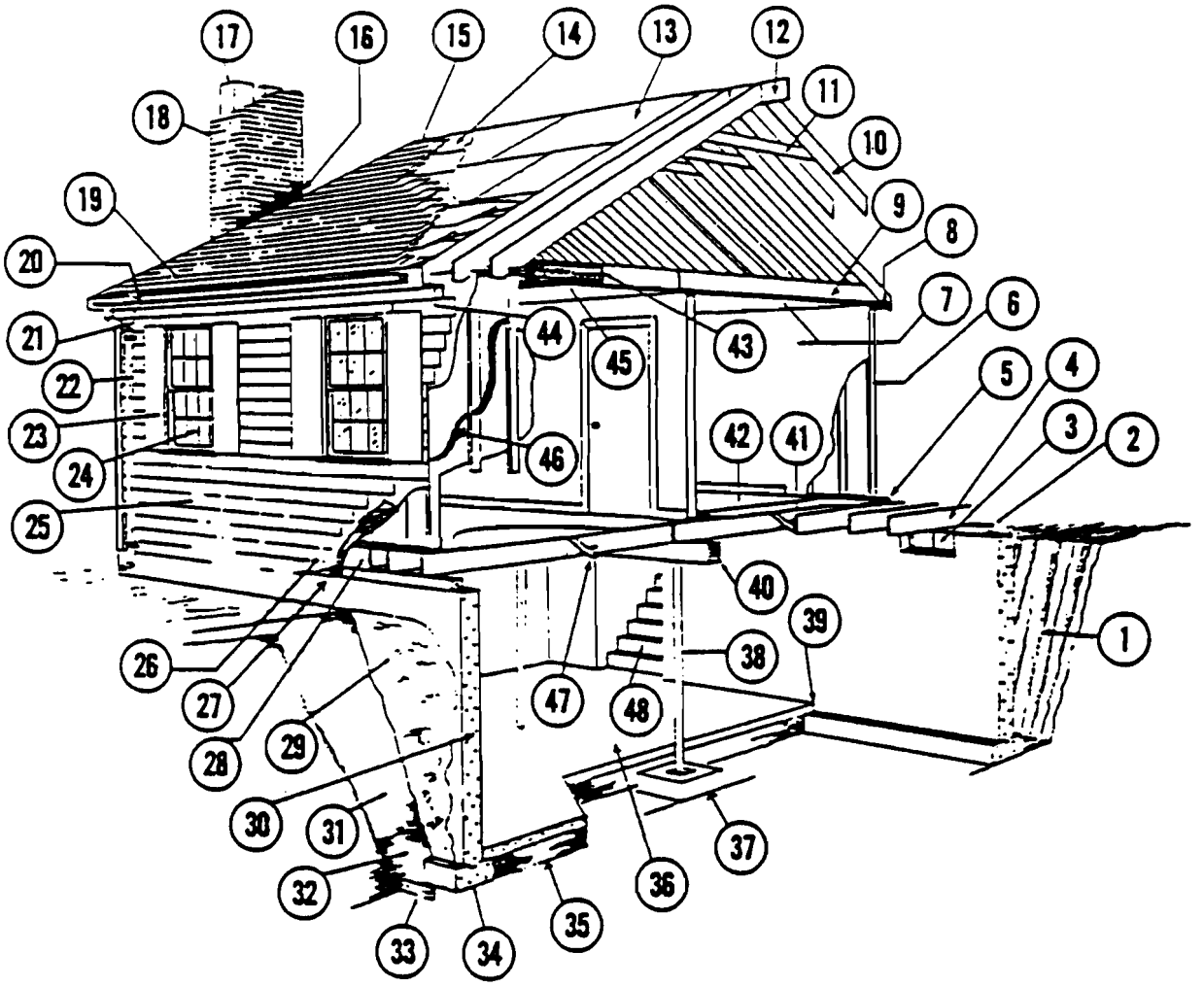
Roof and Chimney

Roof—The component needs moderate scattered shingle replacement, area replacement or total replacement due to: sagging; exposed paper or sheathing; hole(s); curling of shingles; blistering of rolled roofing; cracked shingles; missing shingles; rusted metal roof; and/or leakage.

Chimney—The component needs partial or total reconstruction due to: sinking; being out-of-plumb; excessive cracks*; loose, broken or missing bricks; missing mortar; deteriorated surface and/or lack of a flue.

Fire Escape—The component needs significant physical repairs or replacement and/or is not fully operational.

*Excessive cracks can mean multiple cracks affecting structural integrity or a crack or cracks as wide as ¼ inch.



RESIDENTIAL BUILDING COMPONENTS

1. EXCAVATION
2. SILL PLATE
3. BASEMENT WINDOW
4. FLOOR JOIST
5. SHOE PLATE
6. STUDS
7. DRYWALL
8. PLATE
9. CEILING JOISTS
10. RAFTERS
11. COLLAR TIES
12. RIDGE RAFTER
13. ROOF SHEATHING
14. ROOF FELT
15. RIDGE SHINGLES
16. FLASHING
17. FLUE LINING
18. CHIMNEY
19. ROOF SHINGLES
20. GUTTER
21. FACIA
22. DOWNSPOUT
23. SHUTTER
24. WINDOW
25. WALL SHINGLES
26. BUILDING PAPER
27. WALL SHEATHING
28. FIRE STOP
29. DAMPPROOFING
30. FOUNDATION WALL
31. BACKFILL
32. DRAINAGE STONE
33. DRAINAGE TILE
34. WALL FOOTING
35. GRAVEL
36. CONCRETE SLAB
37. COLUMN FOOTING
38. PIPE COLUMN
39. EXPANSION JOINT
40. GIRDER
41. SUB-FLOOR
42. FINISH FLOOR
43. ATTIC INSULATION
44. SOFFIT
45. CEILING STRAPPING
46. WALL INSULATION
47. CROSS BRIDGING
48. BULKHEAD STAIRS

STRUCTURAL CONDITIONS SURVEY DATE:

RATE COMPONENT: GOOD/EXCELLENT = O

FAIR/POOR = X

SURVEYOR:

STREET: ADDRESS	BLOCK	LOT	NUMBER OF DWELLING UNITS	COMPONENTS: ONE "X" AND STRUCTURE IS DEFICIENT: FOUNDATION	SIDING AND WALLS	ROOF AND CHIMNEY	COMPONENTS: TWO "X"S AND STRUCTURE IS DEFICIENT: WINDOWS AND DOORS	EAVES/SOFFETS GUTTERS/LEADS	RAILS/STAIRS STEPS/PORCH	FIRE ESCAPE	DEFICIENT STRUCTURE MARK "YES" OR "NO"	COMMENTS

TECHNICAL APPENDIX D

The Cost of Providing Infrastructure

Application: The Cost of Providing Infrastructure

September 4, 1986

TABLE OF CONTENTS

I. Study Purpose

II. Assumptions and Analytical Approach

III. Data Requirements
A. Economic and Social Factors
B. Debt Management
C. Financial Management

IV. Financial Evaluation Forms

V. Standards: Comparative Analysis

VI. Recommendations for Further Action

Appendix 1: Data Sources

Appendix 2: Data Definitions

I. Purpose

The purpose of this study is to provide an approach to the development of **financial evaluation forms** to be used by the Council on Affordable Housing and the Department of Community Affairs. This form will provide the necessary data to review whether necessary capital expenditures to support proposed inclusionary housing development obligations would result in "prohibitive costs" to the respective local jurisdictions.

Study Approach

The approach taken to accomplish the study's objective is to first present the theoretical background and analytical approaches that have been used to measure prohibitive costs from the perspective of a community's financial capacity. The infrastructure costs are limited to **water and sewer systems only.**

Section III presents the data requirements needed to measure prohibitive cost and a discussion of indicators that provide a perspective on municipal and financial conditions and status.

Section IV includes a series of worksheets that make up the financial evaluation form. These worksheets provide information on municipal taxes, demographic and statistical data employed to calculate indicators of economic vitality, revenues/expenditures, income data on water and sewer enterprise funds, rates charged to users of each water and sewer service system, wastewater system costs, and costs per household.

Section V presents comparative data on which to make an evaluation of prohibitive costs against generally accepted industry standards. These standards are drawn from Moody's Investors Service selected indicators of Municipal Performance for 1985.

II. Assumptions and Suggested Analytical Approach

The service area and the type of financing, general obligation, revenue bond, special district or tax increment financing will have a direct bearing on who bears the burden of the system costs. A general obligation bond or a revenue bond supported by general property taxes or user charges from an entire jurisdiction has the broadest distribution of cost impacts. An improvement district or tax increment financing district with assessment or "impact fees" levied directly against the properties who benefit from the new system costs has more narrow cost distribution effects. The boundaries of the service area and the method of revenue generation to pay for the project financing must be explicitly defined.

A municipality's ability to pay for the new infrastructure will depend on a judgment as to whether or not its indicators of financial condition indicate "fiscal stress" will result from the added community expenditure. These indicators are objective in nature as described in Section III below and should be judged against the standards of the financial and debt ratios presented in Section V. Generally, a community with poor financial and debt ratios that are below the median ratios are strong candidates for a jurisdiction likely to experience "prohibitive costs" from the new infrastructure. These are generally communities with the lowest investment grade or below investment grade ratings from national rating agencies (Moody's, Standard & Poor's and Fitch).

Many tax-exempt municipal bonds and notes are given ratings to indicate their degree of creditworthiness security from risk or default. Three major national rating agencies analyze the municipal authorities issuing bonds. They are Moody's Investors Service, Standard & Poor's Corporation, and Fitch Investors Service. (Moody's and Standard & Poor's also will rate short-term issues.) Small issues of municipal bonds and notes are often sold without a credit rating.

Creditworthiness	Moody's	Standard & Poor's and Fitch
Prime (highest quality debt)	Aaa	AAA
Excellent	Aa	AA
Good	A	A
Average	Baa	BBB
Fair	Ba	BB
Poor	B	—
Marginal	Caa	B
Default	C	D

Bonds rated between prime and average are considered "investment grade" by banks and conservative investors. Those rated below average are considered "speculative" by the same investors.

In addition, Standard & Poor's has added plus and minus signs to the ratings of certain securities in order to differentiate between stronger and weaker credit ratings. This was done because there were so many bonds in each category. Similarly, Moody's adds a number one to the ratings of bonds that possess the strongest bonds in a category. For example, the strongest bonds in the Aa category are rated Aa1, the strongest bonds in the A category are rated A1, and the strongest bonds in the Baa category are rated Baa1.

Consistency of Standards

It is recommended that the same standards of "prohibitive costs" be used by the Council on Affordable Housing, Local Finance Board, and Department of Environmental Protection in their evaluation of each community.

Limitations

The limitations of these suggested approaches are the difficulties in synthesizing the municipal indicators into a single decision on prohibitive cost. These limitations can be overcome with more sophisticated analysis by developing a **prohibitive cost index**, perhaps with the technique of multiple discriminant analysis of the indicators. This approach groups indicators into common dimensions of municipal financial capability which can then be classified according to high, average or low strength.*

III. Data Requirements

Accurate data is fundamental to accurate analysis. The selected indicators are based on techniques by credit and municipal analysts for evaluating municipal financial condition.

In some cases, a particular data item may be simply unavailable or inappropriate, in which case it should be left out. In all cases, however, it is important that data be consistent during the period under examination. If accounting or recording procedures change from one fiscal year to another, adjustments should be made so that each year's data are comparable.

Data Requirements

The data needed for analysis fall into four general categories:

- expenditure elements,
- tax base elements,
- revenue elements, and
- demographics elements.

The analysis of financial conditions is based on an examination of the trends and behavior of key indicators over time. Data are collected for the most recent five-year period for which information is complete.

Data will usually be obtained from annual financial reports and other accounting or reporting statements. A list of suggested sources appears in the Appendix.

A. Economic and Social Factors

Economic and social factors are of primary importance in assessing the creditworthiness of a jurisdiction. A strong economic base should

*See Karen M. Seidel "Oregon Municipal Fiscal Indicators," Bureau of Governmental Research and Service, University of Oregon, October 1983.

enable an issuer to overcome some weakness in debt, legal and financial factors and to maintain a sound credit position. On the other hand, a weak or declining economy will demand that an issuer exert the utmost care in debt and financial management to protect creditworthiness. A strong credit usually shows greater than average economic diversity, wealth, and growth. Measures of economic base include total personal income, income per capita, population changes, and changes in per capita income.

Wealth

A wealthy economic base will be indicated by above-average per capita property values, personal income and wholesale and retail sales. Negative aspects here would be a high or rapidly growing proportion of the population at or below the poverty level or on welfare rolls.

Growth

A strong credit also requires a growing economic base, although not all growth is necessarily viewed as favorable. Extremely rapid growth based heavily upon speculative factors may lead to excessive build-up of debt and/or taxes which could prove unsupportable over the long run. While growth is not always a favorable sign, a decline in economic resources is viewed as a negative factor since it would be highly unusual for such a decline to be offset by a tapering of demands on the tax base. Growth rates in population should approximate the state and national averages.

Population

Population is a fundamental indicator of economic growth. Growth in population is associated with increases in retail sales and with growth in consumer-related jobs. Population increases attributable to migration are often additionally associated with construction and durable manufacturing job expansion as well as service sector expansion, particularly the components of business service, government and tourist recreation. Growth at faster rates than the national average indicates an increasing share of the U.S. market. Similarly, population growth exceeding regional rates indicates economic shifts within the region.

Personal income

Personal income is a powerful indicator of economic strength and viewed over time can reveal strong basic trends. Income is also a major fiscal resource of state governments and, therefore, is the standard against which debt and taxes are compared. If income is rising more rapidly than in the nation and/or region as a whole, shifts in economic base composition are a strong possibility. Growth in composition can be expected as can growth in government revenues from sales and income taxes.

Per Capita Income

Per capita income below the national average can be both favorable and unfavorable. Low incomes are associated with low quality public education and, consequently, low skilled labor. Low level and limited scope of government services and a low debt burden also are associated with low per capita income.

Total Nonagricultural Employment

Total employment is a powerful analytic tool, but nonagricultural employment is more useful for comparison. Relatively high growth in nonagricultural jobs is a favorable sign.

B. **Debt Management**

Debt factors have always played a prominent role in municipal credit both because of inherent importance and because debt figures are quantifiable measures which make inter-city comparisons easier than for other factors. Three key ratios traditionally used in the industry attempt to establish the size of a unit's debt, the burden this places upon resources, and the relationship between the servicing of this debt and the unit's overall revenues. In turn, each ratio can be viewed from three aspects in an attempt to weigh its importance in the unit's credit picture: (1) the absolute level of the ratio at that point in time as compared with traditional guidelines; (2) the level of the ratio as compared with ratios of similar types of local units; and (3) the trend of that ratio within the unit being reviewed. Three additional ratios explored in evaluating an issuer's debt management policies relate to the rate of debt retirement, the level of bond anticipation note debt and the level of the unfunded pension liability. Two other items which do not readily lend themselves to quantitative analysis but should be considered in debt analysis are (1) authorized debt and projected debt needs and (2) other significant unfunded debts and contingent liabilities such as leases.

Debt Per Capita

This ratio attempts to establish the size of the unit's debt. It is measured by dividing the unit's overall net debt by its population. Overall net debt is the total tax-supported debt of the issuer as well as its proportionate share of the debt of other governments which may tax residents of that community. When this ratio reaches $1,000 or above, debt is considered as sizeable.

Debt/Estimated Full Value

This ratio attempts to establish the burden which debt places upon resources, and is generally calculated by dividing the unit's net debt by the estimated market value of its real property. A debt burden of 3 percent or below is generally considered low. One between 3 percent and 10 percent is moderate. When the burden reaches or exceeds 10 percent, it is considered heavy and must be closely examined to determine that it will not become unmanageable in the future. The heavier the burden, the closer the attention that must be paid to the trend of that burden, the issuer's physical plant and future borrowing plans.

Debt Service/Revenues

This ratio's purpose is to indicate the flexibility that the locality will have to meet debt service (and other fixed charges although they are not directly part of the ratio) if revenues were to decline. A ratio of 10 percent or less indicates that ample flexibility should exist to meet debt service. If the ratio exceeds this level, it may be explained by a rapid debt retirement schedule or a unit in which capital expenditures are unusually large in relation to operating expenditures. If neither is true, then the higher that ratio becomes, the more concern there is about the unit's ability to meet fixed charges if an economic downturn or some other unforeseen circumstances depress revenues.

Direct Debt Due in Ten Years

This measure indicates the amount of the issuer's long-term debt which matures in ten years. Debt to finance a project should not extend beyond the expected useful life of the project. While each issuer's schedule must be viewed in terms of the types of long-term improvements being financed, it is generally true that the more rapid recapture of debt incurring capacity places the issuer in a more flexible position. Any issuer which has less than one-third of its long-term debt maturing in ten years must be carefully reviewed as to the appropriateness of such a slow retirement schedule.

C. **Financial Management**

A healthy credit is marked by a consistently and realistically balanced budget as reflected in the unit's income and expense statements, a cash surplus (cash and investments exceeding current liabilities) at the last balance sheet date, and maintenance of a manageable level of short-term operating debt. Other factors considered include the unit's tax burden, level of tax collections, reliability of its revenue structure and growth rate of its expenditures. A one-year deficit or drop in property tax collections may not be of particular concern if its origin is external (a national recession) and is resolved in a satisfactory manner and time period. However, if deficits persist over good and bad times, their causes must be examined closely.

Taxes

Taxes are the largest source of government revenues and we are developing data to measure **tax burden** or the ratio of taxes from own sources to personal income. (Adjusted personal income excludes welfare transfer payments from state and local texes.) Tax burden reveals the extent to which current levels of general revenue (excluding intergovernmental revenue) limit the private use of personal income. High tax burden is viewed as a disincentive to private investment and can be an indication of excessive government programs in the face of an unhealthy private economic sector. This measure should be studied along with the component data for revenues and personal income.

Ratios used in evaluating financial management may be categorized under two areas: operating statement and balance sheet data and tax ratios.

Average Annual Increase in Expenditures

One of the most telling indicators is how rapidly an issuer's budget is growing. An increase in expenditures which exceeds growth in the tax

base substantially over a period of time will ususally indicate future credit problems.

Direct Expenditures

Direct expenditures are particularly revealing of the extent of government participation in the economy. If expenditures are increasing more than revenues from own sources and Federal aid, increasing reliance on debt and/or accounting gimmicks is a possibility. Rising per capita expenditures may indicate broader scope and higher quality public services, increasing welfare burdens and/or rising public employee compensation. Below average expenditures that show a sudden surge may indicate a shift to an urban economy characterized by high-skilled industries. Per capita figures facilitate comparisons among jurisdictions and within a state over time.

Comparatively high levels of expenditures should be associated with broader, better services, and some attention should be paid to apparent adequacy and delivery efficiency—or lack thereof.

Operating Surplus (Deficit) Revenues

From the income and expense statement, it is ascertained whether revenues exceeded expenditures (operating surplus) or expenditures exceeded revenues (operating deficit). An operating surplus is considered favorable or comfortable. A large surplus is not necessarily looked for, as a particularly large one may even have negative connotations as to budgeting practices. An operating deficit of more than 5 percent of revenues is of concern and must be further examined in terms of past year's performance, the reason for it (internal or external), and the plans to resolve it.

Accumulated Surplus (Deficit) Revenues

From the balance sheet, the issuer's solvency is evaluating by measuring accumulated surplus or deficit. Generally, a surplus of any size may be considered satisfactory, though a substantial decline from the prior year is deserving of further attention as to its implications for future budgets. Investigate the source of any deficit that has been allowed to accumulate in excess of 10 percent of one year's revenues and examine the issuer's ability and plans to eliminate it.

Effective Property Tax Rebate

The effective property tax rate is an overall rate taking into account not only the property tax rate of the issuer but also those of all its overlapping tax jurisdictions. The effective property tax rate is the tax rate on true or market property, thus allowing for comparisons with other units. A problem exists in using this indicator due to the diversity in revenue structures. However, it is useful in comparing like units within a specific state.

Tax Delinquency Ratios

The property tax collection record is important because some issuers depend heavily upon property taxes; for virtually all issuers, the tax is the budget-balancer; and, because it is one of the best measures of willingness to pay. Two ratios are primarily utilized. The first measures the collections from the current year's levy against the gross levy for that year. The second measures current collections and collections from prior years combined against the current levy.

IV. **Financial Evaluation Forms**

A series of worksheets are presented with instructions on how to fill them out. The eight worksheets are based on the indicators of financial condition as follows:

- **Worksheet #1**—Behavior of Municipal Tax Base and Tax Revenues
- **Worksheet #2**—Expenditure Information
- **Worksheet #3**—Demographic and Statistical Information
- **Worksheet #4**—Water and Sewer Enterprise Fund Information
- **Worksheet #5**—Water and Sewer Rates
- **Worksheet #6**—Total Estimated Annual Local Wastewater System Costs
- **Worksheet #7**—Annual Costs per Household
- **Worksheet #8**—Bond Rating and Debt History

These forms are drawn from various publications of the Government Finance Research Center, Washington, DC.* Computer software is available at nominal cost to process and analyze these data. A data base should be created over time to facilitate comparative analysis between the subject municipality and New Jersey averages for each of the data measurements.

*See Government Finance Research Center, GOVRATIO User's Manual, July 1984 and U.S. EPA, Office of Water Programs, Financial Capability Guidebook, March 1984.

Worksheet #1

Since many local governments are substantially supported by property tax revenues, Worksheet #1 is designed to track the behavior of the tax base and tax revenues, and to provide an indication of the jurisdiction's tax flexibility.

Property Taxes Levied (14) and Property Taxes Receivable (15) should be readily available in the government's Combined Statement of Revenues, Expenditures, and Changes in Fund Balance. Assessed Value (16), Assessment Ratio (17) as a percent, and Full Market Value (18) should be available from the Assessor's Office.

If your government uses different tax levies for different classes of property, you may choose either to use the data for only the largest class of property in terms of revenue or you may calculate average or weighted average data. If you select either approach on the worksheet, identify the method used to ensure that data in subsequent years is comparable.

Worksheet #1
Tax Information (A)

Item Number	Description	Amount ($) 19__	19__	19__	19__	19__
14.	Property Tax Levy					
	Source Documents					
15.	Property Taxes Receivable					
	Source Documents					
16.	Assessed Value					
	Source Documents					
17.	Assessment Ratio	%	%	%	%	%
	Source Documents					
18.	Full Market Value					
	Source Documents					

Instructions:

1. Enter the total for the amount of property taxes levied or billed for each year.
2. For each year, enter the amount of property taxes outstanding at year's end (i.e., the amount uncollected for the year of the levy).
3. Enter the Assessed Value of Taxable Real Property.
4. Enter the Assessment Ratio as a percent.
5. Enter the estimated full (or true) market value of taxable property.
6. Make a note of the document name and page number from which you gathered the data. This will serve as a reference if you need to verify the information and also will help ensure consistent information in gathering data to update the analysis in future years.

NOTES: If the Assessed Value or Full Market Value is $1,000,000,000 or more, enter the amount in $1000's.

For the Assessment Ratio, if you have different ratios for different classes of property, use an estimated average ratio.

Worksheet #2

Worksheet #2 also examines trends in the **character** of expenditures across all programs. Data for aggregate Capital Outlays (39), Debt Service (40), Short-Term Interest (41), and Fringe Benefits (42) may be found in the government's Combined Statement of Revenues, Expenditures, and Changes in Fund Balance. These amounts are compared with Total Expenditures actually incurred (43).

Worksheet #2
Expenditure Information (B)

Item Number	Expenditure Type	Actual Expenditures by Type 19__	19__	19__	19__	19__
39.	Capital Outlays					
	Source Documents					
40.	Debt Service					
	Source Documents					
41.	Short-Term Interest					
	Source Documents					
42.	Total Expenditures					
	Source Documents					

Instructions:

1. For each year, obtain the total capital expenditures for all funds except enterprise funds. Enter these amounts in the "Capital Outlays" line.
2. For each year, obtain the total of all debt service (principal and interest) payments from all governmental funds (exclude revenue bond debt service funds). Enter these amounts for Item 35, Debt Service.
3. Similarly, for all funds except enterprise-type funds, obtain the total interest paid on short-term loans; enter the amount for each year in Item 36.
4. Obtain the total expenditures on fringe benefits from all funds except enterprise funds and enter for Item 37.

Worksheet #3

This worksheet is used to assemble demographic and statistical data employed to calculate indicators of economic vitality. If the value of Building Permits (66) and Business Licenses (67) is not available, the raw number of permits and licenses issued may be used. Population (68) and Per Capital Income (69) may be available from a local, regional, or state planning agency; a local bank; or an economic development agency. The Consumer Price Index (70) is available from the U.S. Bureau of Labor Statistics.

Worksheet #3
Demographic and Statistical Information

Item Number	Description	19__	19__	19__	19__	19__
66.	Building Permits					
	Source Document					
67.	Business Licenses					
	Source Document					
68.	Population					
	Source Document					
69.	Per Capita Income	$	$	$	$	$
	Source Document					
70.	CPI					
	Source Document	U.S. Bureau of Labor Statistics—Annual Handbook of Labor Statistics				
71.	Municipal Employees					
	Source Document					
72.	Non-Agricultural Total Employment					

Instructions:

1. For Item 66, enter number of building permits issued during each year.
2. For Item 67, enter number of business licenses issued each year.
3. For Item 68, enter estimated population for each year.
4. Enter estimated per capita income for each year for Item 69.
5. Enter Consumer Price Index each year for Item 70.
6. For Item 71, enter the number of full-time equivalent employees each year.
7. For Item 72, enter the covered employment figures drawn from New Jersey Covered Employment, NJ Department of Labor.

Worksheet #4

This worksheet is used to collect income data on water and sewer funds your jurisdiction may operate. Enterprise funds are those established by a government to account for operations in a manner similar to a private business, where it is the intent to recover the costs of a service or facility through user charges. Common enterprise activities include utilities (such as water and sewer services), parking facilities, airports, and transit systems.

The names of the water and sewer enterprise funds chosen should be entered in the left-hand column of the worksheet. The net income for each year for each of the selected enterprise funds is entered in the appropriate column on the worksheet. Generally, net income is the difference between revenues and expenses and is intended to indicate the degree to which the enterprise is self-supporting. However, some services subsidized by the general government may include "transfers in" in the calculation of gross revenue; and some profitable services may include "transfers out" in the calculation of gross expenses. To ensure that enterprise net income figures are a comparable and accurate reflection of enterprise activity, interfund transfers, unless they represent payments or receipts for services provided (for example, for shared overhead), should be eliminated from the calculation of net income.

The "Source Department" area provides space for you to note a reference to the document (and perhaps the page number) from which the data were taken (such as Annual Audit Report; Sewer Enterprise Statement of Revenues, Expenses, and Changes in Retained Earnings; etc.).

Worksheet #4
Enterprise Fund Information (A)

Item Number	Enterprise Fund Name	Enterprise Fund (Net) Income ($) 19__	19__	19__	19__	19__
1.	Fund					
2.	Fund					
3.	Fund					
4.	Fund					
5.	Fund					

Source Documents:
19___ _____
19___ _____
19___ _____
19___ _____
19___ _____

Instructions:

1. Fill in the names of up to five enterprise funds (such as water, parking, airport, sewer, etc.).
2. Enter the (net) income amount for each fund for each year.
3. Make a note of the document name, and page number, from which you gathered the data. This will serve as a reference if you need to verify the information and also will help ensure consistent information in gathering data to update the analysis in future years.

NOTE: Enterprise funds are those that are established to account for operations that are financed and operated in a manner similar to a business enterprise — where it is often the intent to finance the operation largely through user charges. (Net) income is the difference between revenues and expenses. (Do not include transfers.)

Worksheet #5

This worksheet is used to collect data on the rates charged to users of each Enterprise Fund service identified in Worksheet #4. Rates will be found in ordinances or rate schedules and the units on which the rates are charged should be noted in the "Unit Description" column (such as per 100 gallons, 1,000 cubic feet, hour, etc.). If the rate unit changes from one year to the next, a conversion will be necessary to ensure that all rates for any given Enterprise Fund are comparable from year to year. If the rate structure is complex or varies from year to year an average charge per customer may be calculated to provide a comparable figure.

Worksheet #5

Enterprise Fund Information (B)

Item Number	Enterprise Fund Name	Unit Description	19__	Enterprise Fund Rates ($) 19__	19__	19__	19__
6.							
7.							
8.							
9							
10.							

Source Documents: 19___ _____
19___ _____
19___ _____
19___ _____
19___ _____

Instructions:

1. Enter the names of the enterprise funds shown in Worksheet #1.
2. In the "Units" column, for each fund, describe the units on which the rates are based.
3. Make a note of the document name, and page number, from which you gathered the data. This will serve as a reference if you need to verify the information and also will help ensure consistent information in gathering data to update the analysis in future years.

NOTE: If the charges are based on a complex rate structure, use an average rate per customer or per unit. Note this in the "Unit" column.

Worksheet #6

C. TOTAL ESTIMATED ANNUAL LOCAL WASTEWATER TREATMENT SYSTEM COSTS

- Existing Annual Operation, Maintenance, and Replacement Costs $_____ (326)
- Discontinued Annual Operation Maintenance, and Replacement Costs to be Discontinued as a Result of Proposed Project $_____ (327)
- Net Existing Annual Operation, Maintenance, and Replacement Costs (Net) (326-327) $_____ (328)
- Existing Annual Debt Service $_____ (329)
- Estimated Annual Operation, Maintenance, and Replacement Costs of Proposed Facilities (215) $_____ (330)
- Estimated Annual Debt Service and Other Required Expenses for Proposed Facilities (325) $_____ (331)
- Total Estimated Annual Local Wastewater Treatment System Costs (328 + 329 + 330 + 331) $_____ (332)

Worksheet #7

Annual Costs Per Household

- Total Estimated Annual Wastewater Treatment System Costs (332) $_____ (400)
- Nonresidential Share of Total Annual Wastewater Treatment System Costs $_____ (401)
- Residential Share of Total Annual Wastewater Treatment System Costs (400 – 401) $_____ (402)
- Number of Households _____ (403)
- Annual Wastewater Treatment System Cost Per Household (402 ÷ 401) $_____ (404)
- Other Annual Costs Per Household (identify)

  _____

  _____

  _____ $_____ (405)
- Total Annual Costs Per Household (404 + 405) $_____ (406)

Worksheet #8

Purpose of Worksheet #8

The purpose of this worksheet is to profile and summarize the community's debt position, including the proposed project.

Worksheet #8
Sections A and B
Bond Rating and Debt History

A. BOND RATINGS

- **Community's Most Recent General Obligation Bond Rating** _____ Rating _____ Date of Rating (500)
- **Community's Most Recent Revenue Bond Rating** _____ Rating _____ Date of Rating (501)

B. DEBT

	Outstanding	+ This Project	= Total	
• General Obligation Bonds	_____	_____	_____	(502)
• Revenue Bonds	_____	_____	_____	(503)
• Gross Direct Debt			_____	(504)
• Direct Net Debt	_____	_____	_____	(505)
• Overlapping Net Debt	_____	_____	_____	(506)
• Overall Net Debt			_____	(507)
• Other Debt	_____		_____	(508)
• New Debt for Other Capital Improvements			_____	(509)

General Instructions

This worksheet is divided into four sections, each providing background information related to the community's debt history. The sections cover bond ratings, outstanding debt, debt repayment, and debt limits.

Instructions for Section A

Line 500. Give the community's most recent general obligation bonds rating and the date of the rating.

Line 501. Give the community's (or its wastewater utility's) most recent revenue bond rating and the date of the rating.

Enter this information on the Supplemental Information Sheet (Exhibit VII). If the community has never had a rating, enter N/A as not applicable.

Instructions for Section B

Line 502. Give the amount of general obligation debt outstanding, and any new debt for the proposed project. General obligation bonds are those for whose payment the full faith and credit of the issuer has been pledged and are payable most commonly from real property taxes and other general revenues. Include here any general obligation bonds secured by earmarked revenues that flow outside the general fund (double-barreled bonds).

Line 503. Give the amount of revenue bonds outstanding, including any new debt for the proposed facilities.

Line 504. Gross direct debt is the total amount of general obligation and revenue bonds outstanding. (Lines 502 plus 503)

Line 505. Direct net debt is gross direct debt (line 504) less debt that is self-supporting (revenue bonds) and double-barreled bonds.

Line 506. Overlapping net debt is the community's proportionate share of tax-supported debt of local government units located wholly or in part within the limits of a community which must be borne by property or persons in that community's boundaries.

Line 507. Overall net debt is the sum of direct net debt and overlapping debt. (Lines 505 and 506)

Line 508. Three important debt "obligations" that should be considered in evaluating a community's debt load are outstanding leases, unfunded pension liabilities, and notes having a maturity greater than one year. Insert here the amount of other debt the community has outstanding.

Line 509. Give an estimate of the amount of future planned debt for other planned capital improvements your community is contemplating. Include any outstanding bond anticipation notes (BANs) here.

V. **Standards: Comparative Analysis**

This section presents a set of standards on key debt and financial ratios which judge the potentiality for "prohibitive costs," selected indicators of municipal performance based on Moody's Medians, and methods for affordability screening based on household costs.

A. **Key Financial and Debt Ratios**

Financial Ratios

	Favorable	Comfortable	Fair	Poor
Average Annual Increase of Expenditures*	Under 8%	8%-10%	12%-15%	Over 15%
Operating Surplus (Deficit)/Revenues	S	S	(D) 0-5%	(D) Over 5%
Accumulated Surplus (Deficit)/Revenues	S	S	(D) 0-10%	(D) Over 10%
Current Tax Delinquency	0-2%	2%-4%	4%-6%	Over 6%
Total Tax Delinquency	-0-	0-1½%	1½%-3%	Over 3%
Effective Property Tax Rate	0-2%	2%-3%	3%-4½%	Over 5½%

*Should not be out of line with the national inflation rate.

Debt Ratios

	Favorable	Comfortable	Fair	Poor
Gross Debt Per Capita	$0-500	$500-900	$900-1,200	Over $1,200
Gross Debt/Estimated Full Value	0-3%	3%-7%	7%-10%	Over 10%
Debt Service/Revenues	0-10%	10%-15%	15%-20%	Over 20%
Direct Debt Due in Ten Years	Over 66⅔%	50%-66⅔%	33⅓%-50%	Under 33⅓%

B. **Moody's Medians**

Moody's Ratios: 1985

	New Jersey Rank	New Jersey Amount	U.S. Median
Net Tax-Supported Debt Per Capita	15	$ 388	$ 258
Debt as Percent of Estimated Full Valuation	17	1.5	1.1
Net Tax-Supported Debt as a Percent of Personal Income	22	2.8	2.4
Estimated Full Valuation Per Capita	17	25,868	22,904
1983 Personal Income Per Capita	3	14,122	11,284

City and County Debt Medians

The magnitude and the burden of debt are two measures crucial to an evaluation of debt position. As a starting approach, a method for calculating net debt has been developed which allows for comparability among local governments © across the United States. This net debt figure is then applied to population and tax base data. By using the population data and presenting net debt on a per capita basis, a meaningful measure of the relative size of the debt is provided.

Cities

Net Debt Per Capita [1]

Population Range [2]	Direct Net Debt Median	Overall Net Debt Low	Overall Net Debt Median	Overall Net Debt High
500,000 and over	$559	$271	$ 857	$ 2,004
300,000 to 499,999	406	215	718	1,659
200,000 to 299,999	539	291	706	1,206
100,000 to 199,999	362	85	554	5,211
50,000 to 99,999	369	59	658	3,199
25,000 to 49,999	384	10	689	4,135
10,000 to 24,999	533	134	713	5,843
Under 10,000	792	151	1,064	15,907

Ratio of Net Debt to E.F.V. (%) [4]

Population Range [2]	Direct Net Debt Median	Overall Net Debt Low	Overall Net Debt Median	Overall Net Debt High
1,000,000 and over	0.4	0.03	4.2	4.1
250,000 to 999,999	0.6	0.7	2.5	5.2
100,000 to 249,999	0.4	0.6	2.5	5.5
Under 100,000	0.7	0.4	2.1	12.2

[2] Cities and counties included in these observations have been grouped according to 1980 U.S. Census population.

[3] Estimated full value (E.F.V.) refers to the "true" or "fair" market value of all taxable property within the boundaries of the unit of government. Users of this data must be aware of the significant variations that exist in methods and quality of property assessment from state to state and even among municipal governments within a given state. Definitions of "taxable property" also vary across the country as does the dependability of equalization ratios.

Counties

Net Debt Per Capita [1]

Population Range [2]	Direct Net Debt Median	Overall Net Debt Low	Overall Net Debt Median	Overall Net Debt High
1,000,000 and over	$139	$168	$1,049	$ 1,981
250,000 to 999,999	158	275	607	2,071
100,000 to 249,999	96	150	580	1,379
Under 100,000	196	96	488	156,271

[1] Direct net debt figures are derived from observations of city and county governments only and do not include school districts or special districts.

[2] Net debt is defined as a governmental unit's gross debt less sinking funds and other offsets of monies in hand for principal redemption, bonds fully supported from enterprise revenues, and short-term operating debt. Direct net debt refers to the net debt incurred directly in the name of a specific city or county; overall net debt further includes the net debt of overlapping and/or underlying units of government apportioned in accordance with property valuation.

As a measure of a government's burden of debt, a ratio is calculated between its net debt and the estimated full value of taxable property. The estimated full value serves as a direct measure of local government wealth and, therefore, is reflective of the government's capacity to service public debt. Taxable valuation is utilized as a wealth measure because it tends to be up-to-date and readily available for all sizes of municipal government.

Ratio of Net Debt to E.F.V. (%) [4]

Population Range [2]	Direct Net Debt Median	Overall Net Debt Low	Overall Net Debt Median	Overall Net Debt High
500,000 and over	1.6	0.9	4.2	8.9
300,000 to 499,999	2.3	1.1	3.1	10.4
200,000 to 299,999	2.2	1.6	2.6	9.0
100,000 to 199,999	1.6	0.3	2.5	9.3
50,000 to 99,999	1.7	1.0	2.8	16.1
25,000 to 49,999	1.8	0.1	2.9	15.0
10,000 to 24,999	2.1	0.2	3.3	24.5
Under 10,000	2.4	0.1	3.6	20.0

Enterprise Performance Medians

The following medians, derived during calendar 1984, convey various measures of performance and earning capability which are common to revenue-producing enterprises. These medians are valuable in assessing an enterprise's financial strengths and weaknesses relative to other similar enterprises.

Ratios derived from the income statement provide measures of profitability (operating ratio and net take-down) and debt-servicing capacity (coverage and safety margins). Coverage levels demonstrate both current and prospective debt repayment ability while safety margins denote additional levels of protection. The debt ratio, which is calculated from the balance sheet, signifies the enterprise's reliance on debt financing and its capacity to support additional debt.

The medians are intended as broad indicators. Significant deviation from the median is not necessarily an indicator of credit quality and may, in fact, highlight a significant event or unusual characteristic of the enterprise (i.e., start-up operation, system expansion or restructuring, abnormal weather).

Municipal Enterprise Medians

	Electric Distrib. Systems	Electric Gen. and Trans.	Water	Sewer	Airport
Operating ratio (%)	83.9	76.0	65.0	66.8	53.2
Net take-down (%)	18.3	26.6	41.0	43.7	50.6
Interest coverage (x)	4.55	2.61	4.00	3.03	3.49
Debt svc. coverage (x)	4.18	2.02	2.52	2.39	2.42
Debt svc. safety margin (%)	14.0	13.7	24.3	23.5	26.7
Debt ratio (%)	44.1	60.5	28.7	19.3	43.2

	Bridge, Tunnel, and Expressway	Turnpike
Operating ratio (%)	32.2	45.8
Net take-down (%)	73.1	56.1
Interest coverage (x)	4.97	10.6
Interest safety margin (%)	43.0	53.1
Bonds retired (%)	23.1	80.8

Municipal Enterprise Definitions (Continued)

Income Statement Components and Ratios	
Gross revenue and income:	Operating revenues plus non-operating revenue.
Operating and maintenance expenses:	Operating and maintenance expenses net of depreciation, amortization, and interest requirements
Net revenues:	Gross revenue and income less operating and maintenance expenses.
Operating ratio (%):	Operating and maintenance expenses divided by total operating revenues
Net take-down (%):	Net revenues divided by gross revenue and income
Interest coverage (x):	Net revenues divided by interest requirements for year.
Interest safety margin (%):	Net revenues less interest requirements for year divided by gross revenue and income.
Debt service coverage (x):	Net revenues divided by principal plus interest requirements for year.
Debt service safety margin (%):	Net revenues less principal and interest requirements for year divided by gross revenue and income.
Peak debt service coverage by historical net revenues (x):	Net revenues divided by estimated maximum annual principal and interest requirements on all outstanding debt and the bonds to be issued.
Peak debt service coverage by projected net revenues (x):	Projected net revenues for the first full fiscal year following completion of the capital project financed from the new bonds divided by estimated maximum annual principal and interest requirements on all outstanding debt and the bonds to be issued

APPENDIX 1

Data Sources

The necessary data will be available from several different sources. A list of typical source documents is given below:

- annual financial report (audit) for each year
- adopted budget for each year
- official statement for recent bond issues
- municipal rate ordinances
- annual report of pension system
- local or state planning documents
- census department reports (for population, income, etc.)
- handbook for labor statistics (CPI)
- sections of state code governing tax or revenue limitations

APPENDIX 2

DATA DEFINITIONS*

ACCOUNTING PERIOD. A period at the end of which and for which financial statements are prepared.

ACCOUNTING PROCEDURES. All processes that discover, record, classify, and summarize financial information to produce financial reports and to provide internal control.

ACCOUNTING SYSTEM. The total structure of records and procedures that discover, record, classify, summarize and report information on the financial position and results of operations of a government or any of its funds, fund types, balanced account groups, or organizational components.

ACCOUNTS PAYABLE. A liability account reflecting amounts on open account owing to private persons or organizations for goods and services furnished by a government (but not including amounts due from other funds of the same government or to other governments).

ACCOUNTS RECEIVABLE. An asset account reflecting amounts owing on open account from private persons or organizations for goods and services furnished by a government (but not including amounts due from other funds of the same government). Although taxes and special assessments receivable are covered by this term, they should be recorded and reported separately in Taxes Receivable and Special Assessments Receivable accounts, respectively.

ACCRUAL BASIS. The basis of accounting under which transactions are recognized when they occur, regardless of the timing of related cash flows.

ACCRUED EXPENSES. Expenses incurred but not due until a later date.

ACCUMULATED DEPRECIATION. A valuation account to record the accumulation of periodic credits made to record the expiration of the estimated service life of fixed assets.

ADVANCE REFUNDING BONDS. Bonds issued to refund an outstanding bond issue prior to the data on which the outstanding bonds become due or callable. Proceeds of the advance refunding bonds are deposited in escrow with a fiduciary, invested in U.S. Treasury Bonds or other authorized securities, and used to redeem the underlying bonds at maturity or call date and to pay interest on the bonds being refunded or the advance refunding bonds.

ASSESS. To value property officially for the purpose of taxation.

ASSESSED VALUATION. A valuation set upon real estate or other property by a government as a basis for levying taxes.

ASSESSMENT. (1) The process of making the official valuation of property for purposes of taxation. (2) The valuation placed upon property as a result of this process.

ASSESSMENT ROLE. In the case of real property, the official list containing the legal description of each parcel of property and its assessed valuation. The name and address of the last known owner are also usually shown. In the case of personal property, the assessment roll is the official list containing the name and address of the owner, a description of the personal property, and its assessed value.

ASSETS. Resources owned or held by a government that have monetary value.

AUDIT. A methodical examination of utilization of resources. It concludes in a written report of its findings. An audit is a test of management's accounting system to detemine the extent to which internal accounting controls are both available and being used.

AUDIT PROGRAM. A detailed outline of work to be done and procedures to be followed in any given audit.

AUDIT REPORT. The report prepared by an auditor covering the audit or investigation made by him. As a rule, the report should include (a) a statement of the scope of the audit; (b) explanatory comments (if any) concerning exceptions by the auditor as to application of generally accepted auditing standards; (c) opinions; (d) explanatory comments (if any) concerning verification procedures; (e) financial statements and schedules; and (f) sometimes statistical tables, supplementary comments, and recommendations. The auditor's signature follows item (c) or (d).

AUDITOR'S OPINION. A statement signed by an auditor in which he or she states that he or she has examined the financial statement in accordance with generally accepted auditing standards (with exceptions, if any) and in which he or she expresses an opinion on some or all of the constituent funds and balanced account groups of the government as inappropriate.

BALANCE SHEET. The basic financial statement that discloses the assets, liabilities, and equities of an entity at a specified date in conformity with GAAP.

BASIC FINANCIAL STATEMENTS. Those financial statements including notes thereto, that are necessary for a fair presentation of the financial position and results of operations of an entity in conformity with GAAP. Under Statement 1, basic financial statements include a balance sheet, an "all inclusive" operating statement, and (for proprietary funds, Pension Trust Funds, and Nonexpendable Trust Funds) a statement of changes in financial position.

BETTERMENT. An addition made to, or change made in, a fixed asset that is expected to prolong its life or to increase its efficiency over and above that arising from maintenance, and the cost of which is therefore

*These definitions are from U.S. EPA, Office of Water Programs, Financial Capability Guidebook, March 1984.

added to the book value of the asset. The term is sometimes applied to sidewalks, sewers, and highways.

BOND. A written promise to pay a specified sum of money called the face value or principal amount, at a specified date or dates in the future, called the maturity date(s), together with periodic interest at a specified rate. The difference between a note and bond is that the latter runs for a longer period of time and requires greater legal formality.

BOND ANTICIPATION NOTES. Short-term, interest-bearing notes issued by a government in anticipation of bonds to be issued at a later date. The notes are retired from proceeds of the bond issue to which they are related.

BOND DISCOUNT. The excess of the face value of a bond over the price for which it is acquired or sold. The price does not include accrued interest at the date of acquisiton or sale.

BOND FUND. A fund formerly used to account for the proceeds of general obligation bond issues. Such proceeds are now accounted for in a Capital Projects Fund.

BOND ORDINANCE OR RESOLUTION. An ordinance or resolution authorizing a bond issue.

BOND PREMIUM. The excess of the price at which a bond is acquired or sold over its face value. The price does not include accrued interest at the date of acquisition or sale.

BONDED DEBT. That portion of indebtedness represented by outstanding bonds.

BONDS AUTHORIZED AND UNISSUED. Bonds that have been legally authorized but not issued and which can be issued and sold without further authorization. This term must not be confused with the term "margin of borrowing power" or "legal debt margin," either one of which represents the difference between the legal debt limit of a government and the debt outstanding against it.

BONDS ISSUED. Bonds sold.

CALLABLE BOND. A type of bond that permits the issuer to pay the obligation before the stated maturity date by giving notice of redemption in a manner specified in the bond contract.

CAPITAL OUTLAY. Expenditures that result in the acquisition of or addition to fixed assets.

CAPITAL PROJECTS FUND. A fund created to account for financial resources to be used for the acquisition or construction of major capital facilities (other than those financed by proprietary funds, special assessment funds, and trust funds).

CASH. An asset account reflecting currency, coin, checks, postal and express money orders, and bankers' drafts on hand or on deposit with an official or agent designated as custodian of cash and bank deposits. All cash must be accounted for as a part of the fund to which it belongs. Any restrictions or limitations as to its availability must be indicated in the records and statements. It is not necessary, however, to have a separate bank account for each fund unless required by law.

CASH BASIS. A basis of accounting under which transactions are recognized only when cash changes hands.

CERTIFICATE OF CONFORMANCE IN FINANCIAL REPORTING PROGRAM. A voluntary program administered by GFOA to encourage governments to publish efficiently organized and easily readable CAFRs and to provide peer recognition and technical assistance to the finance officers preparing them.

COMPREHENSIVE ANNUAL FINANCIAL REPORT. (CAFR). The official annual report of a government. It includes five Combined Statements—Overview (the "liftable" GPFS) and basic financial statements for each individual fund and account group prepared in conformity with GAAP and organized into a financial reporting pyramid. It also includes supporting schedules necessary to demonstrate compliance with finance-related legal and contractual provisions, extensive introductory material, and a detailed Statistical Section. Every government should prepare and publish a CAFR as a matter of public record.

DEBT SERVICE FUND REQUIREMENTS. The amounts of revenue that must be provided for a debt service fund so that all principal and interest payments can be made in full on schedule.

DEBT SERVICE REQUIREMENT. The amount of money required to pay interest on outstanding debt, serial maturities of principal for serial bonds, and required contributions to accumulate monies for future retirement of term bonds.

DEPRECIATION. (1) Expiration in the service life of fixed assets, other than wasting assets (q.v.) attributable to wear and tear, deterioration, action of the physical elements, inadequacy, and obsolescence. (2) The portion of the cost of a fixed asset other than a wasting asset that is charged as an expense during a particular period. NOTE: In accounting for depreciation, the cost of a fixed asset, less any salvage value, is prorated over the estimated service life of such an asset, and each period is charged with a portion of such cost. Through this process, the entire cost of the asset is ultimately charged off as an expense.

DIRECT NET DEBT. Gross direct debt less debt that is self-supporting (revenue bonds) and double-barreled bonds (general obligation bonds secured by earmarked revenues that flow outside the general fund).

ENTERPRISE FUND. A fund established to account for operations (a) that are financed and operated in a manner similar to private business enterprises—where the intent of the governing body is that the costs (expenses, including depreciation) of providing goods or services to the general public on a continuing basis be financed or recovered primarily through user charges or (b) where the governing body has decided that periodic determination of revenues earned, expenses incurred, and/or net income is appropriate for capital maintenance, public policy, management control, accountability, or other purposes. Examples of Enterprise Funds are those for water, gas, electric utiliities, swimming pools, airports, parking garages, and transit systems.

ENTITY. The basic unit upon which accounting and/or financial reporting activites focus. The basic governmental legal and accounting entity is the individual fund and account group. Under NCGA Statement 1, governmental GAAP reporting entities include (1) Combined Statements—Overview (the "liftable" GPFS) and (2) financial statements of individual funds (which may be presented as columns on Combining Statements—By Fund Type, on physically separate individual fund statements, or both). The term "entity" is also sometimes used to describe the composition of "the government as a whole" (whether the library is part of the city or a separate government, whether the school system is part of the county or an independent special district, etc.).

EXPENDITURES. Decreases in net financial resources. Expenditures include current operating expenses that require the current of future use of net current assets, debt service, and capital outlays.

EXPENSES. Decreases in net total assets. Expenses represent the total cost of operations during a period regardless of the timing of related expenditures.

FAMILY. A family consists of a householder and one or more other persons living in the same household who are related to the householder by birth, marriage, or adoption; all persons who are related to the householder are regarded as members of his or her family. Not all households contain families, because a household may be composed of a group of unrelated persons or one person living alone.

FULL FAITH AND CREDIT. A pledge of the general taxing power for the payment of debt obligations. Bonds carrying such pledges are referred to as general obligation bonds or full faith and credit bonds.

FUND. A fiscal and accounting entity with a self-balancing set of accounts recording cash and other financial resources, together with all related liabilities and residual equities or balances, and changes therein, which are segregated for the purpose of carrying on specific activities or attaining certain objectives in accordance with special regulations, restrictions, or limitations.

GENERALLY ACCEPTED ACCOUNTING PRINCIPLES (GAAP). Uniform minimum standards of and guidelines to accounting and reporting. They govern the form and content of the basic financial statements of an entity. GAAP encompass the conventions, rules, and procedures necessary to define accepted accounting practice at a particular time. They include not only broad guidelines of general application, but also detailed practices and procedures. GAAP provides a standard by which to measure financial presentations.

GENERALLY ACCEPTED AUDITING STANDARDS (GAAS). Measures of the quality of the performance of auditing procedures and the objectives to be attained through their use. They are concerned with the auditor's professional qualities and with the judgment exercised in the performance of an audit. Generally accepted auditing standards have been prescribed by (1) American Institute of Certified Public Accountants (AICPA) and (2) U.S. General Accounting Office (GAO) in *Standards for Audit of Governmental Organizations, Programs, Activities, & Functions* (the "yellow" book).

GENERAL OBLIGATION BONDS. Bonds for the payment of which full faith and credit of the issuing government are pledged.

GROSS DIRECT DEBT. The total amount of **bonded** debt of a government (general obligation bonds plus revenue bonds).

HOUSEHOLD. A household consists of all the persons who occupy a housing unit. A house, an apartment, or other group of rooms, or a single room is regarded as a housing unit, when it is occupied or intended for occupancy as separate living quarters. A household includes the related family members and all the unrelated persons, if any, such as lodgers, foster children, wards, or employees who share the housing unit. A person living alone in a housing unit, or a group of unrelated persons sharing a housing unit as partners, is also counted as a household.

INDUSTRIAL REVENUE BONDS. Bonds issued by governments, the proceeds of which are used to construct facilities for a private business enterprise. Lease payments made by the business enterprise to the government are used to service the bonds. Such bonds may be in the form of general obligation bonds, combination bonds, or revenue bonds.

LEVY. (Verb) To impose taxes, special assessments, or service charges for the support of government activities. (Noun) The total amount of taxes, special assessments, or service charges imposed by a government.

LIABILITIES. Debt or other legal obligation arising out of transactions in the past that must be liquidated, renewed, or refunded at some future date. This term does not include encumbrances.

MEDIAN INCOME. The median income is the amount that divides the distribution into two equal groups, one having incomes above the median, and the other having incomes below the median.

MODIFIED ACCRUAL BASIS. A basis of accounting under which revenues are recognized when they become both "measurable" and "available to finance expenditures of the current period" and expenditures are recognized when the related fund liability is incurred.

MUNICIPAL IMPROVEMENT CERTIFICATES. Certificates issued in lieu of bonds for the financing of special improvements. As a rule, these certificates are placed in the contractor's hands for collection from the special assessment payers.

NET REVENUES AVAILABLE FOR DEBT SERVICE. Proprietary fund gross operating revenues less operating and maintenance expenses but exclusive of depreciation and bond interest. "Net revenue available for debt service" as thus defined is used to compute "coverage" on revenue bond issues. See Coverage. Under the laws of some states and the provisions of some revenue bond indentures, "net revenues available for debt service" for computation of revenue bond coverage must be computed on a cash basis rather than in conformity with GAAP.

NET INCOME. Proprietary fund excess of operating revenues, non-operating revenues, and operating transfers-in over operating expenses, non-operating expenses, and operating transfers-out.

NON-OPERATING EXPENSES. Proprietary fund expenses that are not directly related to the fund's primary service activities.

NON-OPERATING PROPERTIES. Properties that are owned by an enterprise fund but not used in the provision of the fund's primary service activities.

NON-OPERATING REVENUES. Proprietary fund revenues that are incidental to, or by-products of, the fund's primary service activities.

OFFICIAL STATEMENT. A legal document that summarizes all the salient features of the underlying documents and agreements that support a municipal bond offering. It is considered the disclosure document that presents information that is "material" to the offering. The official statement should contain what a reasonable investor would need to know in making a decision about the issue. Thus this document will usually include a description of the issuer, a description of the security of the bond, a summary of the principal financing documents, any feasibility studies that relate to the security, and any other "key information."

OVERALL NET DEBT. The sum of direct net debt and overlapping debt.

OVERLAPPING DEBT. The proportionate share of the debt of local governments located wholly or in part within the limits of the reporting government that must be borne by property within each government. Except for special assessment debt, the amount of debt of each unit applicable to the reporting unit is arrived at by (1) determining what percentage of the total assessed value of the overlapping jurisdiction lies within the limits of the reporting unit, and (2) applying this percentage to the total debt of the overlapping jurisdiction. Special assessment debt is allocated on the basis of the ratio of assessments receivable in each jurisdiction that will be used wholly or in part to pay off the debt to total assessments receivable which will be used wholly or in part for this purpose.

OPERATING INCOME. The excess of proprietary fund operating revenues over operating expenses.

OPERATING REVENUES. Proprietary fund revenues that are directly related to the fund's primary service activities. They consist primarily of user charges for services.

REVENUE BONDS. Bonds whose principal and interest are payable exclusively from earnings of an Enterprise Fund. In addition to a pledge of revenues, such bonds sometimes contain a mortgage on the enterprise fund property.

REVENUES. In general terms, money received in exchange for the delivery of goods and services. A more precise definition is the additions to assets, such as cash or accounts receivable, which: (1) do not increase any liability, such as a debt obligation; (2) do not represent a recovery of an expenditure, such as results from a return of defective purchased equipment; (3) do not represent the cancellation of certain liabilities without a corresponding increase in other liabilities or a decrease in assets, such as forgiveness of a debt; and (4) are not contributions made to fund business-like enterprises.

SERIAL ANNUITY BONDS. Serial bonds in which the annual installments of bond principal are so arranged that the combined payments for principal and interest are approximately the same each year.

SERIAL BONDS. Bonds whose principal is repaid in periodic installments over the life of the issue.

SINKING FUND. A fund established to account for the accumulation of resources for, and the payment of, the principal and interest of general long-term debt.

SPECIAL ASSESSMENT. A compulsory levy made against certain properties to defray part or all of the cost of a specific improvement or service deemed to benefit primarily those properties.

SPECIAL ASSESSMENT BONDS. Bonds payable from the proceeds of special assessments. If the bonds are payable only from the collections of special assessments, they are known as special assessment bonds. If, in addition to the assessments, the full faith and credit of the government are pledged, they are known as general obligation special assessment bonds.

SPECIAL ASSESSMENT FUND. A fund used to account for the financing of public improvements or services deemed to primarily benefit the properties against which special assessments are levied.

SPECIAL DISTRICT. An independent unit of local government organized to perform a single governmental function or a restricted number of related functions. Special districts usually have the power to incur debt and levy taxes; however, certain types of special districts are entirely dependent upon enterprise earnings and cannot impose taxes. Examples of special districts are water districts, drainage districts, flood control districts, hospital districts, fire protection districts, transit authorities, port authorities, and electric power authorities.

TECHNICAL APPENDIX E

Deed Restriction and Lien (New Construction - Sales Units)

STATE OF NEW JERSEY
COUNCIL ON AFFORDABLE HOUSING
NEW JERSEY DEPARTMENT OF COMMUNITY AFFAIRS

AFFORDABLE HOUSING AGREEMENT

Prepared by: _____

A DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

This AGREEMENT is entered into on this _____ day of _____, _____ between _____ owner of the properties designated in Section II PROPERTY DESCRIPTION, hereafter "OWNER", and _____; hereafter "AUTHORITY", which Authority is an instrumentality of _____ *(referred to as the "MUNICIPALITY")*, both parties having agreed that the covenants, conditions and restrictions contained herein shall be imposed on the Affordable Housing unit described in Section II PROPERTY DESCRIPTION for a period of at least _____ years beginning on _____, and ending at the first non-exempt transfer of title after _____ unless extended by municipal resolution as described in Section III TERM OF RESTRICTION.

WHEREAS, municipalities within the State of New Jersey are required by the Fair Housing Act (P.L. 1985, c.222) hereinafter "Act", to provide for their fair share of housing that is affordable to households with low or moderate incomes in accordance with provisions of the Act; and

WHEREAS, the Act requires that municipalities ensure that such designated housing remains affordable to low and moderate income households for a minimum period of at least 6 years; and

WHEREAS, the Act establishes the Council on Affordable Housing (hereinafter "Council") to assist municipalities in determining a realistic opportunity for the planning and development of such affordable housing; and

WHEREAS, pursuant to the Act, the housing unit (units) described in Section II PROPERTY DESCRIPTION hereafter and/or an attached Exhibit A of this Agreement has (have) been designated as low and moderate income housing as defined by the Act; and

WHEREAS, the purpose of this Agreement is to ensure that the described housing units(unit) remain(s) affordable to low and moderate income eligible households for that period of time described in Section III TERM OF RESTRICTION.

NOW, THEREFORE, it is the intent of this Agreement to ensure that the affordability controls are contained directly in the property deed for the premises and incorporated into and recorded with the property deed so as to bind the owner of the described premises and notify all future purchasers of the housing unit that the housing unit is encumbered with affordability controls; and by entering into this Agreement, the Owner of the described premises agrees to restrict the sale of the housing unit to low and moderate income eligible households at a maximum resale price determined by the Authority for the specified period of time.

I. DEFINITIONS

For purposes of this Agreement, the following terms shall be defined as follows:

"Affordable Housing" shall mean residential units that have been restricted for occupancy by Households whose total Gross Annual Income is measured at less than 80% of the median income level established by an authorized income guideline for geographic region and family size.

"Agency" shall mean the New Jersey Housing and Mortgage Finance Agency established by L. 1983, c.530 (C. 55:14K-1 et seq.).

"Agreement" shall mean this written Affordable Housing Agreement between the Authority and the owner of an Affordable Housing unit which places restrictions on Affordable Housing units so that they remain affordable to and occupied by Low and Moderate Income-Eligible Households for the period of time specified in this agreement.

"Assessments" shall mean all taxes, levies or charges, both public and private, including those charges by any condominium, cooperative or homeowner's association as the applicable case may be, imposed upon the Affordable Housing unit.

"Authority" shall mean the administrative organization designated by municipal ordinance for the purpose of monitoring the occupancy and resale restrictions contained in this Affordable Housing Agreement. The Authority shall serve as an instrument of the municipality in exercising the municipal rights to the collection of funds as contained in this Agreement.

"Base Price" shall mean the initial sales price of a unit produced for or designated as owner-occupied Affordable Housing.

"Council" shall mean the Council on Affordable Housing (COAH) established pursuant to the Fair Housing Act, N.J.S.A. 52:27D-301 et seq.

"Certified Household" shall mean any eligible Household whose estimated total Gross Annual Income has been verified, whose financial references have been approved and who has received written certification as a Low or Moderate Income-Eligible Household from the Authority.

"Department" shall mean the New Jersey State Department of Community Affairs.

"Exempt Transaction" shall mean the following "non-sales" title transactions: (1) Transfer of ownership between husband and wife; (2) Transfer of ownership between former spouses ordered as a result of a judicial decree of divorce or judicial separation (but not including sales to third parties); (3) Transfer of ownership through an Executor's deed to a Class A Beneficiary; and, (4) Transfer of ownership by court order. All other title transfers shall be deemed non-exempt.

"Fair Market Price" shall mean the unrestricted price of a low or moderate income housing unit if sold at a current real estate market rate.

"First Purchase Money Mortgage" shall mean the most senior mortgage lien to secure repayment of funds for the purchase of an Affordable Housing unit providing that such mortgage is not in excess of the applicable maximum allowable resale price and is payable to a valid First Purchase Money Mortgagee.

"First Purchase Money Mortgagee" shall mean an institu-

tional lender or investor, licensed or regulated by the Federal or a State government or any agency thereof, which is the holder and/or assigns of the First Money Mortgage.

"Foreclosure" shall mean the termination through legal processes of all rights of the mortgagor or the mortgagor's heirs, successors, assigns or grantees in a restricted Affordable Housing unit covered by a recorded mortgage.

"Gross Annual Income" shall mean the total amount of all sources of a Household's income including, but not limited to salary, wages, interest, tips, dividends, alimony, pensions, social security, business and capital gains, tips and welfare benefits. Generally, gross annual income will be based on those sources of income reported to the Internal Revenue Service (IRS) and/or that can be utilized for the purpose of mortgage approval.

"Hardship Waiver" shall mean an approval by the Authority to sell an affordable unit to a household that exceeds the income eligibility criteria after the Owner has demonstrated that no Certified Household has signed an agreement to purchase the unit. The Owner shall have marketed the unit for 90 days after a Notice of Intent to Sell has been received by the Authority and the Authority shall have 30 days thereafter to approve a Hardship Waiver. The Hardship Waiver shall permit a low income unit to be sold to a moderate income household or a moderate income unit to be sold to a household whose income is at 80% or above the applicable median income guide. The Hardship Waiver is only valid for a single sale.

"Household" shall mean the person or persons occupying a housing unit.

"Index" shall mean the measured percentage of change in the median income for a Household of four by geographic region using the income guideline approved for use by Council.

"Low Income Household" shall mean a Household whose total Gross Annual Income is equal to 50% or less of the median gross income figure established by geographic region and household size using the income guideline approved for use by Council.

"Moderate Income Household" shall mean a Household whose total Gross Annual Income is equal to more than 50% but less than 80% of the median gross income established by geographic region and household size using the income guideline approved for use by Council.

"Owner" shall mean the title holder of record as same is reflected in the most recently dated and recorded deed for the particular Affordable Housing unit. For purposes of the initial sales or rentals of any Affordable Housing unit, Owner shall include the developer/owner of such Affordable Housing units. Owner shall not include any co-signer or co-borrower on any First Purchase Money Mortgage unless such co-signer or co-borrower is also a named title holder of record of such Affordable Housing unit.

"Price Differential" shall mean the total amount of the restricted sales price that exceeds the maximum restricted resale price as calculated by the Index after reasonable real estate broker fees have been deducted. The unrestricted sales price shall be no less than a comparable fair market price as determined by the Authority at the time a Notice of Intent to Sell has been received from the Owner.

"Primary Residence" shall mean the unit wherein a Certified Household maintains continuing residence for no less than nine months of each calendar year.

"Purchaser" shall mean a Certified Household who has signed an agreement to purchase an Affordable Housing unit subject to a mortgage commitment and closing.

"Repayment" shall mean the Owner's obligation to the municipality for payment of 95% of the price differential between the maximum allowable resale price and the fair market selling price which has accrued to the Affordable unit during the restricted period of resale at the first non-exempt sale of the property after restrictions have ended as specified in the Affordable Housing Agreement.

"Repayment Mortgage" shall mean the second mortgage document signed by the Owner that is given to the municipality as security for the payment due under the Repayment Note.

"Repayment Note" shall mean the second mortgage note signed by the Owner that requires the repayment to the municipality of 95% of the price differential which has accrued to the low or moderate income unit during the period of resale controls at the first non-exempt sale of the property after restrictions have ended as specified in the Affordable Housing Agreement.

"Resale Price" shall mean the Base Price of a unit designated as owner-occupied affordable housing as adjusted by the Index. The resale price may also be adjusted to accommodate an approved home improvement.

"Total Monthly Housing Costs" shall mean the total of the following monthly payments associated with the cost of an owner-occupied Affordable Housing unit including the mortgage payment (principal, interest, private mortgage insurance), applicable assessments by any homeowners, condominium, or cooperative associations, real estate taxes, and fire, theft and liability insurance.

II. PROPERTY DESCRIPTION

This agreement applies to the Owner's interest in the real property commonly known as:

Block _____ Lot _____
Municipality _____
County _____ # of Bedrooms _____
Complete Street Address and Unit Number:
_____
City _____
State _____ Zip _____

If additional Affordable Housing units are to be covered by this Agreement, a description of each additional unit is attached as Exhibit A and is incorporated herein.

III. TERM OF RESTRICTION

A. The terms, restrictions and covenants of this Affordable Housing Agreement shall begin on the later of the date a Certificate of Occupancy is issued or the date on which closing and transfer of title takes place for initial ownership.

B. The terms, restrictions and covenants of this Affordable Housing Agreement shall terminate upon the occurence of either of the following events:

1. At the first non-exempt sale after 10 (ten) years from the beginning date established pursuant to Paragraph A above for units located in municipalities receiving State Aid pursuant to P.L. 1978, L.14 (N.J.S.A. 52:27D-178 et seq.) that exhibit one of the characteristics delineated in N.J.A.C. 5:92-5.3(b); or at the first non-exempt sale after 20 (twenty) years from the beginning date established pursuant to Paragraph A above for units located in all other municipalities; or

2. The date upon which the event set forth in Section IX FORECLOSURE herein shall occur.

C. The terms, restrictions and covenants of this Affordable Housing Agreement may be extended by municipal resolution as provided for in N.J.A.C. 5:92.1 et seq. Such municipal resolution shall provide for a period of extended restrictions and shall be effective upon filing with the Council and the Authority. The municipal resolution shall specify the extended time period by providing for a revised ending date. An amendment to the Affordable Housing Agreement shall be filed with the recording office of the county in which the Affordable Housing unit or units is/are located.

D. At the first non-exempt title transaction after the established ending date, the Authority shall execute a document in recordable form evidencing that the Affordable Housing unit has been released from the restrictions of this Affordable Housing Agreement.

IV. RESTRICTIONS

A. The Owner of an owner-occupied Affordable Housing unit for sale shall not sell the unit at a Resale Price greater than an established Base Price plus the allowable percentage of increase as determined by the Index applicable to the municipality in which the unit is located. However, in no event shall the approved resale price be established at a lower level than the last recorded purchase price.

B. The Owner shall not sell the Affordable Housing unit to anyone other than a Purchaser who has been certified utilizing the income verification procedures established by the Authority to determine qualified Low and Moderate Income-Eligible Households.

C. An Owner wishing to enter a transaction that will terminate controls as specified heretofore in Section III TERM OF RESTRICTION shall be obligated to provide a Notice of Intent to Sell to the Authority and the Council. An option to buy the unit at the maximum restricted sales price as calculated by the Index shall be made available to the Municipality, the Department, the Agency, or a qualified non-profit organization as determined by the Council for a period of ninety (90) days from the date of delivery of the Notice of Intent to Sell. The option to buy shall be by certified mail and shall be effective on the date of mailing to the Owner.

1. If the option to buy is not exercised within ninety (90) days pursuant to Paragraph C above, the Owner may elect to sell the unit to a certified income-eligible household at the maximum restricted sales price as calculated by the Index provided the unit continues to be restricted by an Affordable Housing Agreement and a Repayment Note for a period of up to twenty (20) years.

2. Alternately, the Owner may also elect to sell to any purchaser at a fair market price. In this event, the Owner shall be obligated to pay the municipality 95% of the Price Differential generated at the time of closing and transfer of title of the Affordable Housing unit after restrictions have ended as specified heretofore in Section III TERM OF RESTRICTION.

3. If the Owner does not sell the unit within one (1) year of the date of delivery of the Notice of Intent to Sell, the option to buy shall be restored to the municipality and subsequently to the Department, the Agency or a Non-Profit approved by the Council. The Owner shall then be required to submit a new Notice of Intent to Sell the affordable unit to the Authority.

D. The Affordable Housing unit shall be sold in accordance with all rules, regulations, and requirements duly promulgated by the Council (N.J.A.C. 5:92-1 et seq.), the intent of which is to ensure that the Affordable Housing unit remains affordable to and occupied by Low and Moderate Income-Eligible Households throughout the duration of this Agreement.

V. REQUIREMENTS

A. This Agreement shall be recorded with the recording office of the county in which the Affordable Housing unit or units are located. The Agreement shall be filed no earlier than the recording of an applicable Master Deed and no later than the closing date of the initial sale.

B. When a single Agreement is used to govern more than one Affordable Housing unit, the Agreement shall contain a description of each Affordable Housing unit governed by the Agreement as described in Section II PROPERTY DESCRIPTION and/or Exhibit A of the Agreement and an ending date to be imposed on the unit as described in Section III TERM OF RESTRICTION of the Agreement.

C. A Repayment Mortgage and a Repayment Note shall be executed between the Owner and the municipality wherein the unit(s) is(are) located at the time of closing and transfer of title to any purchaser of an Affordable Housing Unit. The Repayment Mortgage shall provide for the repayment of 95% of the Price Differential at the first non-exempt transfer of title after the ending date of restrictions as specified in Section III TERM OF RESTRICTION. The Repayment Mortgage shall be recorded with the records office of the County in which the unit is located.

VI. DEEDS OF CONVEYANCE AND LEASE PROVISIONS

All Deeds of Conveyance and Contracts to Purchase from all Owners to Certified Purchasers of Affordable Housing units shall include the following clause in a conspicuous place.

"The Owner's right, title and interest in this unit and the use, sale, resale and rental of this property are subject to the terms, conditions, restrictions, limitations and provisions as set forth in the AFFORDABLE HOUSING AGREEMENT dated _____ which is filed in the Office of the County Clerk of _____ County and is also on file with the Authority".

Any Master Deed that includes an Affordable Housing unit shall also reference the affordable unit and the Affordable Housing Agreement and any variation in services, fees, or other terms of the Master Deed that differentiates the affordable unit from all other units covered in the Master Deed.

VII. COVENANTS RUNNING WITH LAND

The provisions of this Affordable Housing Agreement shall constitute covenants running with the land with respect to each Affordable Housing unit affected hereby, and shall bind all Purchasers and Owners of each Affordable Housing unit, their heirs, assigns and all persons claiming by, through or under their heirs, executors, administrators and assigns for the duration of this Agreement as set forth herein.

VIII. OWNER RESPONSIBILITIES

In addition to fully complying with the terms and provisions of this Affordable Housing Agreement, the Owner acknowledges the following responsibilities:

A. Affordable Housing units shall at all times remain the Primary Residence of the Owner. The Owner shall not rent any Affordable Housing unit to any party whether or not that party qualifies as a Low or Moderate Income household without prior written approval from the Authority.

B. All home improvements made to an Affordable Housing Unit shall be at the Owner's expense except that expenditures for any alteration that allows a unit to be resold to a larger household size because of an increased capacity for occupancy shall be con-

sidered for a recalculation of Base Price. Owners must obtain prior approval for such alteration from the Authority to qualify for this recalculation.

C. The Owner of an Affordable Housing unit shall keep the Affordable Housing unit in good repair.

D. Owners of Affordable Housing units shall pay all taxes, charges, assessments or levies, both public and private, assessed against such unit, or any part thereof, as and when the same become due.

E. Owners of Affordable Housing units shall notify the Authority in writing no less than ninety (90) days prior to any proposed sale of an intent to sell the property. Owners shall not execute any purchase agreement, convey title or otherwise deliver possession of the Affordable Housing unit without the prior written approval of the Authority.

F. An Owner shall request referrals of eligible households from pre-established referral lists maintained by the Authority.

G. If the Authority does not refer an eligible household within sixty (60) days of the Notice of Intent to Sell the unit or no Agreement to Purchase the unit has been executed, the Owner may propose a Contract to Purchase the unit to an eligible household not referred through the Authority. The proposed Purchaser must complete all required Household Eligibility forms and submit Gross Annual Income information for verification to the Authority for written certification as an eligible sales transaction.

H. At resale, all items of property which are permanently affixed to the unit and/or were included when the unit was originally restricted (e.g. refrigerator, range, washer, dryer, dishwasher, wall to wall carpeting) shall be included in the maximum allowable Resale Price. Other items of property may be sold to the Purchaser at a reasonable price that has been approved by the Authority at the time of signing the Agreement to Purchase. The purchase of central air conditioning installed subsequent to the initial sale of the unit and not included in the Base Price may be made a condition of the unit resale provided the price has been approved by the Authority. Unless otherwise permitted by the Council, the purchase of any property other than central air conditioning shall not be made a condition of the unit resale. The Owner and the Purchaser must personally certify at the time of closing that no unapproved transfer of funds for the purpose of selling and receiving property has taken place at Resale.

I. The Owner shall not permit any lien, other than the First Purchase Money Mortgage, second mortgages approved by the Authority and liens of the Authority to attach and remain on the property for more than sixty (60) days.

J. If an Affordable Housing unit is part of a condominium, homeowner's or cooperative association, the Owner, in addition to paying any assessments required by the Master Deed of the Condominium or By-laws of an Association, shall further fully comply with all of the terms, covenants or conditions of said Master Deed or By-Laws, as well as fully comply with all terms, conditions and restrictions of this Affordable Housing Agreement.

K. The Owner shall have responsibility for fulfilling all requirements in accordance with and subject to any rules and regulations duly promulgated by the Council (N.J.A.C. 5:92-1 et seq.), for determining that a resale transaction is qualified for a Certificate of Exemption. The Owner shall notify the Authority in writing of any proposed Exempt Transaction and supply the necessary documentation to qualify for a Certificate of Exemption. An Exempt Transaction does not terminate the resale restrictions or existing liens and is not considered a certified sales transaction in calculating subsequent resale prices. A Certificate of Exemption shall be filed with the deed at the time of title transfer.

L. The Owner shall have responsibility for fulfilling all requirements in accordance with and subject to any rules and regulations duly promulgated by the Council (N.J.A.C. 5:92-1 et seq.), for determining that a resale transaction is qualified for a Hardship Waiver. The Owner may submit a written request for a Hardship Waiver if no Certified Household has executed an agreement to purchase within ninety (90) days of notification of an approved resale price and referral of potential purchasers. Prior to issuing a Hardship Waiver, the Municipality shall have 30 days in which to sign an agreement to purchase the unit at the approved resale price and subsequently rent or convey it to a Certified Household. The Municipality may transfer this option to the Department, the Agency, or a qualified non-profit organization as determined by the Council. For approval of a Hardship Waiver, an Owner must document efforts to sell the unit to an income eligible household. If the waiver is granted, the Owner may offer a low income unit to a moderate income household or a moderate income unit to a household whose income exceeds 80% of the applicable median income guide. The Hardship Waiver shall be recorded with the deed at the time of closing and is only valid for the designated resale transaction. It does not affect the resale price. All future resales are subject to all restrictions stated herein.

M. The Owner shall be obligated to pay a reasonable service fee to the Authority at the time of closing and transfer of title in the amount specified by the Authority at the time a restricted resale price has been determined after receipt of a Notice of Intent to Sell. Such fee shall not be included in the calculation of the maximum resale price.

IX. FORECLOSURE

The terms and restrictions of this Agreement shall be subordinate only to the First Purchase Money Mortgage lien on the Affordable Housing property and in no way shall impair the First Purchase Money Mortgagee's ability to exercise the contract remedies available to it in the event of any default of such mortgage as such remedies are set forth in the First Purchase Money Mortgage documents for the Affordable Housing unit.

Any Affordable Housing owner-occupied property that is acquired by a First Purchase Money Mortgagee by Deed in lieu of Foreclosure, or by a Purchaser at a Foreclosure sale conducted by the holder of the First Purchase Money Mortgagee shall be permanently released from the restrictions and covenants of this Affordable Housing Agreement. All resale restrictions shall cease to be effective as of the date of transfer of title pursuant to Foreclosure with regard to the First Purchase Money Mortgagee, a lender in the secondary mortgage market including but not limited to the FNMA, Federal Home Loan Mortgage Corporation, GNMA, or an entity acting on their behalf and all subsequent purchasers, Owners and mortgagees of that particular Affordable Housing unit (except for the defaulting mortgagor, who shall be forever subject to the resale restrictions of this Agreement with respect to the Affordable Housing unit owned by such defaulting mortgagor at time of the Foreclosure sale).

Upon a judgment of Foreclosure, the Authority shall execute a document to be recorded in the county recording office as evidence that such Affordable Housing unit has been forever released from the restrictions of this Agreement. Execution of foreclosure sales by any other class of creditor or mortgagee shall not result in a release of the Affordable Housing unit from the provisions and restrictions of this Agreement.

In the event of a Foreclosure sale by the First Purchase

Mortgagee, the defaulting mortgagor shall be personally obligated to pay to the Authority any excess funds generated from such Foreclosure sale. For purposes of this agreement, excess funds shall be the total amount paid to the sheriff by reason of the Foreclosure sale in excess of the greater of (1) the maximum permissable Resale Price of the Affordable Housing unit as of the date of the Foreclosure sale pursuant to the rules and guidelines of the Authority and (2) the amount required to pay and satisfy the First Money mortgage, including the costs of Foreclosure plus any second mortgages approved by the Authority in accordance with this Agreement. The amount of excess funds shall also include all payments to any junior creditors out of the Foreclosure sale proceeds even if such were to the exclusion of the defaulting mortgagor.

The Authority is hereby given a first priority lien, second only to the First Purchase Money Mortgagee and any taxes or public assessments by a duly authorized governmental body, equal to the full amount of such excess funds. This obligation of the defaulting mortgagor to pay the full amount of excess funds to the Authority shall be deemed to be a personal obligation of the Owner of record at time of the Foreclosure sale surviving such sale. The Authority shall be empowered to enforce the obligation of the defaulting mortgagor in any appropriate court of law or equity as though same were a personal contractual obligation of the defaulting mortgagor. Neither the First Purchase Money Mortgagee nor the purchaser at the Foreclosure sale shall be responsible or liable to the Authority for any portion of this excess.

No part of the excess funds, however, shall be part of the defaulting mortgagor's equity.

The defaulting mortgagor's equity shall be determined to be the difference between the maximum permitted Resale Price of the Affordable Housing unit as of the date of the Foreclosure sale as calculated in accordance with this Agreement and the total of the following sums: First Purchase Money Mortgage, prior liens, costs of Foreclosure, assessments, property taxes, and other liens which may have been attached against the unit prior to Foreclosure, provided such total is less than the maximum permitted Resale Price.

If there are Owner's equity sums to which the defaulting mortgagor is properly entitled, such sums shall be turned over to the defaulting mortgagor or placed in an escrow account for the defaulting mortgagor if the defaulting mortgagor cannot be located. The First Purchase Money Mortgagee shall hold such funds in escrow for a period of two years or until such earlier time as the defaulting mortgagor shall make a claim for such. At the end of two years, if unclaimed, such funds, including any accrued interest, shall become the property of the Authority to the exclusion of any other creditors who may have claims against the defaulting mortgagor.

Nothing shall preclude the municipality wherein the Affordable Housing unit is located from acquiring an affordable property prior to foreclosure sale at the approved maximum Resale price and holding, renting or conveying it to a Certified Household if such right is exercised within 90 days after the property is listed for sale and all outstanding obligations to the First Purchase Money Mortgagee are satisfied.

X. VIOLATION, DEFAULTS AND REMEDIES

In the event of a threatened breach of any of the terms of this Agreement by an Owner, the Authority shall have all remedies provided at law or equity, including the right to seek injunctive relief or specific performance, it being recognized by both parties to this Agreement that a breach will cause irreparable harm to the Authority, in light of the public policies set forth in the Fair Housing Act and the obligation for the provision of low and moderate income housing. Upon the occurrence of a breach of any of the terms of the Agreement by an Owner, the Authority shall have all remedies provided at law or equity, including but not limited to foreclosure, acceleration of all sums due under the mortgage, recoupment of any funds from a sale in violation of the Agreement, injunctive relief to prevent further violation of the Agreement, entry on the premises, and specific performance.

XI. RIGHT TO ASSIGN

The Authority may assign from time to time its rights, and delegate its obligations hereunder without the consent of the Owner. Upon such assignment, the Authority, its successors or assigns shall provide written notice to the Owner.

XII. INTERPRETATION OF THIS AGREEMENT

The terms of this Agreement shall be interpreted so as to avoid financial speculation or circumvention of the purposes of the Fair Housing Act for the duration of this Agreement and to ensure, to the greatest extent possible, that the purchase price, mortgage payments and rents of designated Affordable Housing units remain affordable to Low and Moderate Income-Eligible Households as defined herein.

XIII. NOTICES

All notices required herein shall be sent by certified mail, return receipt requested as follows:

To the Owner:

At the address of the property stated in Section II PROPERTY DESCRIPTION hereof.

To the Authority:

At the address stated below:

Attention:

Or such other address that the Authority, Owner, or municipality may subsequently designate in writing and mail to the other parties.

XIV. SUPERIORITY OF AGREEMENT

Owner warrants that no other Agreement with provisions contradictory of, or in opposition to, the provisions hereof has been or will be executed, and that, in any event, the requirements of this Agreement are paramount and controlling as to the rights and obligations between and among the Owner, the Authority, and their respective successors.

XV. SEVERABILITY

It is the intention of all parties that the provisions of this instrument are severable so that if any provisions, conditions, covenants or restrictions thereof shall be invalid or void under any applicable federal, state or local law, the remainder shall be unaffected thereby.

In the event that any provision, condition, covenant or restriction hereof, is at the time of recording of this instrument, void, voidable or unenforceable as being contrary to any applicable

federal, state or local law, both parties, their successors and assigns, and all persons claiming by, through or under them covenant and agree that any future amendments or supplements to the said laws having the effect of removing said invalidity, voidability or unenforceability, shall be deemed to apply retrospectively to this instrument thereby operating to validate the provisions of this instrument which otherwise might be invalid and it is covenanted and agreed that any such amendments and supplements to the said laws shall have the effect herein described as fully as if they had been in effect at the time of the execution of this instrument.

XVI. CONTROLLING LAW

The terms of this Agreement shall be interpreted under the laws of the State of New Jersey.

XVII. OWNER'S CERTIFICATION

The Owner certifies that all information provided in order to qualify as the owner of the property or to purchase the property is true and correct as of the date of the signing of this Agreement.

XVIII. AGREEMENT

The Owner and the Authority hereby agree that all Affordable Housing units described herein shall be marketed, sold, and occupied in accordance with the provisions of this Agreement. Neither the Owner nor the Authority shall amend or alter the provisions of this Agreement without first obtaining the approval of the other party except as described in Section III, Paragraph C, TERM OF RESTRICTION. Any such approved amendments or modifications of this Agreement shall be in writing and shall contain proof of approval from the other parties and shall not be effective unless and until recorded with the County Clerk for the County in which the Affordable Housing units are situated.

XVIX. ACKNOWLEDGEMENT

Owner acknowledges receipt of a true copy of this Agreement.

Dated: _____

By: _____
Signature *(Owner)*

_____
Signature *(Co-Owner)*

STATE OF NEW JERSEY)

)ss

COUNTY OF)

BE IT REMEMBERED, that on this _____ day of _____ , 199___ , before me, the subscriber, _____ personally appeared _____ who, being by me duly sworn on his/her oath, deposes and makes proof to my satisfaction, that he/she is the Owner (Co-Owner) named in the within instrument; that is the Affordable Housing Agreement of the described Property; that the execution, as well as the making of this instrument, has been duly authorized and is the voluntary act and deed of said Owner.

Sworn to and subscribed before me, _____ the date aforesaid.

0010w 5/91

STATE OF NEW JERSEY
COUNCIL ON AFFORDABLE HOUSING
NEW JERSEY DEPARTMENT OF COMMUNITY AFFAIRS

REPAYMENT MORTGAGE
Contains Deed Restrictions

MORTGAGE IS SUBORDINATE TO A FIRST PURCHASE MONEY MORTGAGE OR REFINANCING

Prepared by: _____

This Mortgage made on _____, 19__ between _____
(referred to as "Borrower") and _____ *(referred to as the "Authority")*,
which Authority is an instrumentality of _____ *(referred to as the "Municipality")*

REPAYMENT MORTGAGE NOTE

In consideration of value received by the Borrower in connection with the Property (described below) purchased by the Borrower, the Borrower has signed a note dated _____. The Borrower promises to pay the amounts due under the Note and to abide by all promises contained in the Note.

MORTGAGE AS SECURITY

This Mortgage is given to the Authority as security for the payment due and the performance of all promises under the Note. The Borrower mortgages the real estate owned by the Borrower described as follows (referred to as the "Property"):

All of the land located in the _____ of _____
County of _____ and State of New Jersey, specifically described as follows:
Street Address: _____
City: _____ Zip: _____ Block No.: _____ Lot No.: _____
Also more particularly described as:

Together with:

1. All buildings and other improvement that now are or will be located on the Property.
2. All fixtures, equipment and personal property that now are or will be attached to or used with the land, buildings and improvements of or on the Property.
3. All rights which the Borrower now has or will acquire with regard to the Property.

BORROWERS ACKNOWLEDGEMENTS

1. The Borrower acknowledges and understands that:

a) Municipalities within the State of New Jersey are required under the Fair Housing Act and regulations adopted under the authority of the Act to provide for their fair share of housing that is affordable to households of low and moderate income; and

b) The Property which is subject to this Mortgage has been designated as housing which must remain affordable to low and moderate income households for at least thirty years unless a shorter time period is authorized in accordance with rules established by any agency having jurisdiction (the "restricted period"); and

c) To ensure that such housing, including this Property, remains affordable to low and moderate income households during the restricted period, an Affordable Housing Agreement has been executed by the Borrower that constitutes covenants running with the land with respect to the Property and the Municipality has adopted procedures and restrictions governing the resale of the Property and ; and

d) The Authority to which the Property is mortgaged has been designated by the Municipality to administer the procedures and restrictions governing such housing.

2. The Borrower also acknowledges and understands that the Property has been purchased at a restricted sales price that is less than the fair market value of the Property.

BORROWER'S PROMISES

In consideration for the value received in connection with the purchase of the Property at a restricted sales price, the Borrower agrees as follows:

1. The Borrower will comply with all of the terms of the Note and this Mortgage which includes:

a) Within the restricted period starting with the date the Borrower obtained title to the Property, the Borrower shall not sell or transfer title to the Property for an amount that exceeds the maximum allowable resale price as established by the Authority. In the event of breach of this promise, Borrower hereby assigns all proceeds in excess of the maximum allowable resale price to the Authority, said assignment to be in addition to any and all rights and remedies the Authority has upon default.

b) At the first non-exempt transfer of title of the Property after the ending date of the restricted period, the Borrower agrees to repay 95% of the incremental amount between the maximum allowable resale price and the fair market selling price which has accrued to the Property during the restricted period to the Authority.

2. The Borrower warrants title to the premises *(N.J.S.A. 46:9-2)*. This means the Borrower owns the Property and will defend its ownership against all claims.

3. The Borrower shall pay all liens, taxes, assessments and other governmental charges made against the Property when due. The Borrower will not claim any credit against the principal and interest payable under the Note and this Mortgage for any taxes paid on the Property.

4. The Borrower shall keep the Property in good repair, neither damaging nor abandoning it. The Borrower will allow the Authority to inspect the Property upon reasonable notice.

5. The Borrower shall use the Property in compliance with all laws, ordinances and other requirements of any governmental authority.

CONTROLS ON AFFORDABILITY

The procedures and restrictions governing resale of the Property have been established pursuant to the Fair Housing Act and the regulations adopted under the authority of the Act, (all collectively referred to as "Controls on Affordability"). Reference is made to the Controls on Affordability for the procedure in calculating the

maximum allowable resale price, the method of repayment described in item 1(b) of the section entitled "Borrower's Promises", and the definition of a "restricted sale" for purposes of determining when the Affordability Controls are applicable, and the determination of the restricted period of time.

RIGHTS GIVEN TO LENDER

The Borrower, by mortgaging the Property to the Authority, gives the Authority those rights stated in this Mortgage, all rights the law gives to lenders, who hold mortgages, and also all rights the law gives to the Authority and/or Municipality under the Affordability Controls. The rights given to the Authority and the restrictions upon the Property are covenants running with the land. The rights, terms and restrictions in this Mortgage shall bind the Borrower and all subsequent purchasers and owners of the Property, and the heirs and assigns of all of them. Upon performance of the promises contained in the Note and Mortgage, the Authority will cancel this Mortgage at its expense.

DEFAULT

The Authority may declare the Borrower in default on the Note and this Mortgage if:

1. The Borrower fails to comply with the provisions of the Affordable Housing Agreement;
2. The Borrower fails to make any payment required by the Note and this Mortgage;
3. The Borrower fails to keep any other promise made in this Mortgage;
4. The ownership of the Property is changed for any reason without compliance with the terms of the Note and Mortgage;
5. The holder of any lien on the Property starts foreclosure proceedings; or
6. Bankruptcy, insolvency or receivership are started by or against any of the Borrowers.

AUTHORITY'S RIGHTS UPON DEFAULT

If the Authority declares that the Note and this Mortgage are in default, the Authority shall have, subject to the rights of the First Mortgagee, all rights given by law or set forth in this Mortgage.

NOTICES

ALL NOTICES MUST BE IN WRITING AND PERSONALLY DELIVERED OR SENT BY CERTIFIED MAIL, RETURN RECEIPT REQUESTED, TO THE ADDRESSES GIVEN IN THIS MORTGAGE. ADDRESS CHANGES MAY BE MADE UPON NOTICE TO THE OTHER PARTY.

NO WAIVER BY AUTHORITY

The Authority may exercise any right under this Mortgage or under any law, even if the Authority has delayed in exercising that right or has agreed in an earlier instance not to exercise that right. The Authority does not waive its right to declare the Borrower is in default by making
payments or incurring expense on behalf of the Borrower.

EACH PERSON LIABLE

This Mortgage is legally binding upon each Borrower and all who succeed to their responsibilities (such as heirs and executors). The Authority may enforce any of the provisions of the Note and this Mortgage against any one or more of the Borrowers who sign this Mortgage.

SUBORDINATE MORTGAGE

The lien on this Mortgage is inferior to and subject to the terms and provisions of the First Purchase Money Mortgage executed contemporaneously herewith or any subsequent refinancing.

NO ORAL CHANGES

This Mortgage can only be changed by an agreement in writing signed by both the Borrower and the Authority.

SIGNATURES

The Borrower agrees to the terms of this Mortgage by signing below.

ACKNOWLEDGEMENT

Borrower acknowledges receipt of a true copy of this mortgage at no charge.

Dated: _____

ATTEST: _____ By: _____
Signature *(Borrower)*

_____
Signature *(Co-Borrower)*

STATE OF NEW JERSEY)
)ss
COUNTY OF)

BE IT REMEMBERED, that on this ____ day of _____ , 19___ , before me, the subscriber, _____ personally appeared _____ who, being by me duly sworn on his/her oath, deposes and makes proof to my satisfaction, that he/she is the Borrower (Co-Borrower) named in the within instrument; that is the Repayment Mortgage for the described Property; that the execution, as well as the making of this instrument, has been duly authorized and is the voluntary act and deed of said Owner.

Sworn to and subscribed before me, _____
the date aforesaid.

0293w 5/91

STATE OF NEW JERSEY
COUNCIL ON AFFORDABLE HOUSING
NEW JERSEY DEPARTMENT OF COMMUNITY AFFAIRS

REPAYMENT MORTGAGE NOTE

_____ ,199— _____, New Jersey

FOR VALUE RECEIVED _____ (referred to as the "Borrower") promises to pay to _____ (referred to as the "Authority") an instrumentality of _____ (the "Municipality") the amounts specified in this Note and promises to abide by the terms contained below.

REPAYMENT MORTGAGE

As security for the payment of amounts due under this Note and the performance of all promises contained in this Note, the Borrower is giving the Authority a Repayment Mortgage , dated _____. The Repayment Mortgage covers real estate (the "Property") owned by the Borrower, the legal description of such real estate being contained in the Repayment Mortgage . This mortgage is subordinate to the first mortgage executed contemporaneously herewith or any subsequent financing.

BORROWERS PROMISE TO PAY AND OTHER TERMS

1. The Property is subject to terms, restrictions and conditions that prohibit its sale at a fair market price for an established period of time. Within the restricted period, starting with the date the Borrower obtains title to the Property, the Borrower shall not sell or transfer title to the Property for an amount that exceeds a maximum allowable resale price established by the Authority.
   a. All proceeds received during the restricted period in excess of the restricted amount shall be paid to the Authority.
   b. At the first non-exempt sale of the Property after restrictions have ended, the Borrower agrees to repay 95% of the incremental amount between the maximum allowable resale price and the fair market selling price which has accrued to the Property during the restricted period of resale (the "Price Differential") to the Authority.
2. The amount due and payable to the Authority shall be calculated as follows:

FAIR MARKET PRICE less MAXIMUM ALLOWABLE RESALE PRICE
equals
PRICE DIFFERENTIAL

BORROWER'S PROCEEDS
equals
MAXIMUM ALLOWABLE RESALE PRICE plus 5% OF PRICE DIFFERENTIAL

AMOUNT OF NOTE
equals
FAIR MARKET PRICE less BORROWER'S PROCEEDS

WAIVER OF FORMAL ACTS

The Borrower waives its right to require the Authority to do any of the following before enforcing its rights under this Note:

1. To demand payment of amount due (known as Presentment).
2. To give notice that amounts due have not been paid (known as Notice of Dishonor).
3. To obtain an official certificate of non-payment (known as Protest).

RESPONSIBILITY UNDER NOTE

All Borrowers signing this Note are jointly and individually obligated to pay the amounts due and to abide by the terms under this Note. The Authority may enforce this Note against any one or more of the Borrowers or against all Borrowers together.

SIGNATURES

The Borrower agrees to the terms of this Note by signing below.

WITNESSED:

_____ _____ L.S.

_____ L.S.

0296w 5/91

TECHNICAL APPENDIX F

State Planning Commission Memorandum of Understanding and Flow Charts

MEMORANDUM OF UNDERSTANDING

MEMORANDUM OF UNDERSTANDING, dated the 27th day of October, 1992, by and between the New Jersey State Planning Commission (the Commission) and the New Jersey Council on Affordable Housing (the Council).

WHEREAS, the New Jesey Supreme Court determined, in its Mt. Laurel decisions, that every municipality has a Constitutional obligation to provide through its land use regulations a realistic opportunity for a fair share of its region's present and prospective needs for housing for low and moderate income families; and

WHEREAS, in 1985, the New Jersey legislature enacted the Fair Housing Act (N.J.S.A. 52:27D-301 *et seq.*) in response to the Mt. Laurel decisions, and created the Council on Affordable Housing as the entity having primary jurisdiction for the administration of housing obligations in accordance with sound regional planning considerations in this State; and

WHEREAS, in 1985, also in response to the Mt. Laurel decisions, the New Jersey legislature enacted the State Planning Act (N.J.S.A. 52:18A-196 *et seq.*) to replace the State Development Guide Plan with a State Development and Redevelopment Plan (State Plan) to be used as a tool for assessing suitable locations for infrastructure, housing, economic growth and conservation; and

WHEREAS, both the State Planning Act and the Fair Housing Act recognize (1) the interdependence of planning for infrastructure and planning for low and moderate income housing; (2) the importance of maximizing the use of existing infrastructure in determining suitable locations for development, and (3) the importance to comprehensive planning of the phasing of infrastructure development with inclusionary development; and

WHEREAS, on June 12, 1992 the State Planning Commission adopted the first State Development and Redevelopment Plan pursuant to the State Planning Act; and

WHEREAS, the Resource Planning and Management System, which establishes planning areas consisting of centers and their environs, is the preferred mechanism of the State Plan to effectuate the State Planning Act's mandates to provide a coordinated, integrated and comprehensive plan for the growth, development, renewal and conservation of the State and its regions, and to identify areas for growth, agriculture, open space conservation and other appropriate designations; and

WHEREAS, in accordance with the Fair Housing Act, which specifically requires the Council to make adjustments to municipal present and prospective fair share of regional housing needs when the pattern of development is contrary to the planning designations in the State Plan, the Council will be promulgating administrative rules that utilize the Resource Planning and Management Structure and Statewide Policies with respect to municipal certification of housing elements and the handling of requests for site specific relief that are directed to the Council from the Courts; and

WHEREAS, it is mutually beneficial to the Council and to the Commission to enter into this Memorandum of Understanding to develop a cooperative planning process that will enable the Council to meet its constitutional and legislative mandates to develop a planning and financing mechanism for low and moderate income housing that is in accordance with regional considerations and sound planning concepts, and that will ensure that the Commission maintains, revises and sees implemented a State Plan that promotes a distribution of low and moderate income housing throughout New Jersey in locations and patterns that are consistent with the goals of the State Planning Act; and

WHEREAS, the cooperative planning process developed pursuant to this Memorandum of Understanding will advance coordinated and comprehensive planning in the State, will result in greater predictability in planning with respect to meeting the mandates of the Council and the Commission, and will thereby benefit State agencies, counties, municipalities and the public interest.

NOW, THEREFORE, in consideration of the promises contained in this Memoradum of Understanding, the Commission and the Council hereby agree to the following Basic Principles:

1. Both the Commission and the Council will share all available information useful or necessary to achieving the objectives of this Memorandum of Understanding. The Commission will direct the Office of State Planning to provide to the Council in a timely manner, such reports or recommendations that are necessary for the Council to carry out its responsibilities.

2. A cooperative planning process will be established and maintained between the Council and the Commission that will advance coordinated and comprehensive planning in the State, will result in greater predictability in planning with respect to meeting the mandates of the Council and the Commission, and will thereby benefit State agencies, counties, municipalities and the public interest.

3. The State Plan's Resource Planning and Management Map (RPMM), which includes planning areas, identified centers, designated centers, environs and critical environmental/historic sites, provides the Council with a framework for allocating housing need and locating sites based on considerations of infrastructure availability, environmental sensitivity, and historic preservation.

4. All planning areas can accommodate growth and therefore can accommodate a commensurate housing obligation, in a manner consistent with the goals, objectives and policies of the State Plan.

5. Centers are the preferred mechanism for accommodating growth and inclusionary developments in each planning area, in a manner consistent with the goals, objectives and policies of the State Plan.

6. As provided for in the State Planning Rules (N.J.A.C. 17:32-8) immediately after adoption of the State Plan the Commission will accept petitions to have identified centers receive designation. When determining community development boundaries for a center, the Commission will take into consideration the State Plan's housing policies and objectives, including those respecting low and moderate income housing.

7. The Commission accepts the Council's definition pursuant to N.J.A.C. 5:92-1, of developable, available, approvable and suitable sites and realistic development potential, and the Council accepts the Commission's definitions, pursuant to the State Plan, of urban and community infrastructure, centers and environs, identified and designated centers and critical environmental/historic sites.

8. The Council will use the State Plan to allocate regional housing need based on planning areas within each municipality.

9. County planning entities will be invited to assist municipalities, the Council and the Commission in identifying Centers on a voluntary basis.

10. Municipalities that are consistent with the State Plan's goals, objectives and policies, and that petition the Council within two years of filing a housing element with the Council, will receive the benefit of maximum flexibility with respect to Council certification. Municipalities that are not consistent with the State Plan's goals objectives and policies, and that do not petition the Council for certification within two years of filing with the Council a housing element consistent with the State Plan's policies and objectives, may expose themselves to actions by the Council and Commission with respect to identifying and designating centers and site specific relief to objectors.

IN WITNESS WHEREOF, the Commission and the Council have caused this Memorandum of Understanding to be duly executed by their authorized representatives on the date first above written.

NEW JERSEY STATE PLANNING COMMISSION

by: _____

Title: _____

NEW JERSEY COUNCIL ON AFFORDABLE HOUSING

by: _____

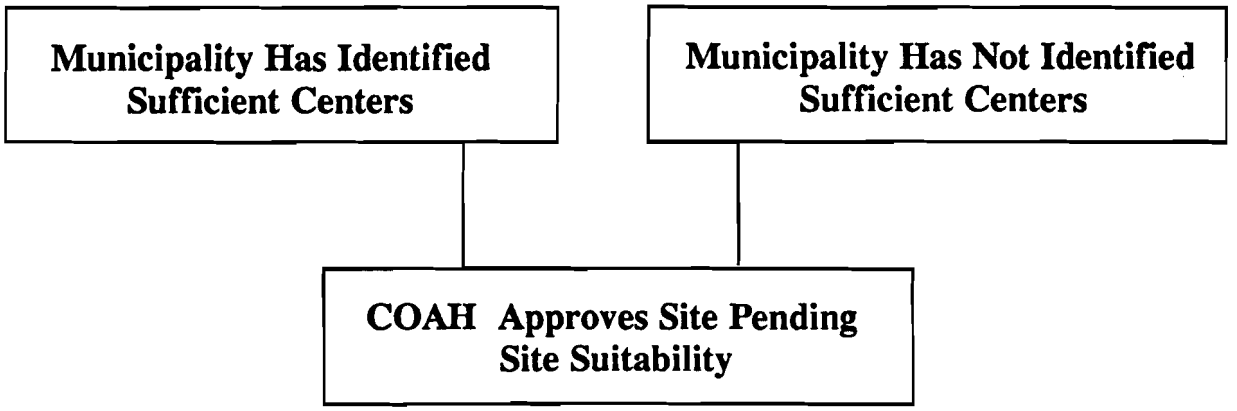
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COAH REVIEW OF MUNICIPAL HOUSING ELEMENTS

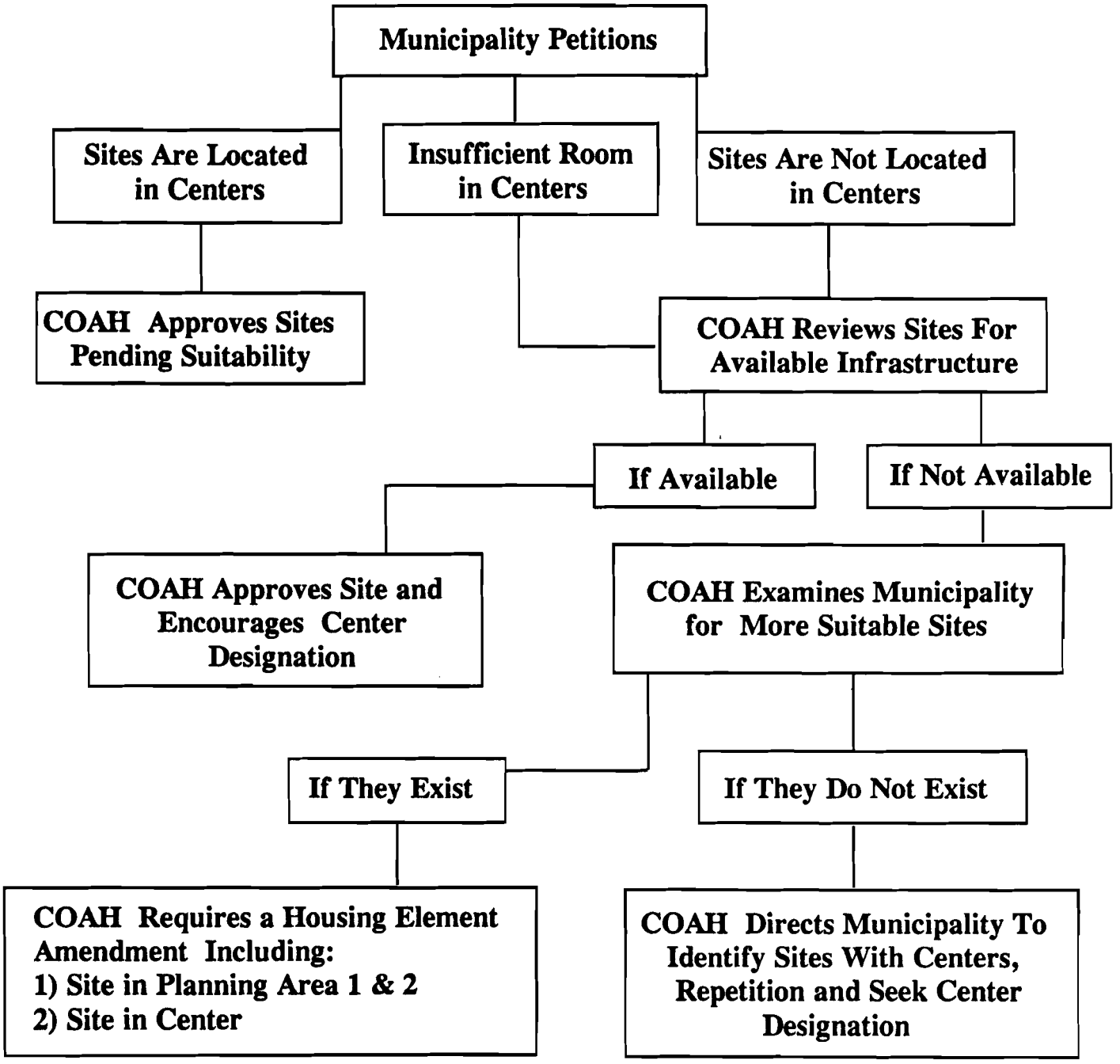
BASED ON SDRP

All Charts Must Be Reviewed Within The Context of N.J.A.C. 5:93-5.4

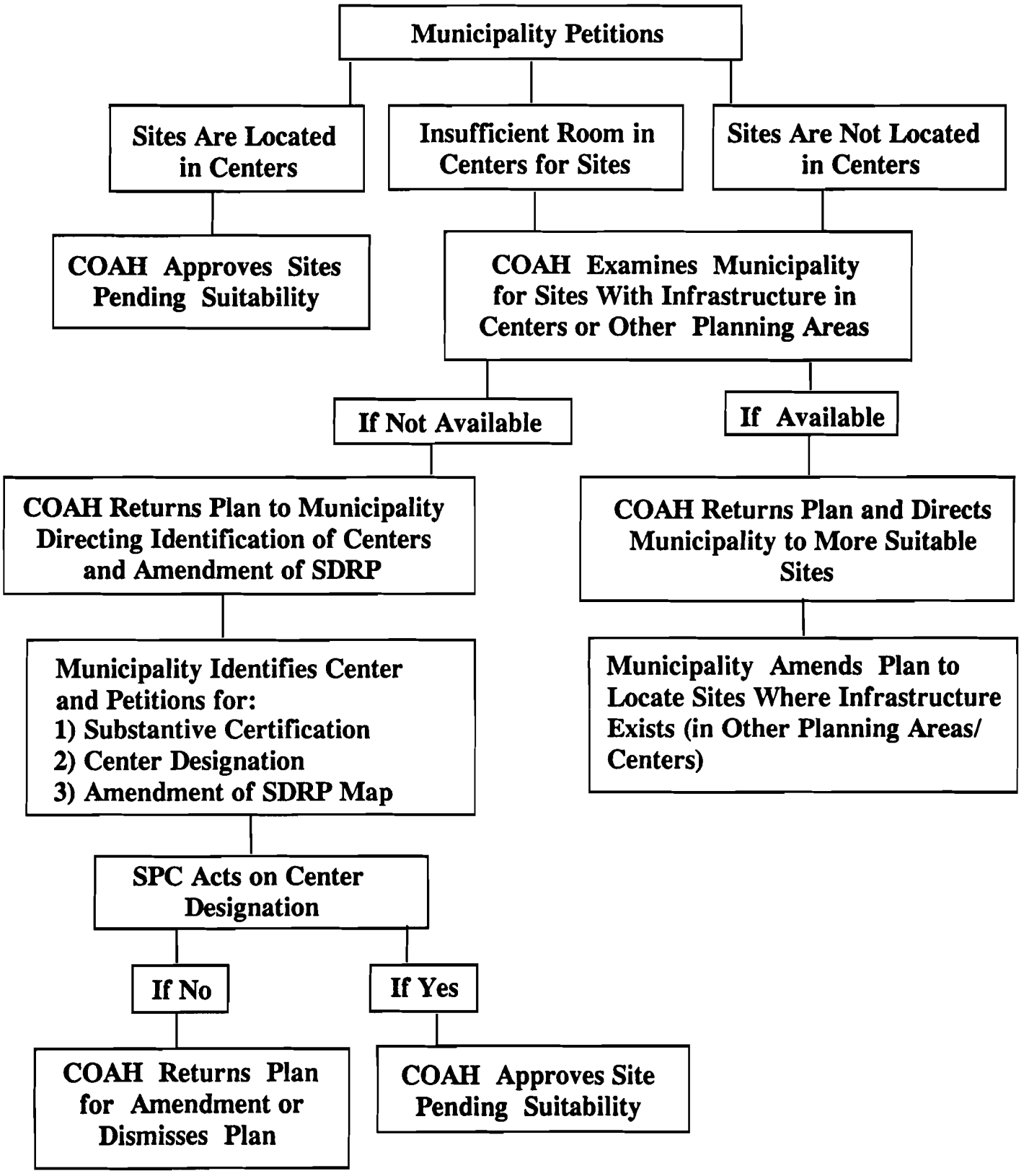
SITE REVIEW IN PLANNING AREAS 1 & 2



SITE REVIEW IN PLANNING AREA 3



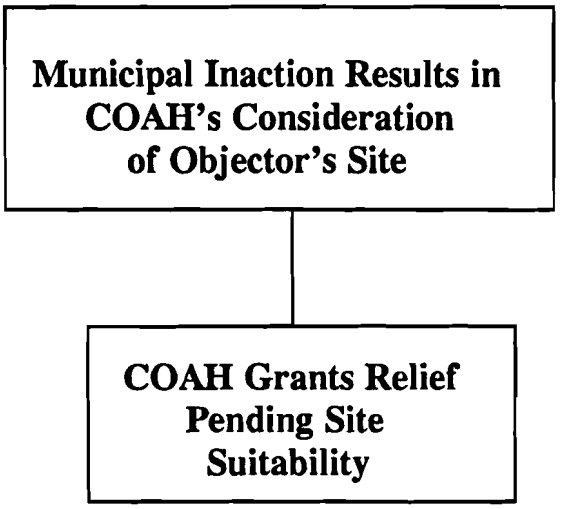
SITE REVIEW IN PLANNING AREAS 4 & 5



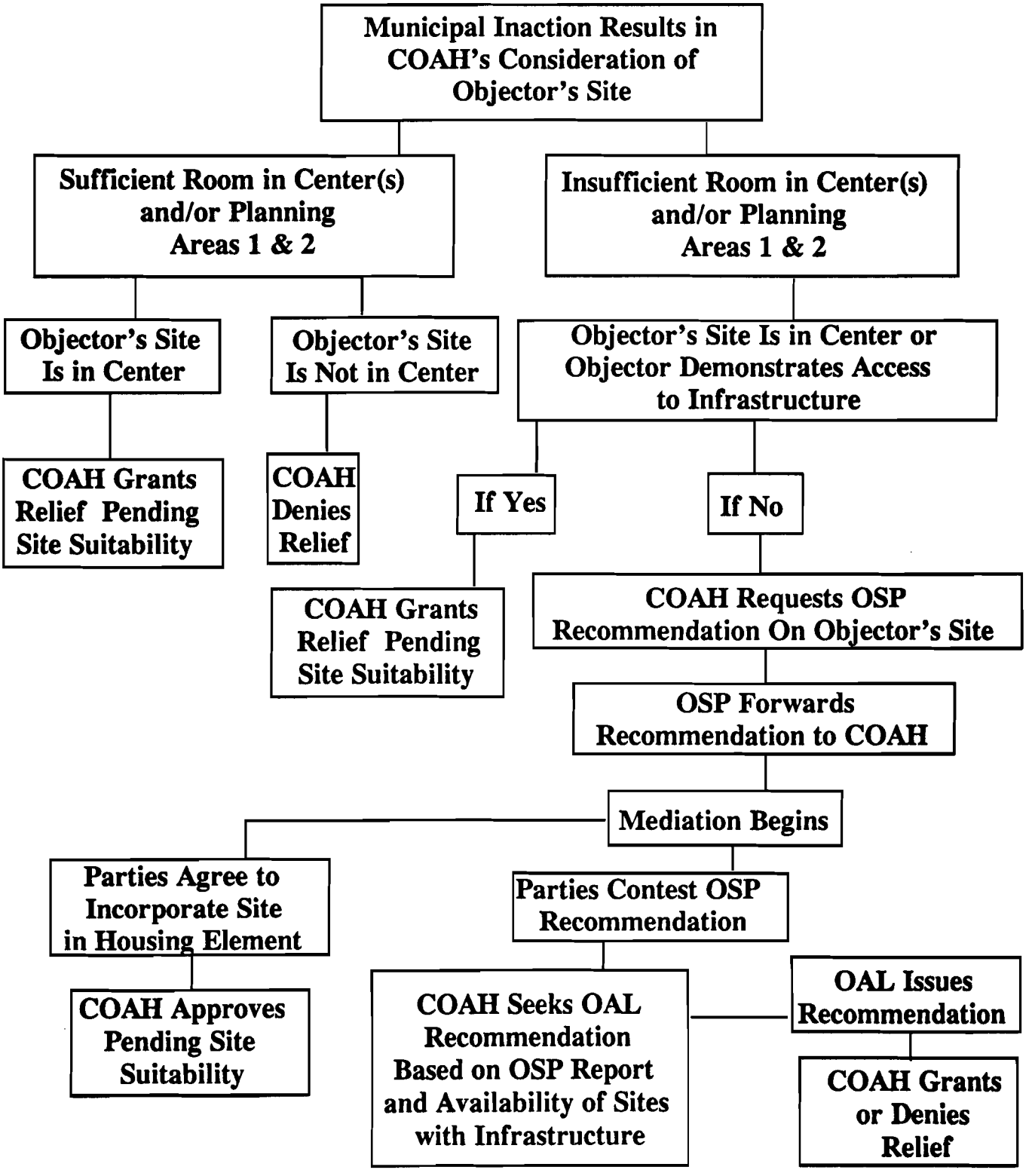
COAH PROCESS OF GRANTING RELIEF TO OBJECTORS BASED ON SDRP

All Charts Must Be Reviewed Within The Context of N.J.A.C. 5:93-13

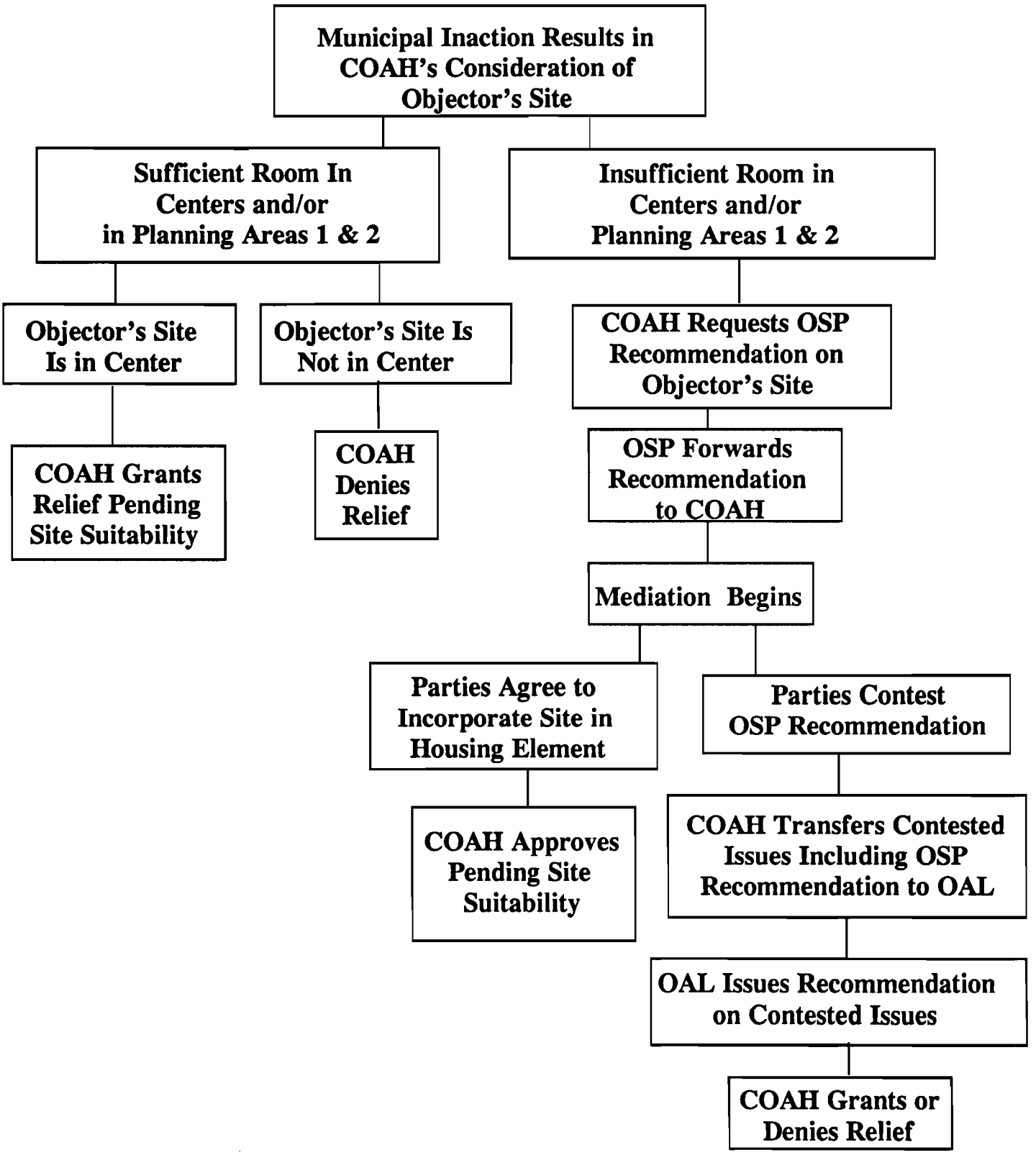
OBJECTOR RELIEF IN PLANNING AREAS 1 & 2



OBJECTOR RELIEF IN PLANNING AREA 3



OBJECTOR RELIEF IN PLANNING AREAS 4 & 5



APPENDIX G

REGIONAL CONTRIBUTION AGREEMENT COUNTY REVIEW CHECKLIST

The Fair Housing Act permits a municipality to transfer up to 50 percent of its low and moderate income housing obligation to a willing receiving municipality. The terms of this Regional Contribution Agreement (RCA) transfer are determined by individual negotiations between willing sending and receiving municipalities within the same housing region.

Recognizing the need for sound comprehensive regional planning, the Act refers the RCA to the county of the receiving municipality for review and for submittal of its comments and recommendations to COAH. The Act indicates that this review shall be performed by the county planning board or other designated agency and that in its review, the county "shall consider the master plan and zoning ordinance of the sending and receiving municipalities, its own county master plan and the State development and redevelopment plan." The results of this review and the county recommendation are to be **by resolution** of the county planning board. At a minimum, the following language is to be incorporated into the resolution, if the recommendation is positive:

WHEREAS, directed by the New Jersey Council on Affordable Housing, the (receiving) County Planning Board has reviewed this proposal; and

WHEREAS, the staff of the (receiving) County Planning Board has examined the Master Plan and Zoning Ordinances of the (sending) municipality and (receiving) municipality; the Master Plan of (receiving) County and the State Development Guide Plan; and

WHEREAS, after duly examining all the above cited plans, the staff of the (receiving) County Planning Board has found that the proposed Regional Contribution Agreement is in accordance with sound, comprehensive regional planning; that the (receiving) municipality and the proposed RCA housing locations therein offer convenient access to employment opportunities; and that the proposed RCA housing would have access to public transportation;

NOW, THEREFORE BE IT RESOLVED that the (receiving) County Planning Board recommends approval of the proposed Regional Contribution Agreement between the (sending) municipality and the (receiving) municipality; and

BE IT FURTHER RESOLVED that the (receiving) County Planning Board recommends that the New Jersey Council on Affordable Housing approve the proposed Regional Contribution Agreement.

If negative, please develop appropriate language.

In order to conduct this review, the **sending** municipality must forward the following documents to the receiving municipality's county planning board:

1. Master Plan of Sending Municipality.
2. Zoning Ordinances of Sending Municipality.
3. Housing Element of Sending Municipality.
4. Transportation Element of Sending Municipality.
5. 208 Plan of Sending Municipality.
6. Other Regional Plans, if applicable.
7. Regional Contribution Agreement Project Plan.

If both sender and receiver are in the same county, then all necessary documents are on file except the RCA Project Plan. In that instance, only a formal review request letter and the RCA Project Plan need be forwarded.

The Act permits COAH to establish time limits for county review and, since COAH views expedient review of RCAs as crucial, it has imposed a 45 day limit for the county to complete its review. COAH may provide a 15 day extension if the county requests such an extension for legitimate reasons. The 45 days begin when the sending municipality forwards all the necessary documents as a complete package to the receiving municipality's county planning board with a request for review and recommendation. COAH should be copied on the transmittal letter only. If the county is unable to complete its review within the allotted time, or if there is no county planning board or designated county agency, COAH shall perform the required review.

To facilitate county review, COAH has developed a four section checklist which is attached. The checklist is to be completed as part of the county review process and forwarded with the resolution to COAH. When both the County Planning Board and NJ Housing and Mortgage Finance Agency feasibility reviews are completed, the RCA will be presented to COAH for action.

SECTION I: ACCESS TO EMPLOYMENT OPPORTUNITIES

A. Does the proposed agreement provide realistic housing opportunities within convenient access to employment opportunities?

Housing Site(s) Proposed:

	Location	Site #	Yes	No
1. Receiving Munic.	_____	____	A.___	___
	_____	____	B.___	___
	_____	____	C.___	___
	Location	Site #		
2. Sending Munic.	_____	____	A.___	___
	_____	____	B.___	___
	_____	____	C.___	___

BRIEFLY EXPLAIN ACCESS FOR EACH SITE ON SEPARATE SHEET
INCLUDE SITE #

B. Is the proposed housing served by available transit?

Housing Site(s) Proposed:
If yes, check type(s) of service

1. Receiving Munic. Location	#	Yes	Munic	Inter-Municipal County	Inter-Co	No
_____	___	A.___	___	___	___	___
_____	___	B.___	___	___	___	___
_____	___	C.___	___	___	___	___
2. Sending Munic.						
Location	**#**					
_____	___	A.___	___	___	___	___
_____	___	B.___	___	___	___	___
_____	___	C.___	___	___	___	___

IF TRANSIT POSSIBLE, BRIEFLY EXPLAIN TRANSIT FOR EACH SITE ON SEPARATE SHEET

SECTION II: CURRENTLY ADOPTED AND/OR OFFICIAL LAND USE ELEMENT CONSISTENCY REVIEW (ATTACH RELEVANT PAGES OF DOCUMENTS CITED BELOW)

	Check One: Complies In Whole	Complies In Part (Explain)	Conflicts In Whole
A.1. Receiving Munic. (a) Master Plan Of: _____; Adopted:	____	_____	_____

Brief Explanation (attach additional sheets as necessary)

_____

_____

_____

	Complies In Whole	Complies In Part (Explain)	Conflicts In Whole
(b) Zoning Ordinance Of: _____; Adopted:	____	_____	_____

Brief Explanation (attach additional sheets as necessary)

_____

_____

_____

2. Sending Munic.

(a) Master Plan Of:	Complies In Whole	Part (Explain)	Conflicts In Whole*
_____:Adopted:	____	_____	_____

Brief Explanation (attach additional sheets as necessary)

(b) Zoning Ordinance	Complies In Whole	Part (Explain)	Conflicts In Whole
Of: _____; Adopted:	____	_____	_____

Brief Explanation (attach additional sheets as necessary)

C. Are there any future plans to serve the proposed housing with transit?

		Yes	No
1. Receiving Munic.	A.	__	__
	B.	__	__
	C.	__	__
2. Sending Munic.	A.	__	__
	B.	__	__
	C.	__	__

IF TRANSIT POSSIBLE, BRIEFLY EXPLAIN TRANSIT FOR EACH SITE ON SEPARATE SHEET

	Complies In Whole	Part (Explain)	Conflicts In Whole
D.1. Receiving County Land Use Element Of: _____County;	____	_____	_____

Adopted: _____

Brief Explanation (attach additional sheets as necessary)

	Complies In Whole	Part (Explain)	Conflicts In Whole
C.1. Other Regional Plan Land Use Element(s) * Affecting:	____	_____	_____

(a) Receiving Munic.

_____:Adopted: _____

Brief Explanation (attach additional sheets as necessary)

	Complies In Whole	Part (Explain)	Conflicts In Whole
D.1. State Development Redevelopment Plan (S.D.R.P.) **			
(a) Receiving Munic.	____	_____	_____
(b) Sending Munic.	____	_____	_____

Brief Explanation (attach additional sheets as necessary)

* For example, is site(s) consistent with Hackensack Meadowland Development Commission's Adopted Land Use Element

** Use official State Development Guide Plan until S.D.R.P. is adopted.

SECTION III: CURRENTLY ADOPTED TRANSPORTATION PLAN AND/OR PROGRAM ELEMENT CONSISTENCY REVIEW

1. Are there transportation or transit plans at any level of government which would positively or negatively affect the proposed housing and/or the proposed housing sites?

1. Within Sending Munic.

2. Within Receiving Munic.

CERTIFICATION: There are currently no transportation plans to build roadway that may invalidate sites.

(ATTACH RELEVANT PAGES OF DOCUMENT)

A. Is the proposed housing consistent with the 208 plan?

	Housing Site(s) Proposed location	Site #	Check One Yes	No
1. Within Receiving Munic.				
			A.__	__
			B.__	__
			C.__	__

ATTACH ADDITIONAL SHEETS IF NECESSARY TO COMPLETE ABOVE QUESTION

This review is certified by the undersigned as representing a true and accurate statement of fact.

Based on this review, it is found that the following sites are:

1. Within Receiving Munic. Housing Site(s) Proposed Location	Site #		In Keeping With Sound Regional Comprehensive Planning	Not in Keeping With Sound Regional Comprehensive Planning
		A.		
		B.		
		C.		
2. Within Sending Munic. Location	Site #			
		A.		
		B.		
		C.		

CERTIFIED BY: _____

DATED: _____

TYPE NAME: _____

TITLE: _____

REPRESENTING _____

PROFESSIONAL LICENSE #:(as applicable)_____

RULE ADOPTIONS

HEALTH

(a)

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

Proposed: January 4, 1993 at 25 N.J.R. 55(a).
Adopted: February 9, 1993 by the Drug Utilization Review Council, Robert Kowalski, Chairman.
Filed: February 19, 1993 as R.1993 d.124, **with portions of the proposal not adopted and portions not adopted but still pending.**

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

Effective Date: March 15, 1993.
Expiration Date: February 17, 1994.

Summary of Public Comments and Agency Responses:

The Drug Utilization Review Council received the following comments pertaining to the proposed products affected by this adoption.

COMMENT: From Procter & Gamble Pharmaceuticals in opposition to Trinity's Entex LA tablets substitute. Procter & Gamble informed the Council that Entex LA is a controlled-release product which uses a patented Hydrobid matrix delivery system that regulates delivery of the active drugs, guaifenesin 400 mg and phenylpropanolamine HCl 75 mg. Procter & Gamble explained there is a potential bioavailability problem of dose-dumping with generic products where bioequivalency has not been demonstrated.

Since bioequivalency data had not been produced to support Trinity's product, Procter & Gamble requested that the product be rejected.

RESPONSE: The Council deferred this product pending the receipt of supporting bioequivalency data.

COMMENT: From Ross Laboratories in opposition to Hi-Tech's Rondec DM substitute syrup.

Ross informed the Council that it reformulated the Rondec DM syrup as sucrose-free and ethanol-free. Ross cautioned the Council that sucrose and ethanol are still being used in some generic formulations. In addition, Ross reviewed documentation on the potential side-effects and drug interactions with these ingredients, as well as, the FDA's OTC Drug Advisory Committee's recommendation concerning alcohol content in OTC medications. Based on this information, Ross requested that the Council reject all generic substitutes for the brand, Rondec DM syrup.

RESPONSE: Ross Laboratories did not substantiate that the reformulation of its Rondec DM syrup has changed the therapeutic equivalency with generic versions that contain sucrose and ethanol. In addition, the Council verified that the proposed generic substitute for Rondec DM, manufactured by Hi-Tech, did not contain alcohol or sucrose. Therefore, the Council approved Hi-Tech's Rondec DM syrup substitute.

Summary of Hearing Officer's Recommendations and Agency Responses:

A public hearing on the proposed additions to the list of interchangeable drug products was held on February 1, 1993. Mark A. Strollo, R.Ph., M.S., served as hearing officer. Two persons attended the hearing. Two comments were submitted. The hearing officer recommended that the decisions made be based upon available biodata. The Council adopted the products specified as "adopted," declined to adopt the products specified as "not adopted," and referred the products identified as "pending" for further study.

The following products and their manufacturers were **adopted**:

Azo Gantrisin tabs substitute 500/50	Trinity
Entex liquid substitute	Hi-Tech
Entex liquid substitute	Barre-Nat'l
Entex cap substitute	Trinity
Metoclopramide oral solution 5mg/5ml	Silarex
Midrin caps substitute	Duramed
Promethazine HCl syrup	Halsey
Rondec DM syrup substitute	Hi-Tech
Salsalate tabs 500, 750mg	Trinity
Sodium fluoride tabs 2.2mg	Trinity
Trilisate tabs substitute 500mg, 750mg, 1000mg	Trinity
Tri-Vi-Flor 0.25mg substitute	Cenci
Tri-Vi-Flor 0.5mg substitute	Cenci
Tri-Vi-Flor w/Iron 0.25mg/ml substitute	Hi-Tech

The following products were **not adopted**:

Colchicine tabs 0.6mg	Trinity
Folic acid tabs 1mg	West-ward
Guaifenesin DM syrup 100mg/10mg/5ml	Halsey
Isoniazid tabs 300mg	Duramed
Loperamide HCl liquid 1mg/5ml	Barre-Nat'l
Phenobarbital elixir 20mg/5ml	Halsey

The following products were **not adopted but are still pending**:

Aminophylline tabs 100mg, 200mg	West-ward
Atenolol tabs 25mg	IPR
Atenolol/chlorthalidone 50/25, 100/25	Mylan
Cortisone acetate tabs 25mg	West-ward
Cyclobenzaprine tabs 10mg	Invamed
Entex LA tabs substitute	Trinity
Fluocinonide cream 0.05%	NMC Labs
Histalet Forte substitute tabs	Trinity
Hydrocodone bitartrate/guaifenesin syrup	Barre-Nat'l
Hydrocortisone tabs 20mg	West-ward
Hyoscyamine sulfate elixir 0.125mg/5ml	Hi-Tech
Hyoscyamine tabs 0.125mg	Trinity
Ibuprofen tabs 400mg, 600mg, 800mg	Invamed
Metoclopramide oral solution 5mg/5ml	Silarex
Nadolol tabs 20mg, 40mg, 80mg, 120mg	Mylan
Naproxen tabs 250mg, 375mg, 500mg	Mylan
Naproxen tabs 250mg, 375mg, 500mg	Purepac
Nortriptyline caps 10, 25, 50, 75mg	Mylan
Oxtriphylline/guaifenesin elixir 100/50 per 5ml	Barre-Nat'l
Phenytoin suspension 125mg/5ml	Barre-Nat'l
Pindolol tabs 5mg, 10mg	Genpharm
Pindolol tabs 5mg, 10mg	Novopharm
Piroxicam caps 10mg, 20mg	Genpharm
Piroxicam caps 10mg, 20mg	Purepac
Poly-Vi-Flor w/Iron 0.25mg/ml substitute	Hi-Tech
Prednisone tabs 5mg, 10mg, 20mg	West-ward
Rynatan ped susp substitute	Barre-Nat'l
Rynatan-S Ped Susp substitute	Duramed
Rynatuss ped susp substitute	Barre-Nat'l
Rynatuss tabs substitute	Trinity
Singlet LA caps substitute	Trinity
Sulindac tabs 150 mg, 200mg	Lederle
Theo-Organidin elixir substitute	Barre-Nat'l
Triazolam tabs 0.125mg, 0.25mg	Mylan
Valproic acid caps 250mg	Pharmacaps

HIGHER EDUCATION

(b)

BOARD OF HIGHER EDUCATION
State College Personnel System
Adopted New Rules: N.J.A.C. 9:6A

Proposed: September 8, 1992 at 24 N.J.R. 3052(a).
Adopted: November 12, 1992 by the Board of Higher Education, Edward D. Goldberg, Chancellor and Secretary.
Filed: February 18, 1993 as R.1993 d.118, **without change.**

Authority: N.J.S.A. 18A:3-14(h) and 18A:64-6(h).

Effective Date: March 15, 1993.
Expiration Date: March 15, 1998.

Summary of Public Comments and Agency Responses:
No comments received. N.J.A.C. 9:6A expired on January 4, 1993. Pursuant to N.J.A.C. 1:30-4.4(f), these expired rules which were proposed for readoption are adopted herein as new rules.

Full text of the adopted new rules may be found in the New Jersey Administrative Code at N.J.A.C. 9:6A.

LAW AND PUBLIC SAFETY

(a)

DIVISION OF MOTOR VEHICLES

Equipment for Emergency Vehicles and Other Specified Vehicles

Adopted Amendments: N.J.A.C. 13:24-4.1 and 4.2

Proposed: November 16, 1992 at 24 N.J.R. 4236(a).
Adopted: February 1, 1993 by Stratton C. Lee, Jr., Director, Division of Motor Vehicles.
Filed: February 11, 1993 as R.1993 d.115, **without change.**

Authority: N.J.S.A. 39:3-54.21.

Effective Date: March 15, 1993.
Expiration Date: September 27, 1994.

Summary of Public Comment and Agency Response:
Opportunity to be heard with regard to the proposal was invited via notice published in the New Jersey Register cited above. A media advisory was also prepared by the Division of Motor Vehicles with regard to the proposal. **No comments were received** from the public with regard to the proposal.

Full text of the adoption follows.

13:24-4.1 Persons eligible
(a) Owners or lessees of the following types of vehicles may be considered eligible for amber light permits.
1.-3. (No change.)
4. Vehicles being operated by rural route letter carriers, employed by the United States Postal Service, while they are performing their official duties.
i. The vehicle must be either owned or leased by the rural route letter carrier or a member of his or her family.

13:24-4.2 Application procedure
(a) Application for a flashing amber light permit pursuant to this subchapter must be made in writing to the Division of Motor Vehicles.
(b) The application for vehicles bearing governmental registration, after completion, is to be signed by the chief official of the governmental agency which owns or leases the vehicles, and returned to the Division of Motor Vehicles.
(c) The application for vehicles not bearing governmental registration, after completion, is to be signed by the chief law enforcement official in the municipality in which the service is being provided, and returned to the Division of Motor Vehicles. However, a rural route letter carrier shall have his or her application signed by the postmaster of the post office which employs him or her, instead of the chief law enforcement official in a municipality.
(d) (No change.)

(b)

DIVISION OF CONSUMER AFFAIRS
BOARD OF REAL ESTATE APPRAISERS

Certified Residential Real Estate Appraiser; Disclosure of Title and License Numbers; Use of Designations and Abbreviations

Adopted Amendments: N.J.A.C. 13:40A-1, 2, 3.6 and 6.1

Adopted New Rules: N.J.A.C. 13:40A-2A, 6.2 and 6.3

Proposed: October 5, 1992 at 24 N.J.R. 3489(a).
Adopted: December 8, 1992 by the Board of Real Estate Appraisers, Robert H. Scrivens, Jr., President.
Filed: February 19, 1993 as R.1993 d.125, **without change.**

Authority: N.J.S.A. 45:14F-8n; P.L. 1991, c.408.

Effective Date: March 15, 1993.
Expiration Date: December 16, 1996.

The Board of Real Estate Appraisers afforded all interested parties an opportunity to comment on the proposed amendments and new rules. The official comment period ended on November 14, 1992. Announcement of the opportunity to respond to the Board appeared in the New Jersey Register on October 5, 1992, at 24 N.J.R. 3489(a). Announcements were also forwarded to the Star Ledger, Trenton Times, Bergen Record, Appraisal Institute, American Society of Appraisers, American Bankers Association, American Institute of Real Estate Appraisers, American Society of Farm Managers and Rural Appraisers, International Association of Assessing Officers, National Association of Certified Real Property Appraisers, National Association of Independent Fee Appraisers, National Society of Real Estate Appraisers, New Jersey Association of Realtors, New Jersey Real Estate Commission, and various professional groups, practitioners and other interested parties.

A full record of this opportunity to be heard can be inspected by contacting the Board of Real Estate Appraisers, Post Office Box 45012, Newark, New Jersey 07101.

Summary of Public Comment and Agency Response:
One letter was received during the 30 day comment period. Linda P. Buchart, IFA, stated that the requirement set forth in N.J.A.C. 13:40A-6.2 regarding use of the appraiser's designation and state license or certification number cannot be met on the Fannie Mae Form 1004 (commonly known as URAR). The commenter suggested that the Board require use of the license or certification number only wherever the signature appears on this form, and that the Board require the designation to appear on the certification sheet along.

RESPONSE: The Board has been advised that an appraiser should have sufficient space on a URAR to include both a license or certification number and a designation if the appraiser uses only a first initial. Of greater significance, the Board has also been advised that a new URAR form providing additional space for the required information will be published shortly. In any event, the Board believes its concern that appraisers be appropriately and clearly identified in order to alleviate confusion and enable the public to more readily identify members of the appraisal profession overrides any concerns as to space limitations.

Full text of the adoption follows.

SUBCHAPTER 1. PURPOSE AND SCOPE; DEFINITIONS

13:40A-1.1 Purpose and scope
This chapter, as effective December 16, 1991, is promulgated by the Director, Division of Consumer Affairs, with subsequent amendments promulgated by the Board of Real Estate Appraisers. The rules contained in this chapter implement the provisions of the Real Estate Appraisers Act, P.L.1991, c.68 (N.J.S.A. 45:14F-1 et seq.) and provide for the voluntary licensing and certification of real estate appraisers.

13:40A-1.2 Definitions
The following words and terms, when used in this chapter, shall have the the following meanings, unless the context clearly indicates otherwise:
...

"Residential" means one to four residential units.

"State certified general real estate appraiser" ("SCGREA") means an individual who has satisfied the experience and education requirements as set forth in this chapter, has successfully completed the Board sponsored examination, and holds a current, valid certificate as a certified general real estate appraiser.

"State certified residential real estate appraiser" ("SCRREA") means an individual who has satisfied the experience and education requirements as set forth in this chapter, has successfully completed the Board sponsored examination, and holds a current, valid certificate as a certified residential real estate appraiser.

...

SUBCHAPTER 2. CERTIFICATION OF GENERAL REAL ESTATE APPRAISERS

13:40A-2.1 Eligibility for certification as a general real estate appraiser

In order to be eligible for certification as a general real estate appraiser, an applicant shall be required to successfully complete the Board approved examination for the certification of general real estate appraisers.

13:40A-2.2 Eligibility for admission to examination

(a) An applicant for certification as a general real estate appraiser shall present evidence to the satisfaction of the Board that he or she is:

1.-5. (No change.)

13:40A-2.3 Educational requirements for certification as a general real estate appraiser

(a) In order to be eligible to take the Board approved examination for the certification of general real estate appraisers, an applicant shall be required to complete 165 classroom hours, as defined in N.J.A.C. 13:40A-1.2, of courses in subjects related to real estate appraisal. The required 165 classroom hours shall include a course on the Uniform Standards of Professional Appraisal Practice of the Appraisal Foundation, which the applicant shall have taken subsequent to April 27, 1987. Classroom hours completed for the certified residential classification and the licensed classification may be included within the required 165 classroom hours.

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

13:40A-2.4 Experience requirements for certification as a general real estate appraiser

(a) Each person applying for certification as a general real estate appraiser shall furnish documentation satisfactory to the Board that:

1.-2. (No change.)

13:40A-2.5 Temporary visiting certificate; certified general real estate appraiser

(a) Upon application to the Board and payment of a registration fee, an appraiser certified as a general real estate appraiser in another state may be issued a temporary visiting certificate as a general real estate appraiser for a specific appraisal assignment, provided that the individual submits satisfactory proof to the Board that the individual has a current valid certificate to practice as a general real estate appraiser in another state which has requirements for certification as a general real estate appraiser substantially equivalent to those of New Jersey.

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

SUBCHAPTER 2A. CERTIFICATION OF RESIDENTIAL REAL ESTATE APPRAISERS

13:40A-2A.1 Eligibility for certification as a residential real estate appraiser

In order to be eligible for certification as a residential real estate appraiser, an applicant shall be required to successfully complete the Board approved examination for the certification of residential real estate appraisers.

13:40A-2A.2 Eligibility for admission to examination

(a) An applicant for certification as a residential real estate appraiser shall present evidence to the satisfaction of the Board that he or she is:

1. More than 18 years of age;

2. Of good moral character, as established by references from individuals, schools and other records acceptable to the Board;

3. Has a high school diploma or its equivalent;

4. Has completed the educational requirements described in N.J.A.C. 13:40A-2A.3; and

5. Has real estate appraisal experience as described in N.J.A.C. 13:40A-2A.4.

13:40A-2A.3 Educational requirements for certification as a residential real estate appraiser

(a) In order to be eligible to take the Board approved examination for the certification of residential real estate appraisers, an applicant shall be required to complete 105 classroom hours, as defined in N.J.A.C. 13:40A-1.2, of courses in subjects related to real estate appraisal. The required 105 classroom hours shall include a course on the Uniform Standards of Professional Appraisal Practice of the Appraisal Foundation, which the applicant shall have taken subsequent to April 27, 1987. Classroom hours completed for the licensed classification may be included within the required 105 classroom hours.

(b) The Board shall grant credit toward the classroom hour requirement only where the length of the educational offering is at least 15 classroom hours and where the individual successfully completes an examination pertinent to that educational offering.

(c) The applicant may obtain credit for the classroom hour requirement from the following: colleges, universities, community colleges or junior colleges accredited by the New Jersey Department of Higher Education or any State accrediting agency approved by the Board; real estate appraisal or real estate related organizations as approved by the Board; State or Federal agencies or commissions as approved by the Board; and proprietary schools as approved by the Board.

(d) The Board may credit various appraisal courses toward the 105 classroom hour educational requirement. Applicants shall demonstrate that their education included coverage of all the topics listed below with particular emphasis on the appraisal of one to four unit residential properties:

1. Influences on Real Estate Value;
2. Legal Considerations in Appraisal;
3. Types of Value;
4. Economic Principles;
5. Real Estate Markets and Analysis;
6. Valuation Process;
7. Property Description;
8. Highest and Best Use Analysis;
9. Appraisal Math and Statistics;
10. Sales Comparison Approach;
11. Site Value;
12. Cost Approach;
13. Income Approach;
14. Valuation of Partial Interests; and
15. Appraisal Standards and Ethics.

(e) Experience may not be substituted for education.

(f) The Board shall not grant credit for correspondence courses or for video and remote television educational offerings.

13:40A-2A.4 Experience requirements for certification as a residential real estate appraiser

(a) Each person applying for certification as a residential real estate appraiser shall furnish documentation satisfactory to the Board that he or she has accumulated at least 2,000 hours of appraisal experience in no less than two nor more than four calendar years.

(b) Acceptable appraisal experience includes, but is not limited to, the following: fee and staff appraisal; ad valorem tax appraisal; review appraisal; appraisal analysis; real estate counseling; highest

and best use analysis; feasibility analysis/study; and teaching of appraisal courses.

(c) The Board shall award experience credit to ad valorem tax appraisers/appraisals when the applicant demonstrates to the satisfaction of the Board that he or she is using similar techniques as appraisers to value properties and that he or she effectively utilizes the appraisal process.

(d) Education may not be substituted for experience.

13:40A-2A.5 Temporary visiting certificate; certified residential real estate appraiser

(a) Upon application to the Board and payment of a registration fee, an appraiser certified as a residential real estate appraiser in another state may be issued a temporary visiting certificate as a residential real estate appraiser for a specific appraisal assignment, provided that the individual submits satisfactory proof to the Board that the individual has a current valid certificate to practice as a residential real estate appraiser in another state which has requirements for certification as a residential real estate appraiser substantially equivalent to those of New Jersey.

(b) An appraiser certified by another state may apply for no more than three temporary certificates within one calendar year, except as provided in (c) below.

(c) The Board may, in its discretion, waive the requirements of (b) above for good cause shown.

13:40A-3.6 Temporary visiting licenses

(a) Upon application to the Board and payment of a registration fee, an appraiser licensed in another state may be issued a temporary visiting license for a specific appraisal assignment, provided that the individual submits satisfactory proof to the Board that the individual has a current valid license to practice in another state which has requirements for licensure as a real estate appraiser substantially equivalent to those of New Jersey.

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

SUBCHAPTER 6. GENERAL PROVISIONS

13:40A-6.1 Fee schedule

(a) Charges for credentialing, certification, licensure and other services are as follows:

1.-2. (No change.)

3. Initial certification fee, general real estate appraiser:

i.-ii. (No change.)

4. Initial certification fee, residential real estate appraiser:

i. During the first year of a biennial renewal period: $200.00

ii. During the second year of a biennial renewal period: $100.00

5. Initial license fee:

i.-ii. (No change.)

6. Certification renewal fee for general real estate appraiser, biennial: $240.00

7. Certification renewal fee for residential real estate appraiser, biennial: $200.00

8. License renewal fee, biennial $160.00

9. Late renewal fee $100.00

10. Duplicate certification fee, general real estate appraiser: $120.00

11. Duplicate certification fee, residential real estate appraiser: $110.00

Recodify existing 9.-18. as 12.-21. (No change in text.)

13:40A-6.2 Disclosure of title and license number

An appraiser shall include on all appraisal reports, wherever his or her signature appears, the appraiser's designation and state license or certification number. The appraiser shall use only the designations permitted pursuant to N.J.A.C. 13:40A-6.3.

13:40A-6.3 Use of designations and abbreviations

(a) The following shall apply in connection with the use of designations and abbreviations on appraisal reports or in any advertisement or public representation:

1. Individuals holding a current valid real estate appraiser certificate or license may use only the following designations and abbreviations to indicate the type of certificate or license held:

Permissible Designation	Permissible Abbreviation
State Certified General Real Estate Appraiser	SCGREA
State Certified Residential Real Estate Appraiser	SCRREA
State Licensed Real Estate Appraiser	SLREA

2. Abbreviations shall appear in capital letters, without a period or space after each letter, and shall not be in type or lettering larger than the individual's name.

3. A certified or licensed appraiser shall use his or her designation or abbreviation only in conjunction with his or her name and not in conjunction with the name of a firm, corporation or partnership. For example, a firm, corporation or partnership shall not be identified as being certified or licensed.

4. An individual who is not certified or licensed pursuant to the Real Estate Appraisers Act, N.J.S.A. 45:14F-1 et seq., shall not use the designations or abbreviations set forth in (a)1 above or any other designation or abbreviation using similar combinations of words or letters to imply that the individual is state certified or licensed.

5. A certified or licensed appraiser shall not permit his or her name and designation to be used on an appraisal where the appraiser has not participated in the appraisal pursuant to the Uniform Standards of Professional Appraisal Practice.

(a)

VIOLENT CRIMES COMPENSATION BOARD

Compensable Damages; Reimbursement for Loss of Earnings

Adopted Amendment: N.J.A.C. 13:75-1.7

Proposed: December 21, 1992 at 24 N.J.R. 4491(a).
Adopted: February 18, 1993 by the Violent Crimes Compensation Board, Jacob C. Toporek, Chairman.
Filed: February 23, 1993 as R.1993 d.133, **without change.**

Authority: N.J.S.A. 52:4B-9.

Effective Date: March 15, 1993.
Expiration Date: June 5, 1994.

Summary of Public Comment and Agency Response:
No comments received.

Full text of the adoption follows.

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.

1. (No change.)

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

(b)

VIOLENT CRIMES COMPENSATION BOARD

Eligibility of Claimants for Personal Injury Resulting from the Crime of Burglary

Adopted New Rule: N.J.A.C. 13:75-1.31

Proposed: December 21, 1992 at 24 N.J.R. 4491(b).
Adopted: February 18, 1993 by the Violent Crimes Compensation Board, Jacob C. Toporek, Chairman.
Filed: February 23, 1993 as R.1993 d.134, **without change.**

Authority: N.J.S.A. 52:4B-9.

Effective Date: March 15, 1993.
Expiration Date: June 5, 1994.

Summary of Public Comment and Agency Response:
No comments received.

Full text of the adoption follows.

13:75-1.31 Eligibility of claimants for personal injury resulting from the crime of burglary

(a) Pursuant to the provisions of N.J.S.A. 52:4B-11(b)11, the Board shall make an award to eligible victims of the crime of burglary when an actor, without license or privilege, enters a structure not open to the public with the purpose of committing another offense, other than trespass or entry, or remains in a structure knowing that there is no license or privilege to do so.

(b) "Structure" shall mean any residence, building, room or any place adapted for overnight accommodation of a person. For purpose of this provision, a motor vehicle is not to be considered as a "structure."

(c) In order to be eligible to receive compensation as a victim of the crime of burglary, the victim must have:

1. Been a resident, owner, or invited guest of the structure burglarized;

2. Been present in the structure at the time of the burglary and either witnessed the burglary itself or subsequently observed the results thereof; and

3. Suffered physical and/or emotional distress directly related to the burglary.

(d) A secondary victim, as defined by N.J.A.C. 13:75-1.28, may be eligible for compensation under this section as a secondary victim solely where the criteria in (c)2 and 3 above have been satisfied.

(e) No award shall be made for loss or theft of personal property secondary to a burglary.

TRANSPORTATION

(a)

DIVISION OF SUPPORT SERVICES
BUREAU OF RECORDS AND SERVICES
Records Management
Issuance and Sale of NJDOT Public Records
Requirements, Accessibility and Sale of Public Records
Adopted Amendment: N.J.A.C. 16:1-2.2

Proposed: January 4, 1993 at 25 N.J.R. 59(a).
Adopted: February 4, 1993 by Kathy A. Stanwick, Deputy Commissioner, Department of Transportation.
Filed: February 16, 1993 as R.1993 d.117, **without change.**

Authority: N.J.S.A. 27:1A-5, 27:1A-6, Section 2(a), Executive Order No. 9 (1963) and N.J.S.A. 47:1A-2.

Effective Date: March 15, 1993.
Expiration Date: October 1, 1995.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the adoption follows.

16:1-2.2 Requirements; accessibility and sale of public records

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

(j) The records listed below shall not be deemed NJDOT public records and shall not be made available for inspection, examination and copying:

1. Appraisal review analyses.

(b)

DIVISION OF TRAFFIC ENGINEERING AND LOCAL AID
BUREAU OF TRAFFIC ENGINEERING AND SAFETY PROGRAMS
Speed Limits
Route 24 in Morris, Essex and Union Counties
Adopted Amendment: N.J.A.C. 16:28-1.36

Proposed: January 19, 1993 at 25 N.J.R. 270(b).
Adopted: February 19, 1993 by Gerard Kerwin, Acting Director, Division of Traffic Engineering and Local Aid.
Filed: February 19, 1993 as R.1993 d.121, **without change.**

Authority: N.J.S.A. 27:1A-5, 27:1A-6 and 39:4-98.

Effective Date: March 15, 1993.
Expiration Date: June 1, 1993.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the adoption follows.

16:28-1.36 Route 24 including collector distribution roads

(a) The rate of speed designated for the certain parts of State highway Route 24 described in this subsection shall be established and adopted as the maximum legal rate of speed.

1. For both directions of traffic:

i.-xi. (No change.)

xii. 55 miles per hour along the new limited access section of Route 24 between I-287 in Hanover Township, Morris Township, Florham Park Borough, and Chatham Borough, Morris County; Millburn Township, Essex County; and Summit City and I-78 in Springfield Township, Union County.

(c)

DIVISION OF TRAFFIC ENGINEERING AND LOCAL AID
BUREAU OF TRAFFIC ENGINEERING AND SAFETY PROGRAMS
Speed Limits
Routes N.J. 27 in Middlesex and Somerset Counties and N.J. 71 in Monmouth County
Adopted Amendments: N.J.A.C. 16:28-1.44 and 1.83

Proposed: January 19, 1993 at 25 N.J.R. 274(b).
Adopted: February 19, 1993 by Gerard Kerwin, Acting Director, Division of Traffic Engineering and Local Aid.
Filed: February 19, 1993 as R.1993 d.123, **without change.**

Authority: N.J.S.A. 27:1A-5, 27:1A-6 and 39:4-98.

Effective Date: March 15, 1993.
Expiration Date: June 1, 1993.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the adoption follows.

16:28-1.44 Route 27

(a) The rate of speed designated for the certain parts of State highway Route 27 described in this subsection shall be established and adopted as the maximum legal rate of speed:

1. For both directions of traffic:

i.-vii. (No change.)

viii. 40 miles per hour between Beekman Road and 200 feet north of Evelyn Avenue, South Brunswick Township—North Brunswick Township, Middlesex County, and Franklin Township, Somerset County (approximate mileposts 9.24 to 10.56); thence

ix. 45 miles per hour between 200 feet north of Evelyn Avenue and Six Mile Run, North Brunswick Township, Middlesex County, and Franklin Township, Somerset County (approximate mileposts 10.56 to 11.54); thence

x. 40 miles per hour between Six Mile Run and 100 feet north of Sandford Street, North Brunswick Township—City of New Brunswick, Middlesex County and Franklin Township, Somerset County (approximate mileposts 11.54 to 15.41); thence

xi.-xix. (No change.)

16:28-1.83 Route 71[1]

(a) The rate of speed designated for the certain parts of State highway Route 71 described in this subsection shall be established and adopted as the maximum legal rate of speed:

1. For both directions of traffic:

i. In Monmouth County:

(1) Brielle Borough:

(A) 30 miles per hour from Higgins Avenue to the Borough of Manasquan—Borough of Brielle corporate line (Robert Swamp Brook) (approximate mileposts 0.00 to 0.61); thence

(2) Manasquan Borough:

(A) Zone 1: 30 miles per hour from the Borough of Brielle—Borough of Manasquan corporate line to Blakely Avenue, except for 25 miles per hour when passing through the Saint Dennis School zone (mileposts 0.78 to 0.86) during recess when the presence of children is clearly visible from the roadway or while children are going to or leaving school, during opening or closing hours (approximate mileposts 0.61 to 1.55); thence

(B) Zone 2: 40 miles per hour from Blakely Avenue to the Borough of Manasquan—Borough of Sea Girt corporate line (approximate mileposts 1.55 to 1.71); thence

(3) Sea Girt Borough:

(A) 40 miles per hour from the Borough of Manasquan—Borough of Sea Girt corporate line to Manasquan Turnpike (County Road 20) except for 25 miles per hour when passing through the Sea Girt School zone (mileposts 1.79 to 1.96) while "25 mph when flashing" signs are operating during recess or while children are going to or leaving school, during opening or closing hours (approximate mileposts 1.71 to 2.30); thence

(4) Spring Lake Heights Borough:

(A) 40 miles per hour from the Borough of Sea Girt—Township of Wall—Borough of Spring Lake Heights corporate line to the Township of Wall—Borough of Spring Lake Heights Corporate line except for 25 miles per hour when passing through the Spring Lake Heights School zone (mileposts 3.32 to 3.48) while "25 mph when flashing" signs are operating during recess or while children are going to or leaving school, during opening or closing hours (approximate mileposts 2.43 to 4.12); thence

(5) Wall Township:

(A) Zone 2: 40 miles per hour from the Borough of Spring Lake Heights northerly—Township of Wall southerly corporate line (Polly Pond Brook) to Walling Avenue (approximate mileposts 4.12 to 4.64); thence

(B) Zone 3: 30 miles per hour from Walling Avenue to the Township of Wall—Borough of Belmar corporate line (approximate mileposts 4.64 to 4.86); thence

(6) Belmar Borough:

(A) Zone 1: 30 miles per hour from the Township of Wall—Borough of Belmar corporate line to Route N.J. 35 (12th Avenue) (approximate mileposts 4.86 to 5.09); thence

(B) Zone 2: 35 miles per hour from 12th Avenue to 8th Avenue (approximate mileposts 5.09 to 5.41); thence

(C) Zone 3: (8th Avenue) 25 miles per hour from Route N.J. 71-35 to "F" Street (approximate mileposts 5.41 to 5.56); thence

Zone 3A: ("F" Street) 25 miles per hour from 8th Avenue to 5th Avenue (approximate milesposts 5.56 to 5.78); thence

(D) Zone 4: 30 miles per hour from Fifth Avenue to the Borough of Avon-By-The-Sea—Borough of Belmar corporate line (Shark River) (approximate mileposts 5.78 to 5.90); thence

(7) Avon-By-The-Sea Borough:

(A) Zone 1: 30 miles per hour from the Borough of Belmar—Borough of Avon-By-The-Sea corporate line (Shark River) to Poole Avenue (approximate mileposts 5.90 to 6.01); thence

(B) Zone 2: 35 miles per hour from Poole Avenue to the Borough of Bradley Beach—Borough of Avon-By-The-Sea corporate line (Sylvan Lake) (approximate mileposts 6.01 to 6.63); thence

(8) Bradley Beach Borough:

(A) Zone 1: 35 miles per hour from the Borough of Avon-By-The-Sea—Borough of Bradley Beach corporate line (Sylvan Lake) to Evergreen Avenue (approximate mileposts 6.63 to 6.81); thence

(B) Zone 2: 30 miles per hour from Evergreen Avenue to the Township of Neptune—Borough of Bradley Beach corporate line (Fletcher Lake) (approximate mileposts 6.81 to 7.48); thence

(9) Neptune Township:

(A) 30 miles per hour from the Borough of Bradley Beach—Township of Neptune corporate line (Fletcher Lake) to the Township of Neptune—City of Asbury Park corporate line (Wesley Lake) (approximate mileposts 7.48 to 7.92); thence

(10) Asbury Park City:

(A) 30 miles per hour from the Township of Neptune—City of Asbury Park corporate line to the City of Asbury Park—Village of Loch Arbor corporate line (Deal Lake) (approximate mileposts 7.92 to 9.40); thence

(11) Loch Arbor Village:

(A) Zone 1: 30 miles per hour from the City of Asbury Park—Village of Loch Arbor corporate line (Deal Lake) to Edgemont Avenue (approximate mileposts 9.40 to 9.45); thence

(B) Zone 2: 35 miles per hour from Edgemont Avenue to the Village of Loch Arbor—Borough of Allenhurst corporate line (approximate mileposts 9.45 to 9.62); thence

(12) Allenhurst Borough:

(A) 35 miles per hour from the Village of Loch Arbor—Borough of Allenhurst corporate line to the Borough of Allenhurst—Borough of Deal corporate line (approximate mileposts 9.62 to 9.94); thence

(13) Deal Borough:

(A) 35 miles per hour from the Borough of Allenhurst—Borough of Deal corporate line to the Borough of Deal—Township of Ocean, City of Long Branch corporate line (approximate mileposts 9.94 to 11.67); thence

(14) Ocean Township:

(A) 35 miles per hour from the Borough of Deal—Township of Ocean corporate line to the Township of Ocean—Borough of West Long Branch corporate line (Whale Pond Stream) (approximate mileposts 11.67 to 12.58); thence

(15) West Long Branch Borough:

(A) Zone 1: 35 miles per hour from the City of Long Branch—Borough of West Long Branch corporate line (Cedar Avenue) to Mount Drive (approximate mileposts 12.95 to 13.62); thence

(B) Zone 2: 30 miles per hour from Mount Drive to Wall Street (approximate mileposts 13.62 to 13.90); thence

(C) Zone 3: 40 miles per hour from Wall Street to Route N.J. 36 (approximate mileposts 13.90 to 14.77); thence

(D) Zone 4: 45 miles per hour from Route N.J. 36 to the Borough of West Long Branch—Borough of Eatontown, Borough of Oceanport corporate line (Turtle Mill Creek) (approximate mileposts 14.77 to 15.05); thence

(16) Eatontown Borough:

(A) 35 miles per hour from the Borough of Oceanport—Borough of Eatontown corporate line (Main Street) to Cliffwood Avenue except for 25 miles per hour when passing through the Meadow Brook School Zone (mileposts 15.87 to 15.95) while "25 MPH WHEN FLASHING" signs are operating during recess or while children are going to or leaving school, during opening or closing hours (approximate mileposts 15.71 to 16.25); thence

(B) Zone 3: 30 miles per hour from Cliffwood Avenue to Route N.J. 35 (approximate mileposts 16.25 to 16.76); thence

2. For northbound direction of traffic:

i. In Monmouth County:

(1) Sea Girt Borough:

(A) 40 miles per hour from Manasquan Turnpike (County Road 20) to the Borough of Spring Lake Heights—Borough of Sea Girt corporate line (approximate mileposts 2.30 to 2.43);

(2) Long Branch City:
(A) 35 miles per hour from the Borough of Deal—City of Long Branch corporate line to the City of Long Branch—Borough of West Long Branch corporate line (Cedar Avenue) (approximate mileposts 11.67 to 12.95).
3. For southbound direction of traffic:
i. In Monmouth County:
(1) Wall Township:
(A) Zone 1: 40 miles per hour from the Borough of Sea Girt northwesterly Township of Wall southwesterly corporate line (Manasquan Turnpike) to the Borough of Spring Lake Heights southerly—Township of Wall northwesterly corporate line (Wreck Pond) to (approximate mileposts 2.30 to 2.43)
(2) Ocean Township:
(A) 35 miles per hour from the Borough of Deal—Township of Ocean corporate line to the Township of Ocean Borough of West Long Branch corporate line (Whale Pond Stream) (approximate mileposts 11.67 to 12.58); thence
(3) West Long Branch Borough:
(A) Zone 1: 35 miles per hour from the Township of Ocean—Borough of West Long Branch corporate line (Whale Pond Stream) to the Borough of West Long Branch—City of Long Branch corporate line (Cedar Avenue) (approximate mileposts 12.58 to 12.95).
(4) Oceanport Borough:
(A) Zone 1: 45 miles per hour from the Borough of West Long Branch—Borough of Oceanport southwesterly corporate line (Turtle Mill Creek) to Reynolds Drive (approximate mileposts 15.05 to 15.41); thence
(B) Zone 2: 35 miles per hour from Reynolds Drive to the Borough of Oceanport northeasterly—Borough of Eatontown southeasterly corporate line (Main Street) (approximate mileposts 15.41 to 15.71).
(5) Eatontown Borough:
(A) Zone 1: 45 miles per hour from the Borough of West Long Branch—Borough of Eatontown corporate line (Turtle Mill Creek) to Reynolds Drive (approximate mileposts 15.05 to 15.41); thence
(B) 35 miles per hour from Reynolds Drive to the Borough of Eatontown—Borough of Oceanport corporate line (Main Street) (approximate mileposts 15.41 to 15.71).

[1]See also N.J.A.C. 16:28-1.49.

(a)

DIVISION OF TRAFFIC ENGINEERING AND LOCAL AID
BUREAU OF TRAFFIC ENGINEERING AND SAFETY PROGRAMS
Restricted Parking and Stopping
Route U.S. 9 in Cape May, Atlantic, Burlington, Ocean, Monmouth and Middlesex Counties
Adopted Amendment: N.J.A.C. 16:28A-1.7

Proposed: January 19, 1993 at 25 N.J.R. 271(a).
Adopted: February 19, 1993 by Gerard Kerwin, Acting Director, Division of Traffic Engineering and Local Aid.
Filed: February 19, 1993 as R.1993 d.119, **without change.**

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

Effective Date: March 15, 1993.
Expiration Date: June 1, 1993.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the adoption follows.

16:28A-1.7 Route U.S. 9
(a) The certain parts of State Highway Route U.S. 9 described in this subsection shall be designated and established as "no stopping or standing" zones where stopping or standing is prohibited at all times, except in areas covered by other parking restrictions adopted in accordance with the Administrative Procedure Act and N.J.A.C. 1:30. In accordance with the provisions of N.J.S.A. 39:4-198, proper signs shall be erected.
1. Stopping or standing along both sides for the entire length within the corporate limits of the following municipalities shall be prohibited, including all ramps and connections thereto which are under the jurisdiction of the Commissioner of Transportation, except in areas covered by other parking restrictions:
i. Cape May County:
(1) Lower Township;
(2) Middle Township;
(3) Dennis Township; and
(4) Upper Township.
ii. Atlantic County:
(1) Somers Point City;
(2) Linwood City;
(3) Northfield City;
(4) Pleasantville City;
(5) Absecon City; and
(6) Port Republic City.
iii. Burlington County:
(1) Bass River Township.
iv. Ocean County:
(1) Little Egg Harbor Township;
(2) Tuckerton Borough;
(3) Eagleswood Township;
(4) Stafford Township;
(5) Barnegat Township;
(6) Ocean Township;
(7) Lacey Township;
(8) Berkeley Township;
(9) Pine Beach Borough;
(10) Beachwood Borough;
(11) Dover Township; and
(12) Lakewood Township.
v. Monmouth County:
(1) Howell Township;
(2) Freehold Township;
(3) Freehold Borough;
(4) Manalapan Township; and
(5) Marlboro Township.
vi. Middlesex County:
(1) Old Bridge Township;
(2) South Amboy City; and
(3) Woodbridge Township.
(b)-(c) (No change.)

(b)

DIVISION OF TRAFFIC ENGINEERING AND LOCAL AID
BUREAU OF TRAFFIC ENGINEERING AND SAFETY PROGRAMS
Restricted Parking and Stopping
Route U.S. 22 in Hunterdon County
Adopted Amendment: N.J.A.C. 16:28A-1.13

Proposed: January 19, 1993 at 25 N.J.R. 273(a).
Adopted: February 19, 1993 by Gerard Kerwin, Acting Director, Division of Traffic Engineering and Local Aid.
Filed: February 19, 1993 as R.1993 d.120, **without change.**

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

Effective Date: March 15, 1993.
Expiration Date: June 1, 1993.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the adoption follows.

16:28A-1.13 Route U.S. 22

(a) The certain parts of State highway Route U.S. 22 described in this subsection shall be designated and established as "no stopping or standing" zones where stopping or standing is prohibited at all times except as provided in N.J.S.A. 39:4-139. In accordance with the provisions of N.J.S.A. 39:4-198, proper signs will be erected.

1. No stopping or standing along both sides:

i. (No change.)

ii. In Hunterdon County:

(1) Clinton Township:

(A) For the entire length within the corporate limits, including all ramps and connections thereto, which are under the jurisdiction of the Commissioner of Transportation; except in areas covered by other parking restrictions adopted in accordance with the Administrative Procedure Act and N.J.A.C. 1:30.

(2) (No change.)

iii. (No change.)

2.-3. (No change.)

(b) (No change.)

(a)

DIVISION OF TRAFFIC ENGINEERING AND LOCAL AID

BUREAU OF TRAFFIC ENGINEERING AND SAFETY PROGRAMS

Restricted Parking and Stopping
Handicapped Parking Space
Route N.J. 57 in Warren County
Adopted Amendment: N.J.A.C. 16:28A-1.36

Proposed: January 19, 1993 at 25 N.J.R. 274(a).

Adopted: February 19, 1993 by Gerard Kerwin, Acting Director, Division of Traffic Engineering and Local Aid.

Filed: February 19, 1993 as R.1993 d.122, **without change.**

Authority: N.J.S.A. 27:1A-5, 27:1A-6, 39:4-197.5 and 39:4-199.

Effective Date: March 15, 1993.

Expiration Date: June 1, 1993.

Summary of Public Comments and Agency Responses:

No comments received.

Full text of the adoption follows.

16:28A-1.36 Route 57

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

(d) The certain parts of State highway Route 57 described in this subsection shall be designated and established as a restricted parking space, for the use of persons who have been issued Special Vehicle Identification Cards by the Division of Motor Vehicles. No other person shall be permitted to park in these areas. In accordance with the provisions of N.J.S.A. 39:4-199, permission is granted to erect appropriate signs at the following established handicapped parking space:

1. Along the south side of West Washington Avenue, in the Borough of Washington, Warren County:

i. Beginning at a point 93 feet east of the easterly curb line of Broad Street and extending 23 feet easterly therefrom.

TREASURY-GENERAL

(b)

DIVISION OF PENSIONS AND BENEFITS

Administration: Minimum Adjustments
Adopted Amendment: N.J.A.C. 17:1-1.10

Proposed: December 21, 1992 at 24 N.J.R. 4501(a).

Adopted: February 3, 1993 by Margaret M. McMahon, Director, Division of Pensions and Benefits.

Filed: February 8, 1993 as R.1993 d.114, **without change.**

Authority: N.J.S.A. 52:18A-96 et seq.

Effective Date: March 15, 1993.

Expiration Date: May 6, 1993.

Summary of Public Comments and Agency Responses:

No comments received.

Full text of the adoption follows.

17:1-1.10 Minimum adjustments

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

(d) Rules concerning the bad balances in retirement accounts are as follows:

1. No rebates or additional contributions shall be made for retired members if the adjustments involve amounts that range from a positive to a negative $5.00 for pensions and $50.00 for contributory life insurance premiums. All balances within these ranges will be written off.

2. In the event the positive or negative balance is greater than $5.00 for pensions but produces a monthly retirement adjustment of less than $1.00, no recalculation or monthly benefits will be computed. Positive balances will be rebated and negative balances will be written off.

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

TREASURY-TAXATION

(c)

DIVISION OF TAXATION

Local Property Tax
Home Improvement Exemption: One and Two Unit Residences and Multiple Dwellings
Adopted Repeals: N.J.A.C. 18:12-6 and 6A

Proposed: December 7, 1992 at 24 N.J.R. 4335(a).

Adopted: February 22, 1993 by Leslie A. Thompson, Director, Division of Taxation.

Filed: February 22, 1993 as R.1993 d.130, **without change.**

Authority: N.J.S.A. 54:50-1.

Effective Date: March 15, 1993.

Expiration Date: July 29, 1993.

Summary of Public Comments and Agency Responses:

No comments received.

Full text of the adopted repeals may be found in the New Jersey Administrative Code at N.J.A.C. 18:12-6 and 6A.

(a)

DIVISION OF TAXATION

Transfer Inheritance and Estate Tax
Interest
Adopted Amendment: N.J.A.C. 18:26-3.7

Proposed: November 16, 1992 at 24 N.J.R. 4240(b).
Adopted: February 22, 1993 by Leslie A. Thompson, Director, Division of Taxation.
Filed: February 22, 1993 as R.1993 d.131, **without change.**

Authority: N.J.S.A. 54:50-1.

Effective Date: March 15, 1993.
Expiration Date: June 7, 1993.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the adoption follows.

18:26-3.7 Payment; due date; interest; extension of time

(a) The New Jersey estate tax is due at the date of a decedent's death; provided, however, payment may be made at any time within nine months from the date of death. All or any part of the estate tax due this State, if not paid within nine months from the date of death, shall bear interest at the rate of 10 percent per annum from the expiration of the said nine months until the date of actual payment, unless an extension of time to file the Federal estate tax return is granted, in which case the Director may reduce the interest rate to six percent per annum until the expiration of the extension. If the decedent was a member of the United States Armed Forces, the estate tax will not bear interest until the expiration of nine months after receipt of official notification of the decedent's death by the decedent's husband, wife, father, mother, or next of kin.

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

(d) The Director may, for cause shown, extend the time for payment with interest at the rate of 10 percent per annum for such period as the circumstances, in his or her discretion, may require.

OTHER AGENCIES

(b)

ELECTION LAW ENFORCEMENT COMMISSION

Notice of Administrative Correction
Regulations of the Election Law Enforcement Commission
Definition of Expenditure
N.J.A.C. 19:25-1.7

Take notice that the Election Law Enforcement Commission has discovered that the text of the definition of "expenditure" in N.J.A.C. 19:25-1.7 does not correspond to that which should appear as the current text, adopted effective August 6, 1984 (see 16 N.J.R. 1044(a) and 2154(a)). After the word "intangible," the first sentence of the definition should read, ", made by any candidate, political committee, or continuing political committee, . . ." Also in that sentence, the phrase "commitment of assumption" should read "commitment or assumption." In addition, through this notice of administrative correction, the unnecessary subcodification of paragraph 2 is removed. This notice 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]):

19:25-1.7 Definitions

The following words and terms, when used in this chapter and in the interpretation of the act, shall have the following meanings unless a different meaning clearly appears from the context.

. . .

"Expenditure" includes every transfer of money or other thing of value, including any item of real or personal property, tangible or intangible, **made by any candidate, political committee,** or continuing political committee, and any pledge or other commitment [of] **or** assumption of liability to make such transfer. For purposes of reports required under the provisions of the act, any such commitment or assumption shall be deemed to have been an expenditure upon the date when such commitment is made or liability assumed. As set forth in N.J.A.C. 19:25-3.1, payments or commitments made solely for the purpose of determining whether an individual should become a candidate are not expenditures.

1. Any cost incurred in covering or carrying a news story, commentary, or editorial by any broadcasting station, newspaper, magazine, or other periodical publication is not an expenditure, unless the facility is owned or controlled by any continuing political committee, political committee or candidate, in which case the cost for a news story [in] which represents a bona fide news account communicated in a publication of general circulation or on a licensed broadcasting facility[;], and [2. Which] **which** is part of a general pattern of campaign-related news accounts which give reasonably equal coverage to all opposing candidates in the circulation or listening areas, is not an expenditure.

(c)

CASINO CONTROL COMMISSION

Internal Controls
Records Regarding Ownership
Adopted Amendment: N.J.A.C. 19:45-1.4

Proposed: January 4, 1993 at 25 N.J.R. 63(a).
Adopted: February 18, 1993 by the Casino Control Commission, Steven P. Perskie, Chairman.
Filed: February 22, 1993 as R.1993 d.126, **with substantive changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 5:12-69(a), 70(b), 70(l) and 84(b).

Effective Date: March 15, 1993.
Expiration Date: March 24, 1993.

Summary of Public Comments and Agency Responses:

Comments were received from the Division of Gaming Enforcement ("Division"), the Sands Hotel and Casino ("the Sands") and Caesar's World, Inc. ("CWI").

COMMENT: The Division stated its support for the proposal, but suggested adding a reference to financing guaranteed by the casino licensee "or applicant."

RESPONSE: The suggested addition is rendered moot by the changes upon adoption, as described below.

COMMENT: CWI asserted that the proposed provision was drafted in terms broader than necessary to achieve its intended purpose. CWI argued that the term "security" is broadly defined in section 44 of the Casino Control Act, N.J.S.A. 5:12-1 et seq., to include not only stocks and bonds but other instruments such as mortgages and security agreements. It was suggested that the amended language specifically refer to "publicly traded" securities.

RESPONSE: The Commission agrees that, consistent with the intended scope of the proposal, N.J.A.C. 19:45-1.4(c) should be expressly limited to publicly traded securities.

COMMENT: CWI also suggested limiting the term "securities" to "securities issued for the purpose of obtaining funds to be used in connection with the operations or financing of the casino hotel."

RESPONSE: N.J.A.C. 19:45-1.4(c) requires that the casino licensee or applicant identify holders of securities issued by specified entities. As indicated in the Summary, the purpose of the proposed amendment was to include securities issued by affiliates which may be required to qualify as a financial source under N.J.S.A. 5:12-84b. 25 N.J.R. 63(a). Pursuant to subsection 84b, a casino licensee or applicant must "establish by clear and convincing evidence the integrity of all financial backers, investors, mortgagees, bond holders, and holders of indentures, notes or other evidences of indebtedness, either in effect or proposed, which bear any

relation to the casino proposal." N.J.A.C. 19:45-1.4(c), which is simply a reporting and recordkeeping requirement, is not intended to establish standards for determining a financial source under subsection 84b of the Act. N.J.A.C. 19:45-1.4(c), as revised upon adoption, simplifies and clarifies the Commission's intent, and renders the commenter's suggestion moot.

COMMENT: The Sands stated that it does not object to the proposal.
RESPONSE: Accepted.

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

19:45-1.4 Records regarding ownership
(a)-(b) (No change.)
(c) Each casino licensee or applicant shall, upon request by the Commission or Division, provide a list of all record holders of any or all classes of ***publicly traded*** securities issued by any holding company or by any other affiliated entity which is *[a party to a financial arrangement supported by a lien on the casino hotel or guaranteed by the casino licensee, or to a financial arrangement which results in any or all of the proceeds thereof being used in connection with the operations or financing of the casino control hotel]* ***required to qualify as a financial source pursuant to subsection 84b of the Act***.

(a)

CASINO CONTROL COMMISSION

Notice of Administrative Correction
Internal Controls
Procedure for Filling Payment Reserve Containers of Slot Machines and Hopper Storage Areas
N.J.A.C. 19:45-1.41

Take notice that the Casino Control Commission has discovered that the text of N.J.A.C. 19:45-1.41(c) and (c)1 does not correspond to that adopted effective September 21, 1992 (see 24 N.J.R. 2137(a) and 3336(a)). Through this notice of administrative correction, published in accordance with N.J.A.C. 1:30-2.7, the text is corrected.

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

19:45-1.41 Procedure for filling payment reserve containers of slot machines and hopper storage areas
(a)-(b) (No change.)
(c) The filling of the hopper of a slot machine from its corresponding [auxiliary] hopper **storage area** shall be accomplished as follows:
1. Whenever a slot machine's hopper requires coin or tokens, a slot attendant or [mechanis] **mechanic** may, in the presence of a member of the **casino** security department [and after making the entries required on the Hopper Storage Area Log], transfer the necessary coin or tokens from that slot machine's hopper storage area directly to the hopper of the corresponding slot machine. The **casino** security department member shall observe the deposit of the coins or tokens in the slot machine hopper and the closing and locking of the slot machine and its corresponding hopper storage area by the slot mechanic or attendant.
2. (No change.)
(d) (No change.)

(b)

CASINO CONTROL COMMISSION

Rules of the Games
Craps
Permissible Wagers
Payout Odds
Adopted Amendments: N.J.A.C. 19:47-1.2 and 1.4

Proposed: January 4, 1993 at 25 N.J.R. 63(b).
Adopted: February 18, 1993 by the Casino Control Commission, Steven P. Perskie, Chairman.
Filed: February 22, 1993 as R.1993 d.127, **without change**.

Authority: N.J.S.A. 5:12-69(a) and 70(f).

Effective Date: March 15, 1993.
Expiration Date: April 28, 1993.

Summary of Public Comment and Agency Response:
COMMENT: Greate Bay Hotel and Casino, Resorts International Hotel, Inc. and the Division of Gaming Enforcement support adoption of the amendments, as published.
RESPONSE: Accepted.

Full text of the adoption follows.

19:47-1.2 Permissible wagers
(a) The following shall constitute the definitions of permissible wagers at the game of craps:
1.-17. (No change.)
18. "Craps-Eleven or C and E" shall mean a one roll wager that may be made at any time which shall win, as provided at N.J.A.C. 19:47-1.4(d), if either a craps (2, 3 or 12) or 11 is rolled immediately following placement of such bet and shall lose if any other total is thrown.
Recodify existing 18.-19. as 19.-20. (No change in text.)
(b) (No change.)

19:47-1.4 Payout odds
(a)-(c) (No change.)
(d) A Craps-Eleven or C and E bet shall be paid as if one half of the wagered amount had been placed on "Any Craps" and one half on "Eleven," and shall be paid as if two separate wagers were made for the one roll.
(e) No casino licensee or his employees shall accept any wager that because of the amount thereof cannot be paid at the odds permitted by (b), (c) or (d) above.

(c)

CASINO CONTROL COMMISSION

Notice of Administrative Correction
Rules of the Games; Notice
N.J.A.C. 19:47-8.3

Take notice that the Casino Control Commission has discovered that the text of N.J.A.C. 19:47-8.3(b)2 and 3 and the first part of (c) was not reproduced in the 12-21-92 Update to the New Jersey Administrative Code. Through this notice of administrative correction, published in accordance with N.J.A.C. 1:30-2.7, the omission is rectified.

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

19:47-8.3 Rules of the games; notice
(a) (No change.)
(b) Except as provided in (c) below, no casino licensee shall change the rules pursuant to which a particular table game is being operated unless, at least one-half hour in advance of such change, the casino licensee shall:
1. (No change.)
2. Announces the rule change to patrons who are at the table; and

3. Notifies the Commission of the rule change, the gaming table where it will be implemented and the time that it will become effective.

(c) Notwithstanding (b) above, a casino licensee may at any time lower the permissible minimum wager or change the permissible maximum wager at a table game by posting a sign at the gaming table advising patrons of the change in the permissible minimum or maximum wager and announcing the change to patrons who are at the table.

(d) (No change.)

ENVIRONMENTAL PROTECTION AND ENERGY

(a)

DIVISION OF FISH, GAME AND WILDLIFE

Defining Fishing Lines

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

Proposed: September 8, 1992 at 24 N.J.R. 2977(a).
Adopted: February 11, 1993 by Scott A. Weiner, Commissioner, Department of Environmental Protection and Energy.
Filed: February 11, 1993 as R.1993 d.116, **without change.**

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

DEPE Docket Number: 33-92-07.
Effective Date: March 15, 1993.
Expiration Date: February 15, 1996.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the adoption follows.

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

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

Name of Water	License required upstream of this location
...	
UNION COUNTY	
...	
Rahway River	Lawrence Street (Route 514) Bridge, Rahway
...	

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

(b)

POLICY AND PLANNING

Control and Prohibition of Air Pollution from New or Altered Sources Affecting Ambient Air Quality (Emission Offset Rules)

Adopted Amendments: N.J.A.C. 7:27-1.4, 8.1, 8.3, 8.4, 8.24, 18.1, 18.3, 18.4, 18.7 and 18.9

Adopted New Rules: N.J.A.C. 7:27-1.36, 1.37, 1.38, 18.3, 18.7, 18.11 and 18.12

Adopted Repeals and New Rules: N.J.A.C. 7:27-18.2, 18.5 and 18.9

Adopted Repeals: N.J.A.C. 7:27-18.6 and 18.10

Proposed: October 5, 1992 at 24 N.J.R. 3459(a).
Adopted: February 19, 1993 by Scott A. Weiner, Commissioner, Department of Environmental Protection and Energy.
Filed: February 22, 1993 as R.1993 d.129, **with substantive and technical changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 13:1B-3 and 26:2C-1 et seq., in particular 26:2C-8.

DEPE Docket Number: 41-92-09.
Effective Date: March 15, 1993.
Operative Date: April 20, 1993.
Expiration Date: N.J.A.C. 7:27, Exempt.

Summary of Public Comments and Agency Responses:

The New Jersey Department of Environmental Protection and Energy (the Department) is adopting new rules and amendments to N.J.A.C. 7:27-18 (subchapter 18), Control and Prohibition of Air Pollution from New or Altered Sources Affecting Ambient Air Quality (Emission Offset Rules). As mandated by the 1990 Amendments to the Federal Clean Air Act (CAA), 42 USC 7401 et seq., the amendments and new rules eliminate certain differences between subchapter 18 and the corresponding Federal regulations at 40 CFR 51.165, and incorporate certain provisions established in the CAA pertaining to emission offsets.

A public hearing was held on November 5, 1992, at the Department's hearing room at 401 East State Street in Trenton, New Jersey, to provide interested parties the opportunity to comment on the proposal. The comment period closed on November 19, 1992. The Department received written comments from 21 persons. In addition, three persons presented oral testimony at the public hearing. The commenters were as follows:

1. Neale Bedrock, Esq., Lowenstein, Sandler, Kohl, Fisher and Boylan
2. Daniel Caramagno, Schering Laboratories
3. Thomas Detweiler, Chemical Industry Council of New Jersey
4. Peter Dolinger, Esq., Mannington Mills, Inc.
5. Richard Dunk, Jersey Central Power and Light Co.
6. Donald Elias, RTP Environmental Associates, Inc.
7. Glenn Howarth, General Motors
8. Ruth Ivory-Moore, Mobil Oil Paulsboro
9. James Klickovich, Atlantic Electric
10. Diane Krell, Merck and Co., Inc.
11. Edward Lloyd, Esq., for NJPIRG, NJEF-ANJEC
12. Michael Luchkiw, Esq., DeCotiis and Pinto (representing Hudson County Improvement Authority)
13. Edward Miller, Burns and Roe Enterprises
14. Phillip Quigley, Medical Society of New Jersey
15. William Ryan, M.D., Medical Society of New Jersey
16. James Shissias, PSE&G
17. Linda Stansfield, American Lung Association of New Jersey
18. Richard Vaccaro, Killam Associates, Inc.
19. Barbara Warren, Consumer Policy Institute, Consumers Union
20. Raymond Werner, EPA
21. John Yavorsky, Ambient Engineering, Inc.

The following is a summary of the comments received on the proposal and the Department's responses. The number(s) in parentheses after each comment identifies the person(s) who commented as listed above.

GENERAL COMMENTS:

1. COMMENT: Mobil commends the Department's efforts for attempting to ensure industrial growth in an environmentally sound manner. (8)

RESPONSE: The Department appreciates the support of Mobil for the emission offset rules.

2. COMMENT: The Department is to be commended for the proposed changes in subchapter 18 to enable companies to have the opportunity to expand or construct new facilities in areas that may be environmentally prohibitive for industrial growth, for example, nonattainment areas for criteria pollutants, while attempting to bring the state into compliance with the CAA. (5)

RESPONSE: The Department appreciates this support of Jersey Central Power and Light Company for the emission offset rules proposal.

3. COMMENT: Despite the difficulty of the task, one commenter states that it is apparent that the Department has made a sincere effort to develop a set of rules meant to apply across a broad spectrum of industrial entities. The commenter particularly applauds the utilization of the informal "workshops" and "meetings" held to enable sharing of ideas and information, and encourages the Department to continue this format for future rulemaking. (3)

RESPONSE: The Department appreciates support of the public participation process. The Department will continue to strive for a high degree of input from the regulated community and from interested parties during the development of rules in order to achieve sound

environmental goals without placing unreasonable or ineffective requirements on the regulated community.

4. COMMENT: A commenter recommends that the Department initiate other task forces in the future to discuss the proposed transportation control measures (TCM) program, emission offset ratios, and discounting. (9)

RESPONSE: The Department is developing plans to meet with interested parties on these matters. Information about these plans can be obtained by contacting the Department's public outreach program at 609-292-3225 or by writing to:

Director, Communications
Department of Environmental Protection and Energy
CN 402
401 East State Street
Trenton, New Jersey 08625-0402

5. COMMENT: The Medical Society of New Jersey commends the activities and the forward-looking programs of the Department, particularly the regular working relationship set up to seek our advice. They specifically endorse the following and commend the Department for their efforts in:

(1) Denying the use of reductions of volatile organic compounds (VOC) or oxides of nitrogen (NO_x) between November 1 and March 31 to offset those emissions between April 1 and October 31;

(2) Extending regulatory control over NO_x as an ozone precursor;

(3) Subjecting more facilities to subchapter 18 by lowering the threshold level beyond which an increase in emissions is a significant net emission increase; and

(4) Accommodating economic considerations by allowing banking of creditable emission reductions and the concept of market-based trading mechanisms. (14, 15)

RESPONSE: The Department appreciates the continuing support of the Medical Society of New Jersey (MSNJ) in air pollution control rule development efforts.

6. COMMENT: Representing the American Lung Association, I would like to comment on the thoroughness and cohesiveness with which the Department has put together this very complicated approach to offset emissions. (17)

RESPONSE: The Department acknowledges this support of the American Lung Association of New Jersey for the emission offset rules.

7. COMMENT: One commenter commends the overall direction of the rule which the commenter sees as two-fold: (1) it improves air quality, and (2) it reconciles state rules with EPA's guidelines. (13)

RESPONSE: The Department acknowledges the importance of achieving air quality standards and consistency between State and Federal regulations.

8. COMMENT: One commenter, noting the target of 60 percent reduction of NO_x, questioned how sure the Department was of the emission statement records with regard to NO_x emitted. Has the Department kept adequate records on NO_x over past years to enable an accurate calculation? (17)

RESPONSE: The CAA as amended in 1990 requires the Department to use, as its emissions information on which it bases calculations of the reductions that must be made, a baseline inventory prepared by the Department showing actual emissions in 1990. The NO_x emissions included in this baseline inventory were, for any facility that emits more than 25 tons per year of NO_x, based on survey information provided by each facility.

This baseline inventory is now undergoing a quality assurance review. As part of this review, each facility surveyed is being contacted to confirm the data for its facility. Also, the data will be reviewed with interested members of the public at a public workshop held in March. The thoroughness of the preparation of this baseline inventory ensures that it is information in which the Department can have a high level of confidence.

9. COMMENT: Contingency measures were mentioned in the Summary, but not elsewhere. Is this a future rulemaking issue? (19)

RESPONSE: Yes. Once EPA has adopted its rule establishing a policy for Economic Incentive Programs, the Department intends to revise N.J.A.C. 7:27-18 to include economic incentives to encourage the generation of creditable emission reductions for use as emission offsets and as one contingency measure if progress toward attainment of the NAAQS for ozone and carbon monoxide does not meet Federal milestones.

10. COMMENT: Two commenters mentioned the linkage between the CAA and the proposed New Jersey State Development and Redevelopment Plan. One urged the State to create a land use task force to study and recommend land use strategies to reduce New Jersey's dependence on the single occupancy vehicle. The other stated that areas most in need of economic redevelopment, the poverty stricken, may already be impacted by heavy industrial emissions and recommended combination of the Development and Redevelopment Plan and a pollution prevention agenda for these critical areas. (11, 19)

RESPONSE: These issues lie beyond the scope of this rule adoption. However, the Department will take these comments into consideration during the development of additional control measures needed for the 1993 State Implementation Plan for the attainment of the ozone standard.

11. COMMENT: One commenter questioned the statement, "Ozone also increases the ability of inhaled infectious viruses to survive within lungs," in the Social Impact section of the proposal document. Another commenter questioned whether the reference to inhaled infectious viruses really meant inhaled infectious bacteria. (17, 19)

RESPONSE: These commenters are correct in observing that the discussions in the scientific literature are of ozone exposure increasing the ability of bacteria, not viruses, to survive within the lungs. This conclusion is based on extrapolations to human populations from animal studies. The basis for this conclusion is set forth in the External Review Draft No. 2 of the EPA Document *Air Quality Criteria for Ozone and Other Photochemical Oxidants*, Volume I, pp. 146-147 (EPA/600/8-84/020B), and in the document *Review of the National Ambient Air Quality Standards for Ozone: Preliminary Assessment of Scientific and Technical Information* (EPA/OAQPS Staff Paper), Research Triangle Park, March 1986, pp. vii-21-24.

12. COMMENT: The proposed rules did not specify different major facility thresholds for facilities in air quality control regions with different nonattainment classifications. New Jersey's major facility thresholds should be consistent with the Federal thresholds. For facilities in regions that are classified with a lower designation of nonattainment, the same major facility thresholds should not apply. What happens in the future when the nonattainment status improves; must the Department then revise the rule? Another commenter stated that the "state-wide" major facility threshold of 25 tons per year for VOC and NO_x emissions unduly penalizes current areas of New Jersey which are not severe ozone nonattainment areas, and in the future, when air quality in present nonattainment areas improve, they should only be subject to the Ozone Transport Region threshold of 50 tons per year as defined in the 1990 CAA. (3, 6)

RESPONSE: Only three counties (Warren, Atlantic, and Cape May) have lower nonattainment classifications for ozone than the rest of New Jersey. Although the commenter is correct in noting that the CAA would allow the use of a less stringent (50 tons per year) major facility threshold for VOC and NO_x in these areas, the Department has elected to treat the entire State as a severe ozone nonattainment area for several reasons.

To make its rules simpler and less confusing to the public, the Department prefers its rules to be uniform Statewide. Further, providing different rules for the four ozone nonattainment areas would establish incentives that would encourage industry to relocate out of the more urbanized areas of the State to three of New Jersey's less developed counties. This would be contrary to the principles of New Jersey's State Development and Redevelopment Plan. Finally, given the regional nature of ozone formation, emissions in Warren, Cape May, and Atlantic counties do impact the ability of the rest of the State to achieve the ozone standard. Establishing lesser control requirements for these three counties would therefore be inconsistent with the State's air quality goals.

As stated in N.J.A.C. 7:27-18.5(e)1, the Department may allow the use of lower emission offset ratios or greater distances if it determines there is reasonable further progress towards attainment of the air quality standards. However, as stated in N.J.A.C. 7:27-18.5(f), the minimum offset ratios can be no less than 1.00:1.00 for CO, and 1.30:1.00 for VOC and NO_x. Changes in the major facility thresholds and emission offset ratios to reflect the change in the nonattainment status of the area would be the subject of a future rulemaking action.

13. COMMENT: With reference to N.J.A.C. 7:27-18.5, one commenter recommended that the State set up four ozone nonattainment regions, with different offset ratios for VOC and NO_x, until each region attains compliance, when the offset requirements would drop to 1.00:1.00. (3)

RESPONSE: Relaxing the offset ratio to 1.0:1.0 as regions of the State attain compliance of the ozone standard would violate the CAA. Section 184 of the CAA, 42 USC 7511c, details the offset requirements for the Ozone Transport Region. New Jersey is part of the Ozone Transport

Region. 42 USC 7511c(b)(2) states that any source, even if it is located in an attainment area, must comply with the moderate ozone nonattainment area provisions at a minimum if located within the ozone transport region. This means that, even for the three counties in New Jersey (Warren, Cape May, and Atlantic) that have a marginal or moderate nonattainment classification, the lowest allowable offset ratio is 1.15:1.0. However, for the reasons set forth in the response to Comment 12, above, the Department has elected to establish an emission offset ratio that would be uniform Statewide. The offset ratio is 1.3:1.0, which is the minimum offset ratio allowed by the CAA for the 18 counties with a severe nonattainment classification.

Furthermore, the commenter should not anticipate that as regions come into attainment, the required emission offset ratios will drop. After attainment is achieved, the Department will need to demonstrate for an extended period yet to be defined by EPA, that the standard is being maintained. Although it is unlikely that the requirements that contributed to attainment being achieved would be relaxed, N.J.A.C. 7:27-18.5(e)1 would allow the use of lower emission offset ratios if the Department determines that reasonable further progress towards attainment of the standards allow a lower ratio.

14. COMMENT: The Department should not consider the expansion of emissions trading and other market-based approaches to aid businesses in the State, but instead should invest heavily in pollution prevention measures. This would particularly help small businesses. (19)

RESPONSE: The Department supports investment in pollution prevention measures to reduce air emissions. Because pollution prevention measures can produce creditable, tradeable emission reductions, the rules as written encourage pollution prevention. However, only investing in pollution prevention measures will not produce the targeted air contaminant emission reductions. Pollution prevention is important, but a combination of strategies are needed for New Jersey to obtain the emission reductions needed to attain the ambient air quality standards, while minimizing the cost of reducing air contaminant emissions.

15. COMMENT: One commenter recommended changing the wording from "overcontrol" to "further control" in the Summary document. Another commenter did not understand the concept of "overcontrolling" and asked that another term be used. (17, 19)

RESPONSE: The term "overcontrol" refers to facilities controlling emissions above and beyond any State or Federal requirement and was used in the Environmental Impact section of the proposal document to explain the banked emission discounting provision of N.J.A.C. 7:27-18.8. This term is not used in the rules.

16. COMMENT: For industrial, institutional power facilities, boiler plants, and cogeneration plants, particularly cogeneration plants smaller than 20 megawatts, selective catalytic reduction (SCR) may be required as LAER technology. Since SCR requires the use of ammonia, how can we balance NO_x reductions with increased emissions of ammonia, a technology with its own environmental problems and high expense? (13)

RESPONSE: The determination of which control requirements constitute LAER does, to some degree, take into consideration the effects of emissions of air contaminants other than the primary air contaminant being controlled. Other methods of NO_x control which obtain equivalent NO_x emission levels as well as SCR technology, are considered in LAER determination. If increased ammonia emissions would outweigh the environmental benefits of SCR in a particular case, that will be taken into account by the Department in a LAER review.

17. COMMENT: With respect to the definition of "alteration" at N.J.A.C. 7:27-18.1, two commenters stated that the Department's rule is more stringent than what is required in the CAA and Part 70 rule, and suggested that the alteration rule should reflect the Part 70 rule by considering all emissions decreases as amendments. (2, 3)

18. COMMENT: With respect to the definition of "emission offset" in N.J.A.C. 7:27-18.1, two commenters stated that an internal offset will require a permit alteration, rather than in Part 70 which allows emission reductions without requiring permit alterations. They recommend modification of the definition to read:

"... containment from **another** facility." (2, 3)

19. COMMENT: Three commenters stated that N.J.A.C. 7:27-18.5(b) goes beyond Section 182 of the CAA and 40 CFR 70 by requiring internal offsets to go through permit "alterations." The commenters recommended that internal offsets be completed as amendments to provide the same amount of flexibility as found within the CAA. (2, 3, 10)

RESPONSE TO COMMENTS 17 THROUGH 19: N.J.A.C. 7:27-18 is a component of the State's preconstruction permit program and is based on the Federal New Source Review (NSR) rule at 40 CFR 51.165, implementing Title I of the CAA. 40 CFR 70 refers to the Federal rules for the operating permit program, adopted pursuant to Title V of the CAA. New Jersey has not yet proposed rules for its state operating permit program. Therefore, it is premature for the Department to address issues, such as those raised by these commenters, which pertain to the relationship between the preconstruction permit program and the operating permit program. Issues such as whether, at a facility with an operating permit, all changes which result in emission decreases should be exempt from preconstruction permit review, are part of the larger question of how the preconstruction permit program and the operating permit program should interface. EPA may provide some guidance on these issues when they revise their NSR rule in the future and incorporate some concepts from 40 CFR 70, but EPA has not done this to date. The Department will address the relationship between the preconstruction permit program, of which the emission offset program is a component, and the operating permit program, when it proposes New Jersey's operating permit rule later this year.

The commenters should note, however, that the newly adopted N.J.A.C. 7:27-8.3(k) makes a first step toward allowing emission reductions to be made through amending an existing permit. Under this provision, permit allowables and limits may, in specified circumstances, be reduced. If these reductions also result in reductions in actual emissions, these actual emission reductions may qualify as creditable emission reductions which could be banked, transferred to another person, or applied as emission offsets.

20. COMMENT: One commenter recommends allowing VOC emission reductions to offset increases in NO_x, at least to the extent that NO_x increases are generated by VOC controls. (4)

RESPONSE: The Department acknowledges that certain VOC controls, such as thermal oxidizers, could cause increases in NO_x emissions. However, the CAA does not exempt facilities from the nonattainment requirements based on an increase in NO_x emissions resulting from the installation of VOC controls. Therefore, the Department has not included such a provision in subchapter 18. The Department encourages well-designed carbon adsorption units and low-temperature condensation units as VOC control because these devices do not generate NO_x and because these devices can be used to recover the VOC.

21. COMMENT: Further consideration should be given to an exclusion from NO_x regulation in the ozone SIP pursuant to section 182(f) of the CAA, since NO_x regulations might be a detriment, rather than an asset, in attaining the ozone standards. (4)

RESPONSE: NO_x exclusions are not possible at this time. Section 185B of the CAA, 42 USC 7511f, requires EPA to conduct a study on the relative roles of NO_x and VOC emissions in ozone formation. The results of this study may be the basis for future rulemaking by the Department to revise the NO_x and VOC provisions in N.J.A.C. 7:27-18. Section 182(f)(3) of the CAA, 42 USC 7511a(f)(3), allows any person to petition EPA for an exemption of the NO_x requirements at any time after the final Section 185B report is submitted to Congress, if the person can demonstrate that controlling NO_x emissions would delay attainment of the NAAQS for ozone. The administrative procedure to apply for such an exemption is detailed in EPA's NO_x supplement to the Title I General Preamble, published at 57 Fed. Reg. 55620. The Department would welcome any information and studies that support this comment, and would use the information, in conjunction with the results of the Section 185B report, as a basis for future rulemaking. Based on current studies, regional control of NO_x in the ozone transport region is necessary to achieve the ozone NAAQS. Therefore, NO_x exemptions within the ozone transport region do not appear to be likely.

22. COMMENT: One commenter recommends that the Department reserve a section of these rules to provide procedures for trading between ozone precursors. For example, reductions of NO_x should be used to offset increases of VOC, since both contaminants are ozone precursors.

Another commenter suggests that the Department should allow offsets of VOC to be used for NO_x emissions (or vice-versa) at some determined ratio. This would be helpful for industries that have VOC offsets, but need NO_x offsets for another facility. (10, 16)

RESPONSE: EPA will be providing the states with guidance on interpollutant trading, most likely in the form of a rule, based on the report required by section 185B of the CAA, on the relative roles of NO_x and VOC emissions in ozone formation. Once EPA adopts rules governing interpollutant trading, the Department expects to revise N.J.A.C. 7:27-18 to be consistent with those rules. Reserving a section at this time is not necessary.

23. COMMENT: With respect to N.J.A.C. 7:27-18.5(g), the wording should be changed to the following:

"Creditable emission reductions may be used as emission offsets only if they are emission reductions of the same **Respective Criteria Pollutant** . . . ."

This wording would allow offsets of VOC and NO_x, which are both considered ozone precursors, to be used interchangeably. (10)

RESPONSE: Interchangeable use of VOC and NO_x emission reductions as emission offsets is not allowed in these rules. As explained in the response to Comment 22 above, EPA will be issuing guidance as to how VOC reductions can be traded or exchanged for NO_x reductions, and vice versa. At such time, the Department will be able to consider the recommendation made by this commenter.

24. COMMENT: One commenter suggests that the Department has gone beyond the legislative intent of the CAA by allowing trading between stationary and mobile sources; the commenter feels there is no way of knowing that mobile source reductions will be permanent. (19)

RESPONSE: New Jersey's previously existing regulations at N.J.A.C. 7:27-18.4(a)5 allow the use of mobile source emission reductions that meet the qualifying criteria to be used to offset increased emissions from stationary sources. However, procedures for use of mobile source emission reductions as offsets were never developed, and the Department has not received an application for the use of such emission reductions to this date.

The CAA does not disallow emission trading between stationary and mobile sources. Procedures to govern trading between stationary and mobile sources have been developed by EPA. These procedures ensure that emission reductions obtained from mobile sources meet the requirements of creditable emission reductions and can be used to offset stationary source emission increases. These procedures are being promulgated in the Federal Register during February, 1993. The Department expects that this guidance will address such issues as how to compensate for the fact that mobile source emission reductions may not be permanent, and how to ensure that progress towards attaining the National Ambient Air Quality Standards (NAAQS) is not impeded. The Department intends to subject any proposed mobile/stationary source trades to the requirements of any EPA guidance, as well as the basic trading requirements of the CAA.

25. COMMENT: One commenter recommends that the Department develop specific provisions to apply emission reductions from mobile sources as emission offsets for stationary sources. The commenter recommends that these provisions be developed as soon as possible and issued for public review. In addition, the commenter recommends that a section be reserved in these rules in order to allow for incorporation of these regulations in the future. (16)

RESPONSE: The Department is awaiting publication of guidance developed by EPA, pertaining to the use of emission reductions from mobile sources as offsets. The Department will consider this commenter's recommendation once the EPA guidance is developed. Reserving a section at this time is not necessary.

26. COMMENT: One commenter inquired whether the CAA requires the Department to obtain NO_x reductions equally from both stationary and mobile sources. (17)

RESPONSE: The CAA requires reductions of ozone precursor (VOC and NO_x) emissions sufficient to attain the ozone standard by the applicable deadline specified in the Act. It does not require that the necessary reductions be obtained equally from stationary and mobile sources.

27. COMMENT: Two commenters supported the provision of allowing transportation control measure credits from all mobile sources within the State to be creditable emission reductions. (9, 16)

RESPONSE: The rules allow emission reductions from mobile sources to be used as offsets if they meet the requirements of a "creditable emission reduction." This requires, among other things, that the reduction not be required by any other law or rule.

28. COMMENT: One commenter stated that since mobile source emission offsets pose many difficult monitoring, measurement and enforcement problems, these problems will lead to little air quality improvement and may actually cause air quality deterioration. The commenter questioned the Department's ability to verify that creditable emission reductions have in fact occurred. The commenter also questioned how offsets from mobile sources will be associated with a specific nonattainment area. (11)

RESPONSE: The Department recognizes the difficulties in quantifying creditable reductions from mobile sources, but the Department expects that it can be done. Only mobile source emission reductions which are demonstrated to meet the criteria of a "creditable emission reduction" will be approved. The Department, in the future, intends to work with EPA, the Northeast States for Coordinated Air Use Management (NESCAUM), and the Ozone Transport Commission (OTC) in developing an effective intersector trading program.

29. COMMENT: Since emissions offsets cannot be obtained from currently mandated CAA measures, one commenter sees a conflict between that and N.J.A.C. 7:27-18.5(b)5 which states that "implementing one or more TCMs" would provide creditable emissions reductions. (11)

RESPONSE: N.J.A.C. 7:27-18.5(b) states only a list of possible ways that creditable emission reductions can be obtained. Only TCMs above and beyond those required by other parts of the SIP or CAA can result in creditable emission reductions. For example, the CAA requires an employer trip reduction (ETR) program for companies with 100 or more employees at a worksite. The program must increase average person occupancy (APO) by 25 percent over average vehicle occupancy (AVO). A creditable emission reduction could be obtained by increasing the APO above 25 percent, or by establishing an ETR program at a worksite with less than 100 employees.

30. COMMENT: With respect to the definition of "transportation control measure" in N.J.A.C. 7:27-18.1, one commenter said he saw no reason for a cutoff of 1980 for autos and trucks removed from use. He suggested that, as long as the vehicle has higher emission rates than current vehicles, credit could be given and the environment would be improved. (21)

RESPONSE: The CAA, under section 108(f)(1)(A)(xvi), 42 USC 7408, sets forth, as one option for meeting required TCM goals, the removal of pre-1980 model year light duty vehicles and pre-1980 model year light duty trucks from use. This item was included in the definition of "TCM" as an example of one of the transportation control measures required by the CAA. Facilities required to implement TCMs could not use such TCMs as creditable emission reductions, unless they exceed any federally or state mandated requirements. Facilities that are not required to implement TCMs could obtain creditable emission reductions from any TCM. Theoretically, removal from use of post-1980 vehicles could result in reduced emissions that could qualify as creditable emission reductions. However, the quantity of the reductions that would be so generated per vehicle removed may prove to be so small as to make such a TCM not cost effective.

N.J.A.C. 7:27-1.38 Liberal Construction

31. COMMENT: One commenter suggested that the proposed language in N.J.A.C. 7:27-1.38 could be interpreted to impose limitations on the regulated public which are not required by specific provisions in the rules, and they proposed the following revised language:

"This chapter shall be reasonably construed by the Department in discharging its statutory functions under the Act so as to promote the public health and welfare, and to protect the environment." (8)

RESPONSE: Because N.J.A.C. 7:27-1.38 is not substantive, but merely indicates how to interpret other substantive provisions of N.J.A.C. 7:27, it cannot by itself impose any limitations at all. In addition, the provision is limited to interpretations which ". . . permit the Department to discharge its statutory functions under the Act." Thus, no limitations can be imposed which will exceed the authority of the New Jersey Air Pollution Control Act.

N.J.A.C. 7:27-8.1 Definitions

32. COMMENT: Ozone (O_3) and VOC were added to the definitions at N.J.A.C. 7:27-18.1, but not in N.J.A.C. 7:27-8.1 even though they were used throughout N.J.A.C. 7:27-8.1. We recommend their addition to N.J.A.C. 7:27-8.1. (6)

RESPONSE: The definition of VOC was originally included in N.J.A.C. 7:27-8.1 in the amendments adopted on February 4, 1985 (17 N.J.R. 587), and has remained in the rule since. The Department does agree, however, with this commenter's recommendation that the definition of ozone should be added to Subchapter 8. Therefore, in these adopted rules, the following definition of the term "ozone," proposed for inclusion at N.J.A.C. 7:27-18.1, has also been adopted at N.J.A.C. 7:27-8.1:

"Ozone" or "O_3" means a gas having a molecular composition of three oxygen atoms.

33. COMMENT: With respect to the definition of "equipment" in N.J.A.C. 7:27-8.1, one commenter asked if that definition included "motor vehicles." (1)

RESPONSE: The definition of "equipment" in N.J.A.C. 7:27-8.1 does not include "motor vehicles," except those involved in a manufacturing process, such as a mobile incinerator.

N.J.A.C. 7:27-8.1 and 18.1, Definitions (both sections)

34. COMMENT: With respect to the definition of "air contaminant" in both N.J.A.C. 7:27-8.1 and 18.1, two commenters believed that this definition should be replaced by the Federal "Regulated Air Pollutant" definition in the Federal air permit (Part 70) rule. (2, 3)

RESPONSE: This commenter's comment on the definition appears to reflect concern that inclusion of the broad, generic definition of the term "air contaminant" in the definition sections of the rules implies that the rules will apply to many air contaminants. In fact, the definition of the term "air contaminant" does not affect the applicability of these rules. The only air contaminants regulated in N.J.A.C. 7:27-18 are the six criteria pollutants and their respective criteria pollutants. Emissions of these pollutants must be counted in a determination of approvability. The Department will address the relationship between N.J.A.C. 7:27-18 and 40 CFR 70 when it proposes New Jersey's operating permit program later this year.

35. COMMENT: With respect to the definition of "major facility" and its threshold level for lead in both N.J.A.C. 7:27-8.1 and 18.1, EPA recommended that the major facility threshold lead level be reduced from 10 tons per year to five tons per year to be consistent with EPA's lead strategy. (20)

RESPONSE: Although the Department acknowledges the importance in controlling lead emissions, this recommendation has not been incorporated in this rulemaking for several reasons. The Department's major facility threshold for lead is 10 tons per year, which is significantly more stringent than the Federal threshold level of 100 tons per year (see 40 CFR 51.165(a)(1)(iv)(A)). Moreover, the lead strategy that EPA refers to has not been finalized yet. The Department intends to modify New Jersey's major facility threshold for lead, if EPA's future lead threshold is more stringent.

36. COMMENT: With respect to the definition of "Federally enforceable" at both N.J.A.C. 7:27-8.1 and 18.1, the definition includes a reference to the "SIP" without providing a definition. The commenter recommends adding a definition of "SIP" to both N.J.A.C. 7:27-8.1 and 18.1. (16)

RESPONSE: The definition of "SIP" is included in the proposed amendments to N.J.A.C. 7:27-18.1 (see the definition of "State Implementation Plan"). In this adoption, the Department has also added the definition of "SIP" to N.J.A.C. 7:27-8.1.

N.J.A.C. 7:27-8.3, General provisions

37. COMMENT: A commenter stated that since permits are based on the maximum worst case conditions, many facilities will not amend their permits under these conditions unless the reduced emissions could be used for emission offsets. Amending a permit should remain an option, not become a requirement. (10)

RESPONSE: N.J.A.C. 7:27-8.3(k) states that a permittee "may" decrease its allowable emissions by amending a permit. This is completely optional and is not a requirement. Such emission reductions could also be used as emission offsets, provided there is a reduction in actual emissions which qualifies as a creditable emission reduction.

38. COMMENT: With respect to N.J.A.C. 7:27-8.3(k), two commenters objected to the provision that industry must submit an application for a permit alteration for all equipment or control device changes, even if the changes result in emission reductions. They cited 40 CFR 70.4(b)(12) which states that permit modifications (that is, alterations) are not required if the resulting emissions do not increase above a de minimus level. Furthermore, they cite Section 182(c)(7) of the CAA which states "... such increases shall not be considered a modification for such purposes if the owner or operator of the source elects to offset the increase by ... an internal offset ratio of at least 1.3 to 1." The commenters recommended that N.J.A.C. 7:27-8.3(k) be deleted or modified to classify equipment and control device changes as a permit amendment if the result is a reduction in emissions. (2, 3)

RESPONSE: N.J.A.C. 7:27-8.3(k) refers to permit amendments, not alterations. As stated in the response to Comment 37 above, this is an optional provision and is not intended to be a requirement.

The commenter refers to 40 CFR 70, which is the Federal operating permit rule. Since New Jersey has not yet proposed an operating permit rule, it is premature for New Jersey to address the relationship between 40 CFR 70 and N.J.A.C. 7:27-18. The Department will address the relationship between N.J.A.C. 7:27-18 and 40 CFR 70 when it proposes New Jersey's operating permit program later this year. The commenter also refers to Section 182(b)(7) of the CAA, 42 USC 7511a, which is a special rule provision for modifications of sources emitting less than 100 tons per year of NO_x or VOC. Since this CAA provision was unclear, the Department has not incorporated it in its final rulemaking. The Department expects EPA to provide guidance on this provision, at which time the Department may consider its use in future rulemaking.

N.J.A.C. 7:27-8.4, Applications for permits and certificates

39. COMMENT: With respect to the addition of the requirement of an air quality impact analysis protocol approved in advance at N.J.A.C. 7:27-8.4(f), one commenter advocated revisions that afford industry credit for their expertise in the areas of air monitoring and risk assessment. Mobil recommended the following revision:

"Upon request of the Department, and in accordance with a protocol approved in advanced by the Department, the applicant for a permit shall demonstrate, utilizing an air quality impact analysis conducted in accordance with (k) below and, as deemed necessary [by] **per agreement between** the Department **and the applicant,** ambient air monitoring and risk assessment, whether maximum controlled emissions stated on permit application may cause ..." (8)

RESPONSE: Rephrasing the rule in this way would prohibit the Department from requiring ambient air monitoring and risk assessment studies without the agreement of the applicant. There may be cases in which the Department may need this information to adequately determine the air quality impacts or health effects from a facility. Therefore, it would be unduly restrictive to change the rule to put this limit on the Department.

For example, there are certain circumstances under Federal law where ambient air monitoring is a requirement. Specifically, the Prevention of Significant Deterioration (PSD) regulations codified at 40 CFR 52.21 require ambient monitoring in cases where predicted impacts exceed certain levels. To base this requirement on an agreement between the Department and the applicant would be unacceptable, and would violate Federal regulations if an applicant refuses to conduct ambient monitoring.

A risk assessment is required in special circumstances. A screening risk assessment is conducted by the Department on every application where toxic pollutants may be emitted. If the results of the screening risk assessment show potentially unacceptable health risks, the applicant is required to perform a more detailed health risk assessment. Because of the importance of controlling toxics, such a requirement should not be contingent on an applicant's agreement.

40. COMMENT: One commenter suggested that the Department be required to issue, within a specified time limit, a formal letter of protocol approval prior to industry conducting the air quality analysis. Further, once such a protocol were approved, the Department should not be afforded the opportunity to require further information. (9)

RESPONSE: The Department does issue formal approval letters once a protocol is found to be acceptable. Prohibiting the Department from requesting additional technical information once a general protocol is approved is not reasonable, and conflicts with both State and Federal law. The results from the air quality impact analysis sometimes indicate the need for additional modeling or the installation of air pollution control equipment to ensure acceptable air quality effects.

Pursuant to P.L.1991, c.422, all permit reviews are required to be completed within specified time periods depending on the complexity of the permit application. This legislation includes the requirement that protocol reviews be completed within specified time periods. Please refer to P.L.1991, c.422, for more details.

41. COMMENT: One commenter stated that the air quality impact analysis requirements of N.J.A.C. 7:27-8.4 could serve as a deterrent to the installation of a control device, if such an analysis is required for emission decreases, as well as emission increases. (16)

RESPONSE: N.J.A.C. 7:27-8.4(j)2 requires an air quality impact analysis for major facilities that propose a significant net emission increase, and those subject to PSD requirements. N.J.A.C. 7:27-8.4(f) allows the Department to request an air quality impact analysis from any applicant. This section is generally applied to new or existing sources which emit air toxics or major quantities of criteria pollutants, whether or not emissions are increasing or decreasing. Where emissions are decreasing, the Department occasionally makes the modeling requirement a condition of the permit, so the emission decrease is not delayed until the completion of modeling.

With future rulemaking, the Department expects to require air quality modeling for all existing major sources of air contaminants as a condition

of issuance or renewal of operating permits. Such modeling would be phased in over a substantial time period. If adopted, this will reduce the need for air quality modeling for facilities that do not cause an emission increase in the future.

42. COMMENT: With respect to the components of the required protocol as listed in N.J.A.C. 7:27-8.4(k), one commenter stated that the phrase "all relevant" is ambiguous and recommended the following revised wording:

"... The Department shall not approve a protocol unless it [takes] **contains the** [all relevant] site-specific [and general] factors [into account.] **that impact the air quality analysis. The applicant shall submit to the Department a protocol that comprehends these factors.** [These factors] **The protocol may include**[, but are not limited to,] a land use analysis ..." (8)

RESPONSE: The recommended change has not been included in the rule. N.J.A.C. 7:27-8.4(k) provides detail indicating what is meant by the phrase "all relevant." In addition, the Department has prepared a technical guidance manual which specifies the relevant factors that need to be incorporated in the protocol. Copies of this manual can be obtained by contacting the Department at the address stated in N.J.A.C. 7:27-8.4(k).

N.J.A.C. 7:27-8.24, Certification of information

43. COMMENT: The proposed revisions to N.J.A.C. 7:27-18.3 refer to the additional certification needed as stated in N.J.A.C. 7:27-8.24 requiring a principal executive officer of at least the level of vice president. One commenter stated that with multi-national corporations, a vice president may be located in another country; rather, a plant manager should suffice for certification. They recommend the following language:

"(f) Certification shall be made by a person described in (d)1 or by a duly authorized representative of that person. A person is a duly authorized representative only if:

1. The authorization is made in writing to the Department by a person described in (d)1; and

2. The authorization specifies a position having responsibility for the overall operation of the regulated facility."

Another commenter on the required certification claimed that those individuals at the higher levels generally do not have explicit familiarity with the information to make a true certification. They recommend changing the certification so as to be based on the applicant's reasonable knowledge and inquiry. Reference is made to the wording in N.J.A.C. 7:14A-2.12 as being more acceptable. (8, 10)

RESPONSE: As noted by the commenter, the certification requirements at N.J.A.C. 7:27-8.24(d)1 are not included in the Department's proposal of this rule. However, the Department recognizes the issues presented by the commenter. Later this year, the Department intends to propose regulations to establish an operating permit program, as required by Title V of the CAA. At the time of that proposal, the Department also intends to revise N.J.A.C. 7:27-8, and will address the issue of certifications. An opportunity for comments on that proposal will be provided at that time.

N.J.A.C. 7:27-18.1, Definitions

44. COMMENT: With respect to the definition of "actual emissions" at N.J.A.C. 7:27-18.1 and the use of the definition of "actual emissions" in N.J.A.C. 7:27-18.5, one commenter, while supporting the use of a two calendar year averaging period in general, had concerns over using a specific two-year period immediately preceding a particular date. He stated that the current recession has reduced automobile production below normal for the last two years. He advocated that something other than a specific two-year period, more representative of normal operations, would be appropriate. (7)

RESPONSE: Consistent with the definition of this term in the Federal rule at 40 CFR 51.165, the definition of "actual emissions," as proposed at N.J.A.C. 7:27-18.1, allows the use of a different two calendar year reporting period in calculating actual emissions from a source operation, equipment or control apparatus, provided that the applicant can show such a different time period is more representative of normal operations.

45. COMMENT: One commenter claimed that the definition of "actual emissions" in N.J.A.C. 7:27-18.1 was not consistent with the definition in subchapter 21 concerning emissions reporting. Preferring the wording in subchapter 21, the commenter indicated that the definition should include the determination of actual emissions over the last two years in the text of N.J.A.C. 7:27-18.5. (10)

RESPONSE: The definition of "actual emissions" in N.J.A.C. 7:27-18.1 was based on the Federal definition of the term at 40 CFR 51.165, which is the relevant Federal rule with which consistency must be maintained. The use of the definition in N.J.A.C. 7:27-21 would be impermissible as it would make N.J.A.C. 7:27-18 less stringent than the Federal rule. Therefore, this suggestion cannot be incorporated into N.J.A.C. 7:27-18. EPA will be revising 40 CFR 51.165 in the near future, and may propose to change the Federal definition of "actual emissions," at which time the Department may consider changing this definition.

46. COMMENT: With respect to the definition of "air quality simulation model," one commenter indicated that the proposed definition in N.J.A.C. 7:27-18.1 was inconsistent with the definition in N.J.A.C. 7:27-8.1. (1)

RESPONSE: In response to this comment, the Department has revised the definition of "air quality simulation model" in N.J.A.C. 7:27-8.1 to be consistent with the definition of the term in N.J.A.C. 7:27-18.1.

47. COMMENT: With respect to the definition of "contemporaneous" in N.J.A.C. 7:27-18.1, one commenter recommended that the Department change the definition to include the five year period prior to the submission of the permit application to the Department. (10)

RESPONSE: In these amendments, the definition of "contemporaneous" in N.J.A.C. 7:27-18.1 is consistent with the Federal definition of this term at 40 CFR 51.165, which includes the five years prior to construction of new sources. Because a permit application must be submitted prior to construction of a new source, the suggested change would prohibit facilities from taking credit for replacing an existing source with a new, cleaner source, since the shutdown of an existing source occurs after submittal of the permit application, and thus would not be within the five year period preceding the application for the new source. Therefore, any emission reductions associated with shutting down the existing source would not be creditable and could not be used in the netting analysis. Such a change is inconsistent with the intent of the rule, would be detrimental to many applicants subject to N.J.A.C. 7:27-18, and would not fairly reflect their emission reductions. Consequently, the recommended change has not been included in the rule.

48. COMMENT: One commenter questioned whether the Department has the ability to determine whether the applicant has triggered a significant increase in a specific pollutant over the contemporaneous period. (10)

RESPONSE: It is the major facility's responsibility to determine if a significant net emission increase would occur. The Department then reviews the determination. The existing regulations require such a calculation over a much longer time period than the contemporaneous period. The amendments and new rules will lessen the administrative burden for facilities and the Department by requiring an evaluation of emission changes only during the contemporaneous period. The accuracy with which the Department can verify significant net emission increases will improve with implementation of the emission statement and operating permit programs, and an improved computer system.

49. COMMENT: With respect to the definition of the term "complete" in N.J.A.C. 7:27-18.1, one commenter stated that the sentence "Designating an application complete for purposes of permit processing does not preclude the Department from requesting or accepting any additional information," makes the definition of "complete" moot. He recommends the deletion of this sentence. (9)

RESPONSE: "Complete" as used in N.J.A.C. 7:27-18.1 refers to the administrative completeness of the application, and means that the application contains all of the information necessary to commence technical review. This does not include technical completeness, which means that the information in the application is sufficient for the Department to determine the approvability of the application. A determination of administrative completeness sometimes is relevant for determining rule applicability, as is the case with this rule. The definition of "complete" has been revised as follows in these adopted rules to clarify this:

"Complete" means, in reference to an application for a permit, that the application contains all of the information necessary, as determined by the Department, for commencing technical review of the application. Designating an application complete for purposes of commencing technical review does not preclude the Department from requesting or accepting any additional information.

50. COMMENT: The terms "quantifiable" and "verifiable," used within the definition of "creditable emission reduction" found at N.J.A.C. 7:27-18.1, should be defined. (16)

RESPONSE: In terms of creditable emission reductions, EPA's December 4, 1986 Emission Trading Policy (see 51 Fed. Reg. 43832) states that "quantifiable" means a reliable basis must exist for calculating the amount and the rate of the reduction, along with a description of the characteristics of the reduction. Quantification may be based on emission

factors, stack tests, monitored values, operating rates and averaging times, process or production inputs, modeling, or other reasonable measurement practices. The same method of calculating emissions should generally be used to quantify emission levels both before and after the reduction.

Although EPA does not use the term "verifiable," it means that the emission reduction must be substantiated through the use of operating records or other forms of proof. The applicant must provide evidence that the emission reduction actually occurred.

The Department will take this comment into consideration in its development of future revisions to N.J.A.C. 7:27-18, based on expected new Federal rules and guidance.

51. COMMENT: With respect to the definition of "creditable emission reduction" in N.J.A.C. 7:27-18.1, two commenters questioned the use of the term "Federally enforceable" within the above definition. Since, in order to be Federally enforceable, the reduction must be enforceable by the EPA through Federal requirements, how could the cessation of operations of a grandfathered source satisfy these requirements? They recommended clarification of the definition by adding:

"... a decrease in **actual** allowable emissions **from existing permitted and unpermitted sources** ..." (3, 16)

RESPONSE: N.J.A.C. 7:27-18 allows facilities the opportunity to obtain creditable emission reductions from both permitted and unpermitted (that is, "grandparented") sources. If a grandparented source shuts down, a Federally enforceable condition could be placed on the facility through a permit (for a new source at the facility) or other legal document prohibiting the operation of that source. The reduction in actual emissions resulting from the shutdown may then be eligible to be considered a creditable emission reduction.

52. COMMENT: With respect to the definition of "creditable emission reduction" at N.J.A.C. 7:27-18.1, one commenter requested clarification as to whether only banked emission offsets can be used, or whether internal emission offsets that have not been banked can be used as well. (10)

RESPONSE: Internal emission reductions which have not been banked can be used as emission offsets, as well as reductions that have been banked, provided they are "creditable emission reductions." However, most facilities prefer to apply unbanked internal emission reductions in determining their "net emission increase." The procedure for determining "net emission increases" is located at N.J.A.C. 7:27-18.7.

53. COMMENT: With respect to the definition of "equipment" in N.J.A.C. 7:27-18.1, two commenters stated that the definition was overly broad and too encompassing by considering equipment that emits any air contaminant. The commenters state that the offset rule is meant to control "Regulated Air Pollutants." To include any air contaminant goes beyond the intent of the CAA. (2, 3)

RESPONSE: The definition for "equipment" included in these revisions to N.J.A.C. 7:27-18 is the generic definition of this term used in several subchapters of N.J.A.C. 7:27. The air contaminants regulated in this subchapter are limited, pursuant to the provisions of N.J.A.C. 7:27-18, to six criteria pollutants, and their respective criteria pollutants, as mandated by the CAA.

54. COMMENT: With respect to the definition of "fugitive emissions" in N.J.A.C. 7:27-18.1, one commenter claimed that the definition was overly broad by considering fugitive emissions of any air contaminant. He indicated that the only fugitives which are of concern are those that contain "Regulated Air Pollutants." (2, 3)

RESPONSE: The definition of the term "fugitive emissions" does not affect the applicability of these rules. The only air contaminants regulated in N.J.A.C. 7:27-18 are the six criteria pollutants and their respective criteria pollutants. Fugitive emissions of these pollutants must be counted in a determination of applicability.

55. COMMENT: One commenter was concerned with the issue of fugitive emissions: Since they are not required to be monitored, how can they be quantified? If they can't be quantified, how can they be measured as an emission increase over the five-year contemporaneous period? Conversely, if a company can quantify them, and therefore can prove a reduction, could that be considered a creditable emission reduction? (10)

RESPONSE: Fugitive emissions can be quantified using published emission factors for various source categories. AP-42, a publication issued by EPA, is a reference source that contains fugitive emission factors for many source categories. There are also other reference manuals published by private industry that contain fugitive emission factors for other source categories. Reductions in fugutive emissions which are quantifiable and otherwise meet the criteria for a creditable emission reduction can be banked or used as emission offsets.

56. COMMENT: One commenter recommended that fugitive emission reductions not be used for emission offsets. (19)

RESPONSE: N.J.A.C. 7:27-18.5(b)2 allows reductions in fugitive emissions to be considered a creditable emission reduction. However, the applicant must first demonstrate to the Department that such reductions are creditable. This provision has not changed from the prior regulations at N.J.A.C. 7:27-18.4(a)2. Since the facility's calculations of potential to emit take into account fugitive emissions, reductions in fugitive emissions can be used for offset purposes, provided they are creditable.

57. COMMENT: With respect to the definition of "major facility" in both N.J.A.C. 7:27-8.1 and 18.1, one commenter stated that the sentence, "A facility that is a major facility in respect to any one air contaminant shall be deemed to be a major facility in respect to all air contaminants listed below..." conflicts with various portions of subchapter 8 and, specifically, N.J.A.C. 7:27-18.2(a)2, which states that "The major facility threshold level determines if a facility is a major facility for that air contaminant...." As stated in the proposed rule, this sentence is not necessary to define a major source for those pollutants for which emission levels/increases exceed the Prevention of Significant Deterioration (PSD) significant emission rates at 40 CFR 52.21 which, except for VOC and NO_x, are identical to the levels given at N.J.A.C. 7:27-18.7, Table 3. He recommends that the sentence be deleted for the purposes of PSD review. (6)

RESPONSE: The Department agrees that the wording of the definition of the term "major facility" in N.J.A.C. 7:27-8.1 and 18.1, and the wording of N.J.A.C. 7:27-18.2(a)2, needs clarification. Consequently, in these adopted amendments, these wordings have been revised for clarity as follows:

"Major facility" means a facility which has the potential to emit any of the air contaminants listed below in an amount which is equal to or exceeds the applicable major facility threshold level given below. The major facility threshold levels are as follows:

Air Contaminant	Major Facility Threshold Level
Carbon monoxide	100 tons per year
PM-10	100 tons per year
TSP	100 tons per year
Sulfur dioxide	100 tons per year
Nitrogen oxides	25 tons per year
VOC	25 tons per year
Lead	10 tons per year

Related changes in the rule language have been made at N.J.A.C. 7:27-18.2(a)2.

These revisions apply only to the provisions of N.J.A.C. 7:27-8 and 18. PSD requirements are set forth in Federal, not State, rules, and for PSD determinations the Federal definition of "major stationary source" would apply. For the purposes of evaluating whether a facility is subject to the federal PSD regulations, EPA provided guidance on this subject in the NO_x supplement to the Title I General Preamble, published at 57 Fed. Reg. 55620. EPA states that the major stationary source thresholds defined in the PSD rules continue to apply when determining PSD applicability. This means that, in many areas, both the nonattainment (Lowest Achievable Emission Rate, or LAER) and PSD (Best Available Control Technology, or BACT) regulations apply for the same pollutant. Where a facility must meet both the LAER and BACT requirements for a particular pollutant, the more stringent LAER requirement satisfies the BACT requirement.

58. COMMENT: A commenter objected to the inclusion of the sentence "a facility that is a major facility in respect to any ... shall be deemed to be all..." since it may trigger the imposition of additional requirements pursuant to subchapter 8, not just subchapter 18. For example, Public Service Electric and Gas' electric generating units using natural gas have little or no lead emissions. A facility should not be subject to the imposition of monitoring, reporting or control requirements for lead simply because it may be a major source of another listed contaminant. (16)

RESPONSE: The quoted portion of the definition is consistent with the application of the Federal nonattainment regulations. Once a facility's potential to emit exceeds the major facility threshold level in N.J.A.C. 7:27-18 for any single pollutant, the facility is considered a "major facility." It is the Department's experience that combustion sources, such

as electrical generation units, would be considered a major facility based on triggering the NO_x major facility threshold level. Being a major facility would subject the facility to certain generic reporting requirements (see N.J.A.C. 7:27-21). However, the monitoring and control requirements, and the facility specific reporting requirements, to which the facility is subject would depend on the expected emissions of the facility, not merely on its major facility status.

59. COMMENT: One commenter recommends a revised definition of "major facility" that would consider threshold emission levels consistent with both the New Source Review requirements under the CAA for nonattainment areas (which take into account the various nonattainment designations specified in the CAA) and Federal PSD regulations for attainment areas. (6)

RESPONSE: PSD thresholds are treated separately from the nonattainment thresholds and are specified in 40 CFR 52.21. For New Source Review, implementing a multilevel threshold, dependent on the nonattainment classification, is not necessary since, for ozone, the provisions of the rules are equivalent to those in the CAA for severe ozone nonattainment areas and will be applied Statewide. For the other pollutants, there is only one nonattainment classification.

60. COMMENT: With respect to the definition of "major facility" in N.J.A.C. 7:27-18.1, three commenters recommend that the Department modify this definition by the addition of a research and development (R & D) exemption which is mentioned in the preamble to the Part 70 Rule, thus separating R & D from manufacturing in a "major facility." (57 FR 32269) (2, 3, 10)

RESPONSE: Although an R & D exemption is mentioned in the preamble of the Federal operating permit rule at 40 CFR 70, such an exemption is not mentioned in Title I of the CAA or in the preamble to Title I. Since New Jersey has not yet proposed an operating permit rule, it is premature for New Jersey to address the relationship between N.J.A.C. 7:27-18 and 40 CFR 70. Consequently, the Department has not incorporated this recommendation in its rulemaking.

61. COMMENT: With respect to the definition of "net air quality benefit" in N.J.A.C. 7:27-18.1, the wording should be changed to a "decrease in emissions of the contaminant of concern" rather than "a decrease in the ambient concentration." Changes in the modeling procedure could result in the appearance of a decrease in ambient concentration without an actual decrease in air emissions. (19)

RESPONSE: This suggestion was not incorporated into the rule because the term "net air quality benefit" is a term used specifically to refer to a change in the ambient concentration of an air contaminant, not to a change in emissions of the air contaminant. This term is used in N.J.A.C. 7:27-18.5 in the context of an alternative method of demonstrating that use of emission offsets is acceptable. Persons proposing to use emission offsets that do not meet the distance or offset ratio requirements specified in Table 2 may alternatively demonstrate that a net air quality benefit would result from the use of the offsets. Due to the varying characteristics of the offset and the emission increase, there may be cases in which the use of offsets would cause an increase in ambient concentration, even though emissions are decreased. Therefore, for the use of such emission offsets to be approved, an air quality impact analysis would have to demonstrate that the emission offsets would result in a net improvement in air quality in the area of the proposed emission increase (for example, near the new or altered facility). This demonstration typically includes an air quality impact analysis, but may include additional analyses. This definition has not been changed by this rule revision.

62. COMMENT: With respect to the definition of "potential to emit" in N.J.A.C. 7:27-18.1, one commenter recommended that the Department clarify the definition by indicating that the potential to emit is the permitted allowable emissions. (10)

RESPONSE: The term "potential to emit" is intended to be broader than the phrase "permitted allowable emissions" implies. The definition of "potential to emit" at N.J.A.C. 7:27-18.1 encompasses both permitted and non-permitted (grandparented) sources. The "potential to emit," as it applies to permitted sources, is the same as the source's permitted allowable emissions. However, non-permitted (grandparented) sources do not have permitted allowable emissions, but do have a potential to emit. Their "potential to emit" is equivalent to the capability of a source to emit an air contaminant at its maximum design capacity. The definition of the term "potential to emit" has been clarified at both N.J.A.C. 7:27-8.1 and 18.1 in the adopted rule to specify that this term includes fugitive emissions but excludes secondary emissions.

63. COMMENT: With respect to the definition of "secondary emissions" in N.J.A.C. 7:27-18.1, three commenters recommended that the Department delete this definition, as well as N.J.A.C. 7:27-18.9, which addresses secondary emissions. (2, 3, 10)

RESPONSE: The definition cannot be deleted as suggested because Federal regulations (see interpretive ruling regarding 40 CFR 51.165, located at 40 CFR 51, Appendix S, Part II.G.) require that secondary emissions be addressed by the rule. This ruling requires facilities subject to the new source review (that is, emission offset) regulations, as a result of direct emissions from the facility, to evaluate secondary emissions. The ruling states that the applicable requirements for emission increases at facilities also apply to secondary emissions. Therefore, the definition of "secondary emissions," and N.J.A.C. 7:27-18.9, which implements these provisions, must be retained in this rule.

64. COMMENT: Construction emissions should not be included in the secondary emission definition if they are temporary in nature and will not coincide with emissions from facility operations. (3)

RESPONSE: The Federal definition of "secondary emissions" specifically includes construction emissions. However, EPA's interpretive ruling at 40 CFR 51, Appendix S, Section IV.B, exempts facilities from obtaining emission offsets for emissions resulting from the construction phase of a new source. Accordingly, the Department has added N.J.A.C. 7:27-18.3(h) upon adoption to clarify this as follows:

(h) Notwithstanding the provisions of N.J.A.C. 7:27-18.3(c) or (d) above, no person is required to secure emission offsets for temporary emission increases that occur during and result directly from the construction or installation of the new or altered equipment or control apparatus.

65. COMMENT: With respect to the definition of "significant air quality effect level" in N.J.A.C. 7:27-18.1, EPA recommended that in order to be consistent with the Federal definition, this term should be defined as a "significant air quality **impact** level." (20)

RESPONSE: The Department agrees, and has revised the term, both at its definition in N.J.A.C. 7:27-18.1, and throughout the rule wherever the term is used.

66. COMMENT: With respect to the definition of "facility" and "source operation" in N.J.A.C. 7:27-18.1, a commenter asked whether these definitions included areas where motor vehicles congregated (for example, shopping malls, parking lots, truck stops). (1)

RESPONSE: The Department agrees that there is ambiguity in the definitions of the terms "facility" and "source operation" in respect to areas where motor vehicles congregate. A source operation may be a motor vehicle, as in the case of a mobile tire shredder. A facility may incorporate motor vehicles, as in the case of a manufacturing operation which uses vehicles to transport raw materials or process intermediates from one on-site location to another. In the case of motor vehicles congregated at shopping malls, parking lots, and truck stops, however, in respect to subchapter 18, these have not been regarded as facilities or source operations. This may need reconsideration in future rulemaking, as guidance is developed for use of mobile source emission reductions as emission offsets.

N.J.A.C. 7:27-18.2, Facilities subject to this subchapter

67. COMMENT: One commenter indicated that the applicability section as written was confusing, and suggested that the addition of a flow diagram of applicability would be helpful. (18)

RESPONSE: The Department intends to provide guidance to permit applicants for the implementation of this rule, including a diagram to determine applicability. The Department does not feel that it is appropriate to include a flow diagram of the applicability section in the body of the rule.

68. COMMENT: One commenter requested clarification of N.J.A.C. 7:27-18.2(b)2i. This section applies to facilities in attainment areas where the proposed emission increases would result in an increase in the ambient concentration of the respective criteria pollutant in an area that is nonattainment for the respective criteria pollutant. The commenter questioned whether this refers to increases in a nonattainment area near the source. (18)

RESPONSE: Major facilities located in attainment areas that propose significant net emissions increases must examine the impacts from the proposed emissions increase. The nonattainment area referred to could be any nonattainment area within the significant impact area of the facility.

69. COMMENT: EPA recommended the following revision in wording in N.J.A.C. 7:27-18.2(b)2i: "The proposed **significant** emission increase . . ." (20)

RESPONSE: The Department agrees with this recommendation and has incorporated this clarification in its final rulemaking. To be consistent with the terminology used in the rule, this section will read: "The proposed **significant net** emission increase . . ."

70. COMMENT: EPA recommended changing N.J.A.C. 7:27-18.2(b)3 to clarify that proposed sources located in an attainment area are subject to the rule if their allowable emissions significantly cause or contribute to a predicted violation of the NAAQS. (20)

RESPONSE: The Department agrees with this recommendation and has clarified N.J.A.C. 7:27-18.2(b)3 as follows:

3. Attainment for the respective criteria pollutant, and the proposed significant net emission increase would result in an increase in the ambient concentration of the respective criteria pollutant that would:

i. Equal or exceed the significant air quality impact level; and

ii. Result in a violation of an applicable NAAQS or NJAAQS, as determined by an air quality impact analyses required under N.J.A.C. 7:27-8.4(j).

71. COMMENT: Four commenters found N.J.A.C. 7:27-18.2(c) confusing. They read this proposed subsection as saying that offsets are required if any emission increase has occurred, even if the increase is not a significant net increase. They recommend that an increase of 25 tons over a five-year period occur before an offset is required, which is also equivalent to the "significant net emission increase" definition in the proposal. (2, 3, 10, 18)

RESPONSE: The proposed new rule at N.J.A.C. 7:27-18.2(c) does not require a facility to obtain emission offsets. Equipment affected by N.J.A.C. 7:27-18.2(c) would be required to comply with N.J.A.C. 7:27-18.3(b)1, which requires a facility to use "lowest achievable emission rate" (LAER) equipment, and N.J.A.C. 7:27-18.3(b)2 which requires certification that all facilities in the state, owned or operated by the person applying for the permit, are in compliance with the CAA requirements and the Department's requirements at N.J.A.C. 7:27. Clarification that these two provisions are the only ones triggered by this subsection has been added to the adopted amendments as follows:

(c) *[Except as provided in (a) above]* ***For a major facility***, a person applying for a permit is subject to *[this subchapter]* ***N.J.A.C. 7:27-18.3(b)1 (LAER) and 2 (compliance certification)***, if . . . .

The requirement to use LAER ensures that, once a facility triggers offset requirements, emission increases thereafter at the facility will be subject to stringent LAER control standards. This provision was in the previous version of the rule at N.J.A.C. 7:27-18.2(f)2. The amendments to this rule do not change this requirement.

72. COMMENT: One commenter noted that N.J.A.C. 7:27-18.2(c) has no time period for applicability. The commenter recommended that this section, if required, should only apply if the previously required offsets, referred to in N.J.A.C. 7:27-18.3(c)1, were obtained during the contemporaneous period. (10)

RESPONSE: N.J.A.C. 7:27-18.2(c) was not intended to have a contemporaneous time limit. LAER and compliance certification are required for every net emission increase of a nonattainment pollutant within the contemporaneous period, once a major facility triggers an emission offset requirement for a particular air contaminant. Rather, the time limit for this provision is the time required to bring the affected nonattainment area into attainment. N.J.A.C. 7:27-18.2(c)3, as follows, has been added to clarify that this provision is applicable until the area is designated attainment:

3. The nonattainment area in which the facility is located (or, in the case of a facility located in an attainment area, the nonattainment area whose air quality would have been significantly impacted by emissions from the facility had emission offsets not been secured) has not been redesignated as being in attainment for the respective criteria pollutant as of the date the permit application is submitted to the Department.

N.J.A.C. 7:27-18.3, Standards for issuance of permits

73. COMMENT: Four commenters believed that the CAA only requires offsets. Three of these commenters recommended the Department delete N.J.A.C 7:27-18.3(b)1, which requires LAER. The other recommended the Department require less stringent "state of the art" controls instead of LAER (2, 3, 9, 10)

RESPONSE: The CAA mandates control of air contaminent emissions to the degree which represents LAER, as well as emission offsets, for certain major facilities proposing significant net emission increases. Consequently, the Department cannot delete the LAER requirements from this rule.

74. COMMENT: Four commenters recommended that permitting of a particular individual facility should not be dependent on the compliance status of other facilities in New Jersey that are owned or operated by a common entity, as required at N.J.A.C. 7:27-18.3(b)2. One of the commenters claimed further that this provision is inconsistent with the principles of corporate liability under New Jersey law. (2, 3, 10, 16)

RESPONSE: This provision is required to be included in N.J.A.C. 7:27-18 to be consistent with EPA's interpretive ruling at 40 CFR 51, Appendix S, Section IV.A. Furthermore, this is not a new requirement. This requirement appeared in N.J.A.C. 7:27-18.2(c)2 of the previous rule.

75. COMMENT: Three commenters recommended that the alternative site analysis, as set forth at N.J.A.C. 7:27-18.3(c)2, not be required for an alteration to an existing facility. (8, 9, 21)

RESPONSE: The requirement that an alternatives analysis be conducted is mandated by section 173(a)5 of the CAA, 42 USC 7503, and therefore must be included in the State rules. This section of the CAA requires an evaluation of alternative sites, alternative sizes, production processes and environmental control techniques, and a demonstration that the benefits of the new or altered equipment significantly outweigh the environmental and social costs imposed as a result of the location, construction or alteration, and operation of the new or altered equipment.

76. COMMENT: Regarding the alternatives analysis at N.J.A.C. 7:27-18.3(c)2, four commenters recommended not requiring economic justification for every alteration in a facility (2, 3, 8, 10)

RESPONSE: Submitting an economic justification is not a required component of this analysis. Furthermore, the alternatives analysis is only required for those alterations that meet the applicability criteria set forth at N.J.A.C. 7:27-18.2. The alternatives analysis is only required with each significant net emission increase, not every alteration. Furthermore, as stated in N.J.A.C. 7:27-18.3(c)2, this analysis only examines the environmental and social costs imposed as a result of the location, construction or alteration, and operation of the new or altered equipment. An economic justification is not required.

77. COMMENT: One commenter recommended that pollution prevention measures be included as part of the alternatives analysis, to be consistent with Federal and State pollution prevention initiatives. (19)

RESPONSE: The Department considers pollution prevention measures as defined at N.J.A.C. 7:1K-1.5, to be a type of "alternative production process," and, therefore, N.J.A.C. 7:27-18.3(c)2 has been clarified to require facilities to evaluate such measures as part of the alternatives analysis.

78. COMMENT: With respect to the requirement at N.J.A.C. 7:27-18.3(d) for a person to secure emission offsets sufficient to eliminate any predicted violations of the NAAQS or NJAAQS, EPA noted that a source is responsible for offsetting its impacts in the area where it "significantly causes or contributes" to a predicted violation of a standard. If a source does not significantly cause or contribute to a predicted violation, it becomes the State's responsibility to address the predicted violation from another source. (20)

RESPONSE: The Department acknowledges EPA's comment. A person must comply with N.J.A.C. 7:27-18.3(d) only if he or she is subject to the subchapter pursuant to N.J.A.C. 7:27-18.2(b)3. To clarify that a new or altered source would be subject to N.J.A.C. 7:27-18.3(d), if it significantly causes or contributes to a predicted violation of a NAAQS, N.J.A.C. 7:27-18.2(b)3 has been added to these adopted rules to indicate that it applies if the proposed emission increase would equal or exceed the significant air quality impact level. Further, N.J.A.C. 7:27-18.3(d) has been clarified to indicate that the offsets that the new or altered source needs to secure must be "sufficient to eliminate the proposed significant net emission increase."

In addition, a related change has been made to N.J.A.C. 7:27-18.5(k)2 which clarifies that emission offsets for lead may be obtained from another facility only if that other facility significantly contributes to the exceedance of the lead NAAQS.

79. COMMENT: EPA recommended that, at N.J.A.C. 7:27-18.3(e)3, instead of requiring the applicant to state how achieving permanent emission reductions "shall be ensured," the applicant should be required to state how the emission reductions shall be made "Federally enforceable." (20)

RESPONSE: The Department agrees that EPA's rephrasing more clearly expresses the intent of the rule, and has incorporated this recommendation in the final rule at N.J.A.C. 7:27-18.3(e)3 as follows:

"How the permanent reduction of the emissions on or before the commencement of the operation of new or altered equipment shall be made Federally enforceable; and"

80. COMMENT: EPA recommended that N.J.A.C. 7:27-18.3(e) should include a fifth requirement which specifies how the emission offsets result in a net air quality benefit in the nonattainment area. (20)

RESPONSE: Ensuring a net air quality benefit is already required as part of N.J.A.C. 7:27-18.3(e)4 which requires a demonstration of compliance with N.J.A.C. 7:27-18.5. In N.J.A.C. 7:27-18.5, the Department established distances and offset ratios such that, if an applicant conducts an emission trade that meets the distance, offset ratio, and location requirements of N.J.A.C. 7:27-18.5, then a net air quality benefit would be achieved. However, a facility proposing an emission trade at a lower offset ratio or greater distance than that specified in Table 2 would be required to demonstrate that a net air quality benefit would occur. This requirement is stated in N.J.A.C. 7:27-18.5(e)2, and is not a change from the previous rule. To clarify that the use of emission offsets must result in a net air quality benefit, the language at N.J.A.C. 7:27-18.5(c) and (e) has been clarified to make this requirement explicit.

81. COMMENT: Two commenters questioned the use, at N.J.A.C. 7:27-18.3(g), of the November 15, 1992 date to demarcate whether the Department will review an application under the old rule or this new rule. They recommended instead that all persons with applications deemed administratively complete by the operative date of these rules be allowed to have their applications reviewed under the old rules if they choose. (10, 16)

RESPONSE: EPA issued transitional guidance on September 3, 1992, for states that did not adopt new nonattainment regulations by the November 15, 1992 deadline mandated in the CAA. This guidance allows states to review permit applications under the pre-existing rules, if the applicant has submitted an application that is administratively complete by November 15, 1992. Pursuant to this guidance, these new rules and amendments allow an applicant with an application that is complete by November 15, 1993, to elect whether the application should be reviewed under the pre-existing rules or these new rules and amendments. This option does not extend to the emission offset postponement provisions set forth in the pre-existing rule at N.J.A.C. 7:27-18.5. The guidance does not provide authority for the Department to issue any permit after November 15, 1992, which allows postponement of securing emission offsets. Upon adoption, the rule language at N.J.A.C. 7:27-18.3(g) has been corrected to clarify this.

N.J.A.C. 7:27-18.4, Air quality impact analysis

82. COMMENT: EPA recommended that, with respect to air quality impact analysis, the Department should include a statement which requires that the air quality impact analysis must result in a "net air quality benefit." (20)

RESPONSE: The purpose of an air quality impact analysis is to determine whether an emission increase may cause an exceedance of a NAAQS or a NJAAQS or cause an increase in the ambient concentration of an air contaminant which exceeds the significant air quality impact level. It would be incorrect to say that an air quality impact analysis must result in a "net air quality benefit."

It would, however, be correct to say that any use of emission offsets must result in a "net air quality benefit." As stated in the response to EPA's Comment 79 above on N.J.A.C. 7:27-18.3(e), language to this effect has been added to N.J.A.C. 7:27-18.5(c) and (e).

83. COMMENT: Since models contain inherent inaccuracies, possibly exceeding actual occurrences by a factor of two or more, the Department should develop provisions in the regulations for "borderline" cases, that is, those cases in which predicted impact may exceed threshold values by only a small margin. (5)

RESPONSE: The purpose of air quality impact analysis is to determine maximum predicted impacts of air contaminant emissions. Conservative factors are used to insure that predicted impacts are equal to or exceed the actual impacts. In cases where predicted impacts are "borderline," the department's procedures allow the use of refined EPA-approved models, in accordance with a protocol approved pursuant to N.J.A.C. 7:27-8.4(j), to provide a more accurate representation of emissions. The results of the most refined EPA-approved models used in the analysis must be compared directly to the threshold levels.

84. COMMENT: One commenter indicated that the Department should define more clearly what type of air quality impact analysis would be acceptable. (5)

RESPONSE: The types of air quality impact analyses that would be acceptable are detailed in a technical manual published by the Department titled "Guidance on Preparing an Air Quality Modeling Protocol." This document can be obtained by contacting the Department at the address listed in N.J.A.C. 7:27-8.4(k).

85. COMMENT: One commenter suggested that the Department provide, in N.J.A.C. 7:27-18.4, for an alternative means of conducting an air quality impact analysis to determine emission impacts. The use of ambient monitoring for a proposed new source, or modification of an existing source, may demonstrate that the impacts on air quality standards would be negligible, if all characteristics were similar. (5)

RESPONSE: The use of ambient monitors as an alternative means of conducting an air quality impact analysis to determine air quality impacts is acceptable to the Department for existing sources, if the monitoring is conducted in accordance with a protocol approved in advance by the Department. For new or altered sources, however, modeling is the only option because air quality effects must be determined prior to permit issuance and construction. Also, when ambient monitoring is allowed for existing sources, some air quality modeling would still be required to determine the appropriate site for the monitors.

86. COMMENT: A commenter suggested the use of physical modeling (wind tunnel) technology, as an alternative to mathematical air quality modeling. (5)

RESPONSE: Using physical modeling technology to determine air quality impacts is acceptable to the Department, provided the modeling protocol is reviewed and approved in advance by the Department. The definition of the term "air quality simulation model" at N.J.A.C. 7:27-8.1 and 18.1 has been clarified to reflect this option. Applicants should note that this technique is usually more costly and time consuming than mathematical modeling.

N.J.A.C. 7:27-18.5, Standards for use of emissions reductions as offsets

87. COMMENT: EPA indicated that New Jersey's proposal to relax its emission offset ratios for NO_x and VOC is inconsistent with the CAA Section 193, General Savings Clause, unless New Jersey demonstrates that its nonattainment SIP will result in equivalent or greater reductions of emissions of NO_x and VOC. (20)

RESPONSE: In this comment and in EPA's letter dated December 21, 1992, concerning New Jersey's proposed revisions to N.J.A.C. 7:27-18, EPA has stated that several provisions of the proposed rules may violate the General Savings Clause as defined in Section 193 of the Clean Air Act (CAA) unless New Jersey could show that other new provisions result in equivalent or greater reductions of nonattainment pollutants. Specifically, EPA has commented that the proposed relaxation of the nitrogen oxides (NO_x) and volatile organic compounds (VOC) emission offset ratio from 2.0:1 to 1.3:1, and the proposed relaxation of the carbon monoxide (CO) significant net emission increase threshold from 50 tons per year to 100 tons per year, are less stringent provisions that need to be addressed pursuant to the General Savings Clause as defined in Section 193 of the CAA.

While the Department believes that an equivalency demonstration is not required for new source review rules which impose requirements on future sources, Appendices 1, 2, and 3, located in this notice of adoption immediately prior to the text of the adopted rules, demonstrate that the rules, taken as a whole, would provide greater emission reductions of nonattainment pollutants than the previous rules. Therefore, the adopted rules satisfy the General Savings Clause.

88. COMMENT: With respect to NO_x offsets, one commenter asked whether utilities would be the only significantly affect industry or does the State expect a wide range of industries to be affected? (17)

RESPONSE: In general, the large NO_x sources which will be affected by this rule are utility boilers, large incinerators, large industrial boilers, and large combustion turbines. Any large new or altered combustion source could trigger an increase of NO_x in excess of 25 tons per year. For example, assuming 0.1 pounds of NO_x is emitted per million BTU, a new 100 million BTU per hour industrial boiler operating at peak load for an entire year would emit 43.8 tons of NO_x per year and may be subject to LAER and emission offsets unless enforceable permit conditions reduce the allowable NO_x emissions to less than 25 tons of NO_x per year.

89. COMMENT: With respect to Table 2, one commenter recommended a reduction in the allowable distance of VOC reduction could be located from the emission increase for which it is used as an offset. The commenter suggested the following distances and ratios for urban areas: zero to 10 miles for the 1.3:1 offset, 10 to 25 miles for a 2.6:1.0 offset, and for areas out of the city limits, a 5.2:1.0 offset. (19)

RESPONSE: The offset distances in the rule reflect the long range transport nature of the ozone air quality problem. Obtaining VOC offsets from facilities within 25 miles is not necessary to achieve the required air quality benefit. Therefore, to make the suggested change would put

facilities located in urban areas at an economic disadvantage, without sufficient justification.

90. COMMENT: A commenter recommended Table 2 be revised to include only the minimum VOC and NO_x offset ratio (those listed for zero to 100 miles) and that the longer distances be deleted from the table in order to be consistent with the requirements of the CAA. The commenter suggests that since New Jersey is part of the ozone transport region, the CAA allows offsets to be obtained from anywhere in the transport region. (7)

RESPONSE: The intent of establishing Table 2 at N.J.A.C. 7:27-18.5(c) is to ensure a net air quality benefit by requiring minimum offset ratios depending upon the type of pollutant in question and upon the distance between the point of discharge of the increased emissions and the point of discharge of the reduced emissions. N.J.A.C. 7:27-18.5(d) allows any person to request a different offset ratio or distance than established at Table 2 provided that the applicant can show that a net air quality benefit would result.

Pursuant to section 173(c)(1) of the CAA, 42 USC 7503, facilities can only obtain emission offsets in the same nonattainment area as the facility, or from another nonattainment area with a higher classification provided certain criteria are met. The Department has limited this further in N.J.A.C. 7:27-18.5(j) by allowing offsets to be obtained only from the same nonattainment area as the facility. The reasons for restricting this are further detailed in the response to Comment 95 below. While this action tends to restrict the offset region for VOC and NO_x to distances less than 100 miles, the Department has stated it will consider emission trading throughout the ozone transport region, when Federal and regional rules and policies are further developed. Therefore, the Department has retained the longer than 100 mile distances which were previosuly specified in its offset rule.

91. COMMENT: One commenter requested that the Department provide guidance regarding the relationship of N.J.A.C. 7:27-18 to the acid rain provisions of the CAA since this relationship is not clear. (9)

RESPONSE: N.J.A.C. 7:27-18 is derived from the requirements of Title I of the CAA. The acid rain requirements are in Title IV. The relationship between Title I and IV of the CAA was discussed in EPA's Title I General Preamble NO_x supplement, which was published at 57 Fed. Reg. 55620. Although the supplement discussed the relationship in terms of NO_x requirements, this discussion may be assumed to extend to the SO_2 requirements of both Titles.

The supplement states that emission reductions obtained from the Title I program, that is, N.J.A.C. 7:27-18 (Emission Offset or New Source Review Rule) and N.J.A.C. 7:27-19 (NO_x RACT Rule), could be used for the purposes of meeting the Title IV emissions reduction requirements. Likewise, emission reductions obtained from the Title IV program could be used to satisfy the Title I requirements under certain conditions. Refer to 57 Fed. Reg. 55620 for more details.

The SO_2 requirements in subchapter 18 pertain only to areas of the state that are not in attainment of the SO_2 Ambient Air Quality Standards (AAQS). Facilities proposing significant net emission increases of SO_2 in the SO_2 nonattainment area would be required to obtain offsets as established in subchapter 18. At present, the entire State, except for portions of Warren County is in attainment of the SO_2 NAAQS.

The Title IV SO_2 allowance trading program is a nationwide program that would apply to facilities located in attainment and nonattainment areas alike. Trading for the purposes of the Title IV program would be affected only to the extent discussed in the Federal Register.

92. COMMENT: Two commenters stated that there appears to be a conflict between the definition of "creditable emission reduction" and the language in N.J.A.C. 7:27-18.5 relating to the use of emission offsets. N.J.A.C. 7:27-18.5(a) states that "Only a creditable emissions reduction, as defined at N.J.A.C. 7:27-18.1, may be used to offset an emission increase." The definition of "creditable emission reduction" at N.J.A.C. 7:27-18.1 states that such reductions must be "contemporaneous with the construction of the new or altered equipment." Does the Department require emission offsets to be contemporaneous with the emission increase, even if the offsets were obtained from banked emission reductions? This conflicts with the discounting provision at N.J.A.C. 7:27-18.8(f) and (g) which discounts shutdown banked emission reductions after five years and 10 years, respectively, since N.J.A.C. 7:27-18.5(a), as currently written, would not allow facilities to use emission reductions that have been banked for more than five years. (6, 12)

RESPONSE: The intent of the rule was to allow non-contemporaneous creditable emission reductions that were banked in accordance with N.J.A.C. 7:27-18.8 to be used as emission offsets. The definition of "creditable emission reduction" at N.J.A.C. 7:27-18.1, and N.J.A.C. 7:27-18.5(a), has been revised to clarify that use of banked emissions is allowed, even if the reductions reflected in the banked emissions occurred outside of the contemporaneous period. This allowance encourages the voluntary reduction and banking of emissions, especially from pollution prevention or control measures, for future use as offsets.

93. COMMENT: Referring to the fact that this rule will lower the VOC and NO_x offset ratio from 2.0:1 to 1.3:1, one commenter, while acknowledging the Department's attempt to be consistent with other states, questioned whether the change would delay attaining the NAAQS in New Jersey. (17)

RESPONSE: These amendments and new rules are part of New Jersey's overall effort to attain the NAAQS in New Jersey without delay. The Department acknowledges that revising the emission offset ratio from 2.0:1 to 1.3:1 for VOC and NO_x to be consistent with the Clean Air Act make these particular provisions in the rule less stringent. However, other changes in the rules make the offset requirements apply to more permit applications, so that the over-all effect of these rule amendments is to make progress toward the NAAQS more expeditiously than the old rules. (See the equivalency demonstration set forth in Appendices 1, 2, and 3 immediately prior to the rule text in this notice of adoption.) Also, by promoting regional consistency, these rules further the goal of expeditious regionwide control of ozone.

94. COMMENT: One commenter recommended a two-tiered approach: maintain a 2:1 ratio for facilities that exceed the currently effective "significant net emission increase levels" while allowing the reduced 1.3:1 offset for facilities that would only be regulated under the new rule's proposed "significant net emissions increase levels." (11)

RESPONSE: This recommendation is already included in the rule. Any VOC offsets that were obtained at a 2:1 ratio under the existing rule must be maintained. For new or altered facilities subject to the new rules, the 1.3:1 offset ratio will be applicable.

95. COMMENT: One commenter recommended that increasing offset ratios with increasing distance should be eliminated in the case of precursors of ozone, which affect large geographic areas. Since these precursors travel for such long distances, New Jersey companies should be allowed to freely transfer offsets from South Jersey to North Jersey and even beyond, within the New Jersey Ozone Transport Region, without using higher offset ratios. (4)

RESPONSE: Section 173(c)(1) of the CAA, 42 USC 7503, establishes the geographic limits on the transfer of offsets. This section states that offsets can be obtained from another nonattainment area with the same or higher nonattainment classification, provided the emissions from the other area contribute to a violation of the NAAQS in the nonattainment area in which the facility obtaining the offsets is located. As this CAA language is open to varying interpretations, the EPA is currently, at the request of the Ozone Transport Commission, developing more specific guidance for states. One of the possible interpretations that has been proposed to EPA and is under study is allowance of free transfer across broad geographic areas as recommended by this commenter. The Department anticipates that the geographic constraints on the transfer of emission offsets contained in this rule will be reconsidered in future rulemaking.

96. COMMENT: With respect to the list of possible sources of creditable emission reductions set forth at N.J.A.C. 7:27-18.5(b), EPA recommends that the sentence include the word "or" after the sixth criteria listed for defining a creditable emission reduction. (20)

RESPONSE: The Department has incorporated this clarification in its final rulemaking.

97. COMMENT: With respect to N.J.A.C. 7:27-18.5(g), one commenter is concerned that since many VOCs are toxic, VOC emissions offsets means trading in toxics. This might lead to some areas disproportionately bearing the burden of polluted air. (19)

RESPONSE: Emission offset trading will not have the consequence of some areas being inflicted with unacceptable levels of toxic emissions. For the Department to approve a permit, the permit must be acceptable in a number of respects. Pursuant to N.J.A.C. 7:27-18.5(g), emission offsets "must be qualitatively equivalent in their effects on public health and welfare to the effects attributable to the proposed increase." In addition, for the permit to be acceptable pursuant to N.J.A.C. 7:27-8.4(f)4, the permit must not pose an unacceptable risk to human health and welfare and to the environment. For a permit applicant proposing an increase of toxic emissions, the Department performs a screening assessment on air quality impacts and health risks to determine

if the risks of the proposed emission increase are insignificant at the point of maximum effect. If risks could be significant, the Department requires the applicant to perform a detailed air quality impact analysis and health risk assessment pursuant to N.J.A.C. 7:27-8.4.

98. COMMENT: With respect to N.J.A.C. 7:27-18.5(g), one commenter recommended establishing reduction credits for energy conservation programs, such as the Green Lights Program, and voluntary conversion of inefficient oil heating systems to gas in public buildings. (10)

RESPONSE: N.J.A.C. 7:27-18.5(b)7 states that creditable emission reductions may occur by any other method or measure approved by the Department. If an applicant can demonstrate to the Department that the emission reductions are creditable, the person can use the reductions as emission offsets.

99. COMMENT: With respect to N.J.A.C. 7:27-18.5(h), one commenter stated that there appear to be three peak "ozone seasons" in the Department's air pollution control rules: subchapter 18 implies that the season is April 1 to October 31; subchapter 21 (Emission Statements) sets it at June 1 through August 31; this differs again from subchapter 19 (NO_x RACT) which has a May 1 to September 30 season. The commenter recommends that the Department consider only one ozone season and make the regulations consistent. (9)

RESPONSE: The Department recognizes that in various rules, periods of differing lengths are defined as the ozone season. There are some justifications for the differences. The EPA recognizes that ozone levels decrease significantly in colder parts of the year in many areas, and has defined the **ozone season** for New Jersey as the period from April 1 through and including October 31, 1993 (40 CFR 58, Appendix D). This definition of the ozone season is used in N.J.A.C. 7:27-18.5(h).

The EPA also requires the state to develop emission inventory type information in the **peak ozone season** (See: "Procedures for the Preparation of Emission Inventories for Carbon Monoxide and Precursors of Ozone," USEPA, OAQPS, (EPA-450/4-91-016) May 1991; Annual Point Source Requirements at 40 CFR 51.321-323; and "Guidance on the Implementation of an Emission Statement Program" (Draft) July 1992). This period is a subset of the ozone season, and is defined as a consecutive three month period during which most of the exceedances of the health standard occur. For New Jersey, the peak ozone season is defined as the period between and including June 1 through August 31. This definition of the peak ozone season is used in N.J.A.C. 7:27-21 (Emission Statement Rule).

N.J.A.C. 7:27-25 (Vehicular Fuels) and the proposed N.J.A.C. 7:27-19 (NO_x RACT) require the control of precursors of ozone during the period when exceedances of the ozone health standard are likely to occur. In N.J.A.C. 7:27-25, the control period is defined as the period between and including May 1 through September 15. In N.J.A.C. 7:27-19, the control period is the period between and including May 1 through September 30. The date in N.J.A.C. 7:27-25 was defined to allow sufficient time for gasoline fuel stocks to turn over to avoid starting and driveability problems during the colder months. The end date for the control period in the proposed N.J.A.C. 7:27-19 extends the ozone season to the end of September.

The Department does intend to examine further these varying "ozone season" periods to determine whether, through future rulemaking, greater consistency can be achieved.

100. COMMENT: With respect to N.J.A.C. 7:27-18.5(h), it appears that reductions in emissions in the off-season cannot be used to offset emission increases during peak ozone seasons. Would banked emissions only be credited to offsets in the "season" they were retired? The language and rule summary are not clear, please clarify. (9)

RESPONSE: Reductions in VOC and NO_x emissions in the off-season cannot be used to offset emission increases during the peak ozone season. The Department is considering revising its banking procedures to specify that the emissions value of the VOC and NO_x reductions banked be given both in tons per year for the calendar year and pounds per day for a typical ozone summer day. For a definition of the term "typical ozone summer day," see N.J.A.C. 7:27-21.1. This would help match up banked emissions to the emission offset needs of a facility.

101. COMMENT: With respect to N.J.A.C. 7:27-18.5(h), the term "same general area" is vague and ambiguous. The commenter recommends either a quantifiable distance be stated or a geographical reference, that is, all contiguous counties. (1)

RESPONSE: The term "same general area" is not in N.J.A.C. 7:27-18.5(h). The Department believes that the commenter is referring to N.J.A.C. 7:27-18.5(k)2, which uses the term to limit lead emission offsets to those obtained from facilities causing the NAAQS or NJAAQS for lead to be exceeded in the same general area as the facility using the offset. In response to this comment, N.J.A.C. 7:27-18.5(k)2 has been clarified to require that the offset be obtained from "... another facility which significantly contributes to the same exceedance of the NAAQS or NJAAQS for lead in the same nonattainment area as the facility for which an application for a permit has been made."

102. COMMENT: Two commenters question the application of N.J.A.C. 7:27-18.5(j). Does a facility located in Bergen County, which is in non-attainment for ozone, need to obtain an emission reduction from another facility in Bergen County specifically, or would a reduction in another non-attainment county be allowed? What would the Department do if a facility was unable to locate offsets in the same area? (1, 3)

RESPONSE: Bergen County is one of 12 New Jersey counties that are part of the region designated by EPA as a severe 2 nonattainment area for ozone (see 40 CFR 81.331). A facility located in Bergen County could obtain emissions offsets anywhere within this nonattainment area. This means that the facility can trade with other facilities located throughout most of northern New Jersey. Parts of New York and Connecticut are also in this same ozone nonattainment area. This rule does not prohibit the facility from obtaining emission offsets in these portions of New York and Connecticut. However, such interstate exchanges of emissions offsets would be subject to a yet to be defined Federal and state administrative approval process. New Jersey is currently exploring with other states within the Ozone Transport Region approaches which could make interstate exchanges more viable.

The Department would deny the applicant's permit if a facility was unable to locate offsets in the same nonattainment area.

103. COMMENT: With respect to N.J.A.C. 7:27-18.5(j), EPA questioned whether the wording allows a source to obtain emission offsets from a lower nonattainment designation area. EPA stated this would not be consistent with the CAA, which only allows offsets from another nonattainment area if the other area has an equal or higher nonattainment classification than the area of the source. Another commenter indicated that this section needs clarification since it appears to be inconsistent with the intent of N.J.A.C. 7:27-18.5(c), which appears to allow emission offsets between consolidated metropolitan statistical areas (3, 20)

RESPONSE: It is the Department's intent only to allow emission offsets to be obtained from the same Federally-designated nonattainment area. N.J.A.C. 7:27-18.5(j) and (k) have been clarified to make this explicit.

N.J.A.C. 7:27-18.6, Emission offset postponement

104. COMMENT: One commenter recommended that there should be no extension of the postponement provisions under this subchapter, and that any facilities granted postponements under the existing rules should be given one year to obtain the needed offsets. (19)

RESPONSE: The rule extends the postponement provision only for facilities for which postponements were authorized, pursuant to State and Federal rules, prior to the adoption of this rule. This is necessary because large capital investments were made, and facilities were constructed, in reliance on the postponement. Without the postponement extension, some of these facilities would have to shut down completely. The limited extension of existing postponements in the rule strikes a balance between fairness to those who relied on the postponements in the past and the offsetting reduction of emissions. The new rules and amendments at N.J.A.C. 7:27-18.3(g) have been corrected to specify that the revised postponement provisions, which do not allow postponement of securing emission offsets, shall apply to all permits issued on or after November 15, 1992.

Postponements are still in effect for total suspended particulates (two facilities) and sulfur dioxide (one facility). Extension of postponements for these cases will not jeopardize attainment of the air quality standards.

N.J.A.C. 7:27-18.7, Determination of net emission increase

105. COMMENT: One commenter recommended that the relationship between grandfathered sources and creditable emission reductions in N.J.A.C. 7:27-18.7 be clarified. The Department should allow "creditable emission reductions" to occur from grandfathered sources. (3)

RESPONSE: The rule does allow emission reductions from grandparented, that is unpermitted, sources to be used as offsets provided that such reductions are "creditable emission reductions" as defined at N.J.A.C. 7:27-18.1. For example, documentation would be required demonstrating that reductions of actual emissions from the

grandparented source occurred, and that the emission reduction is permanent. The emission reduction would also need to be made Federally enforceable through incorporation in a permit, order, or other legal document.

106. COMMENT: One commenter, referring to N.J.A.C. 7:27-18.7(a)2, Table 3, questioned why the trigger point for significant net emission increases for both VOC and NO_x in New Jersey's proposed rule is 25 tons per year, whereas in 40 CFR 51.165, the value is given as 40 tons per year. This commenter also questioned why New Jersey is treating NO_x as a nonattainment pollutant. (8)

RESPONSE: The Federal provisions at 40 CFR 51.165 have been superseded by more stringent provisions in section 182 of the CAA, 42 USC 7511a. The Department's use of 25 tons per year as a trigger, and the control of NO_x as a precursor to ozone, are both consistent with the CAA, as presently amended. Section 182(f) of the CAA, 42 USC 7511a, recognizes that NO_x is a precursor to ozone formation. As New Jersey is in nonattainment for ozone, NO_x is appropriately treated as a nonattainment pollutant.

N.J.A.C. 7:27-18.8, Banking of emission reductions

107. COMMENT: Two commenters objected to the discounting of emissions over given time periods, believing that it penalizes good companies who made successful pollution prevention efforts in the past. Those good companies who spend money and make efforts to reduce emissions should keep their banked emissions for future growth or sale and should not see them devalued. This will be a deterrent to banking emission reductions. (2, 3)

RESPONSE: Discounting, pursuant to N.J.A.C. 7:27-18.8, only applies to emissions banked as a result of shutdowns or curtailments. This provision will not affect banked emissions reductions derived from the use of pollution prevention or air pollution control measures.

108. COMMENT: One commenter objected to the requirement at N.J.A.C. 7:27-18.8(c) that, in order to bank emission reductions, the Department must have prior notice and the opportunity to inspect the equipment. The commenter states that N.J.A.C. 7:27-18.8(c) would expand the requirement for advance notification to the "shutdown of **any equipment or** source operation" (emphasis added by commenter).

Specifically, the commenter recommends deleting the phrase "equipment or", or, revising the closing phrase of that section "... before it is dismantled" to "... before it is dismantled or unless the Department can otherwise reasonably establish that the reductions proposed for banking are creditable emission reductions." (4)

RESPONSE: For emission reductions to be creditable, the Department must be able to verify that they have in fact occurred. (See definition of "creditable emission reduction" at N.J.A.C. 7:27-18.1.) Once equipment is dismantled, the Department may not be able to make such a verification. Therefore, the requirement at N.J.A.C. 7:27-18.8(c) for prior notice to the Department, which has been in effect since 1985, has been retained in the amended rules.

109. COMMENT: With respect to N.J.A.C. 7:27-18.8(d), one commenter recommended that an emission reduction should become an enforceable operating restriction only if **approved** by the Department, not just submitted, and recommended the following language:

"Any emission reduction submitted to the Department for banking shall become an enforceable operating restriction for the facility only after approval by the Department." (8)

RESPONSE: The Department agrees and has clarified N.J.A.C. 7:27-18.8(d) to reflect this comment.

110. COMMENT: Two commenters indicated the proposed discounting of banked emissions will not result in a benefit to the State, because the regulated community may attempt to use or sell banked emissions as soon as possible to avoid discounting, thereby lowering available credits in the long term. (9, 16)

RESPONSE: The discounting of shutdown credits encourages the use of banked emission reductions as soon as possible, and discourages hoarding of banked emissions. This results in economic benefits to New Jersey.

111. COMMENT: One commenter objected to the discounting of banked emissions, and recommended the following options.

(a) Include language in the subchapter which allows the owner of a banked emission to petition against the discounting of those credits, with extensions or a grace period possible;

(b) Allow the owner of a banked emission the opportunity to pay a reasonable fee for the life extension of that emission; or

(c) Revise the discount to 50 percent after 10 years, and 100 percent after 15 years. (9)

RESPONSE: The Department is participating in interstate discussions on emissions trading. One of the topics under review is discounting and the lifetime of emission reductions credits. Should an interstate consensus be developed which differs from the provisions of this rule, the Department will consider revising its rule with respect to discounting to achieve regional consistency.

112. COMMENT: With respect to N.J.A.C. 7:27-18.8(f) and (g), which discount certain banked emissions 50 percent after five years and 100 percent after 10 years, two commenters indicated that, as more offsets revert to the Department, it may become difficult and expensive to obtain emission offsets. (9, 10)

RESPONSE: Only banked emission reductions from shutdowns or curtailments will be discounted over time. Banked emission reductions from other methods, such as pollution prevention, fuel switching, or voluntarily installing control devices, will continue to have an indefinite lifetime. The purposes of discounting banked emissions from shutdowns or curtailments are to provide an incentive for economic development by promoting the use of shutdown credits.

113. COMMENT: One commenter stated that discounting the value of offsets that have already been purchased constitutes a regulatory taking without just compensation. This commenter recommended that the Department provide a procedure for compensating parties where they experience a discounting of the banked emission reductions previously purchased, or alternatively delete references to discounting of banked emission reductions. (12)

RESPONSE: The discounting of banked emission reductions does not amount to a taking because a constitutional taking requires that the owner of property (or some other constitutionally protected interest) must be deprived of all reasonable use of the property. The retention of a credit for past emission reductions over time is not a constitutionally protected property right. Rather, the process of banking and using emission credits is an option created by the Department by rule, which is not mandated by law. Further, the discounting of reductions does not deprive the owner of all reasonable use of the banked reductions, but merely serves as an incentive to use or transfer them promptly to someone who will use them. The rule provides at least five years from its effective date for full use of any previous shutdown credits, and an additional five years for use of 50 percent of the credits.

114. COMMENT: One commenter recommended that the Department set up an inventory of banked emissions openly available to the regulated community, updated and distributed monthly. This list would contain the date the banking occurred, the type of banked emissions, and the owner of that emission. (9)

RESPONSE: Such an inventory is already available upon request by contacting the Bureau of New Source Review at (609) 633-2753, or by writing to:

New Jersey Department of Environmental Protection
and Energy
Bureau of New Source Review
CN 027
Trenton, New Jersey 08625-0027

115. COMMENT: One commenter stressed that the Department will need to be responsive to the 30 day period, specified in N.J.A.C. 7:27-18.8(c), in which to verify emission reductions. (9)

RESPONSE: The Department agrees that the equipment should be inspected prior to dismantling to help verify the banked emission reductions. However, the verification of the facility's calculations and production records for the actual emissions being banked can occur after the 30 day period referenced in N.J.A.C. 7:27-18.8(c).

116. COMMENT: One commenter requested clarification on the method of emission verification the Department will use on sources shut down prior to enactment of the rule. For instance, if a source was shut down in 1990, and the emissions were not banked at that time, will the emissions from that source be allowed to be placed in the bank? (9)

RESPONSE: N.J.A.C. 7:27-18.8(c) states that an application to bank emission reductions shall be made no later than 12 months after the emission reduction occurs. This is identical to the requirement in the previous rule at N.J.A.C. 7:27-18.7(a). The provision means that the facility would not be allowed to bank emission reductions resulting from a shutdown in 1990. However, the facility would be allowed to bank emission reductions from the shutdown of the source if the shutdown occurred within the 12 months prior to the day the banking request was made, provided the Department was notified and given the opportunity to inspect it, before it was dismantled.

N.J.A.C. 7:27-18.9, Secondary emissions

117. COMMENT: One commenter was unsure as to what sources the Department regulates under the secondary emission section, and requested that a list be supplied. He questioned whether emissions from a facility manufacturing a raw material for use in the equipment for which a permit is sought and the emissions of the diesel engine that hauls the material to the facility can be considered secondary emissions. If so, then how could LAER be applied? (10)

RESPONSE: The definition of the term "secondary emissions" delineates the universe of sources which are included in this term. A list is inappropriate because the definition could be applied to any number of different sources. The definition allows flexibility in meeting the intent of the Federal requirement. In general, secondary emissions are off-site emissions that result from the construction or operation of the facility, and must be specific, well defined, and quantifiable. Further, secondary emissions affect the air quality of the same general area as is impacted by emissions from the facility.

In the case of the example cited by the commenter, if the source of a raw material is located in the same general area as the facility, and if its emissions would be increased due to the construction and operation of the new or altered source operation proposed in the permit, then increased emissions from the source of raw materials constitute secondary emissions for the facility. What would constitute LAER for this raw material supplier would depend on the nature of that source's emissions.

If the diesel engine mentioned by the commenter that hauls the material is part of a truck, then it is not considered a source of secondary emissions, since motor vehicles are specifically excluded in the definition. If the diesel engine is on a train, then it would be considered a secondary emission. LAER for such a train may be use of a cleaner burning fuel, if use of an alternative fuel is technically feasible. LAER for these sources of secondary emissions would be applied through the contractual arrangements the facility has with the suppliers of transportation and/or raw materials.

118. COMMENT: Two commenters questioned the requirement to include secondary emissions from mobile sources and outside facilities in N.J.A.C. 7:27-18. They recommend that this section be dropped. (2, 3)

RESPONSE: The secondary emissions requirements are based on Federal regulations at 40 CFR 51.165, and cannot be relaxed. The rule, as it pertains to mobile sources, is consistent with the Federal rule in that only emissions from certain mobile sources (like trains or ships) are considered in the secondary emission determination. Emissions resulting from motor vehicles and aircraft are excluded.

119. COMMENT: One commenter recommended deletion of N.J.A.C. 7:27-18.9(b). The commenter states that facilities cannot certify compliance with something not under their control. (3)

RESPONSE: N.J.A.C. 7:27-18.9(b) requires emission offsets for secondary emissions not under the person's control. The facility operator can obtain data on increases in emissions from these sources and can obtain offsets for those emissions. The operator is not certifying the compliance status of another facility, rather he or she is certifying that he or she has obtained offsets for secondary emissions, or has ensured that such offsets have been obtained by the secondary emitter.

N.J.A.C. 7:27-18.10, Exemptions

120. COMMENT: One commenter requested a further clarification of what alternative fuels would be exempted from offset requirements, and suggested that wood fuel and hazardous waste should not be exempted. (19)

RESPONSE: This provision has not been substantively changed with this rulemaking. The term "alternative fuel" is defined in N.J.A.C. 7:27-18.1. The Department has not limited the types of alternative fuels that could be used, since any fuel that meets the definition, and which meets the criteria outlined in N.J.A.C. 7:27-18.10(a)1 through 4, can qualify. This is a very narrow exemption with very limiting criteria. As a consequence, no such exemptions are currently in place in New Jersey.

121. COMMENT: Although it may be reasonable to exempt portable facilities from the offset rules, there should be limitations on the size of all temporary facilities and temporary source operations. If temporary source operations are regularly occurring events on an annual or biannual basis, they should be included in a facility's potential to emit. The Department may also be faced with an increase of temporary facilities as a result of this provision. (19)

RESPONSE: The exemptions listed in N.J.A.C. 7:27-18.10(b) have not been changed from those listed in N.J.A.C. 7:27-18.6 of the previous rule. This provision does not apply to temporary source operations or portable facilities that operate on a regular basis. The rule was intended to provide only a one time exemption. The Department has clarified this at N.J.A.C. 7:27-18.10(c) to make this explicit. The Department does not anticipate an increase in the number of facilities applying for this exemption since this provision has not been changed from the existing rule.

N.J.A.C. 7:27-18.11, Interstate trading (Reserved)

122. COMMENT: One commenter recommended that the rule explicitly address the process for obtaining offsets from outside the State. (10)

RESPONSE: Specific procedures for interstate trading may be included after Federal rulemaking and guidance have been promulgated, and interstate trading strategies have been developed by the Ozone Transport Commission (OTC), of which New Jersey is a member.

123. COMMENT: While acknowledging the Department has reserved this for the future, one commenter encouraged the Department to develop these procedures as soon as possible and to continue to include public participation in the development of these and other procedures. (16)

RESPONSE: Interstate trading is being discussed at the Ozone Transport Commission (OTC) meetings, which are open to the public. Further, the Department intends to offer forums for public discussion of trading and banking within New Jersey.

124. COMMENT: One commenter indicated that the Department should not consider interstate trading at all, since it will be impossible to regulate and enforce. Further, it falsely assumes that there are no available emissions reductions in the state. (19)

RESPONSE: The Department will not participate in any interstate trading program unless it is assured that the generation, trading, and use of the reductions can be regulated and enforced. One of the key federal requirements for emission reductions to be used as emission offsets is enforceability. If a mechanism is not available to make the reductions enforceable, then use of the reduction as an offset is not approvable. EPA is expected to provide guidance to the states as to how such offsets can be made enforceable.

This section of the rule does not assume that there are no available emission reductions within the state. In fact, many offsets are available from facilities which have banked their emission reductions with the Department in the past.

125. COMMENT: One commenter recommended that procedures for interstate trading be implemented in a timeframe to coincide with N.J.A.C. 7:27-19 (NO_x RACT Rule) and N.J.A.C. 7:27-8. This would allow facilities subject to the upcoming NO_x RACT regulations more flexibility. (5)

RESPONSE: In order to allow companies flexibility, the recently proposed NO_x RACT regulations (published in the February 16, 1993, New Jersey Register at 25 N.J.R. 631(a)) would allow NO_x emissions to be traded between facilities owned by the same company and located within New Jersey. Trading between companies or between states for the purposes of complying with the NO_x RACT requirements was not included in this proposal. This issue may be considered in future rulemaking, once EPA provides guidance on interstate trading for emission offset purposes.

126. COMMENT: One commenter indicated that, although there is not a widely developed market for offsets, the Department should be urged to encourage a free market in offset trading to help smaller industries, businesses and institutions to purchase offsets. (13)

RESPONSE: Trades are private actions between individuals creating and using creditable emission reductions. To help persons seeking to buy or sell emission reductions, the Department provides an inventory of the emissions listed in New Jersey's emission bank to any interested person upon request. In future rulemaking, the Department will consider including any suggested revisions to its emission offset, banking, and trading rules which could further encourage voluntary emission reductions.

N.J.A.C. 7:27-18.12, Civil or criminal penalties

127. COMMENT: With respect to the "jointly and severally liable" clause, one commenter recommended this entire subsection be deleted due to opposition to the concept of civil liability being extended to criminal liability. (21)

RESPONSE: The Department has clarified the rule at N.J.A.C. 7:27-18.12 to indicate that multiple owners or operators are jointly and severally liable for civil penalties. In addition, criminal law provides that persons acting together to violate a law can in some cases be criminally liable not only for the violation itself, but for conspiracy.

Summary of Hearing Officer's Recommendations and Agency Response:

John Elston, Administrator of the Office of Air Quality Management, served as the hearing officer at the November 5, 1992, public hearing held at the Department of Environmental Protection and Energy Building in Trenton, New Jersey. After reviewing the oral testimony presented at the public hearing, Administrator Elston recommended that the rule be adopted as proposed.

The Department has considered this recommendation of the Hearing Officer, and has adopted the new rules and amendments with no substantial change. A number of technical clarifications have been made upon adoption, however, in response to written comments received.

A copy of the record of public hearing is available upon payment of the Department's normal changes for copying ($0.75 per page for the first 10 pages, $0.50 per page for the following 10 pages, $0.25 per page for additional pages). The record of the public hearing is 22 pages. The Department will charge $13.00 for one copy. Persons requesting copies should contact:

ATTN: DOCKET #41-92-09
Department of Environmental Protection and Energy
Office of Legal Affairs
401 East State Street
CN 402
Trenton, New Jersey 08625-0402

Summary of Agency-Initiated Changes:

Changes have been made on adoption to clarify the requirements as follows:

At N.J.A.C. 7:27-8.3(k)1, the word "air" was omitted from the proposal, and has been added to form the correct term "air contaminant" upon adoption.

At N.J.A.C. 7:27-8.4(j)2, the article "an" has been added before the term "air contaminant" for correct grammar.

At N.J.A.C. 7:27-18.1, in the definition of the term "actual emissions," several revisions have been made in order to clarify and correct the wording of the definition.

At N.J.A.C. 7:27-18.1, in the definition of "allowable emission," commas following the words "equipment" and "operations" were inadvertently omitted from the proposed rule and have been included in the adopted rule.

At N.J.A.C. 7:27-18.1, in the definition of the term "emission offset," to correct the punctuation of the definition, a comma has been deleted.

At N.J.A.C. 7:27-18.1, in the proposed amendments the number "3." was incorrectly placed before the definition of the term "NSPS." This number has been removed upon adoption.

At N.J.A.C. 7:27-18.1, in the definition of the term "State Implementation Plan" or "SIP", for technical correctness and consistency the word "adopted" has been replaced with the word "prepared," also used in the definition of the term in proposed new rules N.J.A.C. 7:27-19, Control and Prohibition of Air Pollution from Oxides of Nitrogen.

At N.J.A.C. 7:27-18.2(b), to clarify the circumstances under which the provision applies, the following introductory phrase has been added in lieu of the less clear phrase proposed:

"For a major facility or a facility for which an emission increase is proposed that exceeds the major facility threshold level, . . ."

Similarly at N.J.A.C. 7:27-18.2(c), to clarify the circumstances under which the provision applies, the following introductory phrase has been inserted: "For a major facility . . ."

At N.J.A.C. 7:27-18.2(c)2, the proposed language has been edited for clarity and so revised upon adoption.

At N.J.A.C. 7:27-18.4(a), the word "of" following the phrase "ambient concentration" was incorrectly indicated as new text. Upon adoption the previously existing "of" has been retained and no new duplicative "of" has been inserted.

At N.J.A.C. 7:27-18.4, Table 1, in the proposed amendments the word "IN" preceding the phrase "NONATTAINMENT AREAS" in the heading for Table 1 was not designated as new text. Therefore, this word "IN" has been indicated as new text in this rule adoption.

At N.J.A.C. 7:27-18.5(b)4, the word "actual" has been inserted upon adoption to clarify that the curtailment must be of the actual production rate or operating hours.

At N.J.A.C. 7:27-18.8(f) and (g), the discounting provision has been clarified to make explicit who, and the deadlines by which, the banked emission reductions can no longer be used as emission offsets.

NOTICE OF ADOPTION
APPENDIX 1

DEMONSTRATION OF EQUIVALENCY FOR NITROGEN OXIDES

Comparison of New Jersey's existing rule (N.J.A.C. 7:27-18) to the adopted amendments and new rules indicates that a relaxation of the nitrogen oxides (NO_x) emission offset ratio from 2.0:1 to 1.3:1 would not violate the General Savings Clause as defined in Section 193 of the Clean Air Act (CAA) for the following reasons:

Previous Rule

(1) The previous rule requires NO_x emission offsets for facilities causing significant emission increases of NO_x in predicted or designated nitrogen dioxide (NO_2) nonattainment areas.

(2) No area of the State is, or has ever been, a predicted or designated NO_2 nonattainment area.

(3) Consequently, no NO_x emission offsets have ever been required in New Jersey (see Table 2).

Adopted Amendments and New Rules

(1) For the first time, N.J.A.C. 7:27-18 would require NO_x emission offsets for major facilities which cause significant net emission increases of NO_x in predicted or designated **ozone** nonattainment areas. (Specifying NO_x as an ozone precursor is a new requirement.)

(2) The entire State is a designated ozone nonattainment area, so NO_x offsets will be required for the first time throughout the State.

Summary of NO_x Justification

The adopted amendments and new rules at N.J.A.C. 7:27-18, as described above, would not violate the General Savings Clause because no area of the State is designated as nonattainment for NO_2, and no NO_x offsets are currently required. Accordingly, the 1.3:1 offset ratio, and designating NO_x as an ozone precursor, results in a more stringent, rather than less stringent rule. Furthermore, the 1.3:1 offset ratio is consistent with the 1990 CAA requirements that define NO_x as an ozone precursor and specify this ratio.

APPENDIX 2

DEMONSTRATION OF EQUIVALENCY FOR VOC AS AN OZONE PRECURSOR

Comparison of New Jersey's previous rule to the adopted amendments and new rules indicates that a relaxation of the volatile organic compounds (VOC) offset ratio from 2.0:1 to 1.3:1 would not violate the General Savings Clause for the following reasons:

(1) Lower VOC Applicability Level

The Department expects that the reduction of the VOC applicability from 50 tons per year to 25 tons per year would significantly increase the number of facilities subject to the rule, and increase the number of VOC offsets in the future. Table 2 indicates that only four VOC emission offsets have occurred during the past 13 years in New Jersey. (Only two of these were actually consummated because two facilities were not constructed.) The Department estimates that the amendments could produce at least five VOC emission offsets per year. This number is based on the Department's historical permit data and expected future growth in the State. As shown in Table 4, the Department has approved an average of 96 permits per year with VOC allowable emissions exceeding 25 tons per year, not considering netting. As a result of the reduced VOC threshold, the Department expects that there will be a significant decrease in the number of permits issued that exceed this emission rate. In addition, more existing facilities are expected to "net out" of the rule through the use of creditable emission reductions. Even with these effects taken into consideration, the Department believes that five VOC emission offsets per year is a conservative estimate.

Since there would be more frequent offsets, the Department expects that the emission reductions obtained through the proposed 1.3:1 offset ratio would outweigh the 812 tons of reductions obtained for the four offsets during the past 13 years from the existing 2.0:1 offset ratio at

a 50 ton per year applicability level. This historical average of 62 tons of offsets would be offset by at least 162 tons of offsets under the new rule (assuming five offsets per year × (25)(1.3) tons for each offset). Since each offset is likely to exceed 25 tons, the net benefit is likely to be even greater.

(2) Excess NO_x Credits

The reductions obtained through the proposed VOC provisions would satisfy the General Savings Clause as it pertains to ozone precursor emission reductions. However, a significant quantity of additional ozone precursor emission reductions would also occur from the proposed NO_x provisions, as discussed above.

Summary of VOC Justification

The combined effect of the 25 ton per year applicability threshold and the 1.3:1 VOC emission offset ratio would provide a greater "excess" emission reduction than by using a 2.0:1 VOC emission offset ratio at a 50 ton per year applicability threshold. The provisions designating NO_x as an ozone precursor adds further net ozone air quality benefits. Also, the 1.3:1 VOC emission offset ratio is consistent with the CAA.

APPENDIX 23

DEMONSTRATION OF EQUIVALENCY FOR CARBON MONOXIDE

Comparison of New Jersey's previous rule to the adopted amendments and new rules indicates that a relaxation of the CO applicability threshold from 50 tons per year to 100 tons per year would not violate the General Savings Clause for the following reasons:

(1) Expanded CO Nonattainment Areas

Prior to 1991, New Jersey's CO nonattainment areas were limited to 15 cities. The CO nonattainment areas were greatly expanded in 1991, pursuant to the CAA, to five counties and 12 cities. Due to the recently expanded CO nonattainment areas, the number of facilities potentially affected by the rule will increase substantially. A review of New Jersey's emission inventory indicates that the expanded nonattainment areas would triple the number of major CO facilities, even though the applicability threshold would be relaxed from 50 tons per year to 100 tons per year (see Table 3).

During the past 13 years of the previous rule, there has only been one CO offset for 378 tons (see Table 2). This is equivalent to approximately 29 tons of offsets per year. The Department estimates that the amendments could produce about one CO emission offset every two years. This number is based on the Department's historical permit data, the expanded CO nonattainment area, and expected future growth in the state. As shown in Table 4, the Department has approved an average of two permits a year with allowable CO emissions exceeding 100 tons per year to facilities located in the expanded nonattainment area. Although this number is expected to decrease as a result of the amendments, the Department believes that one CO emission offset every two years is a conservative estimate of the increased offsets that will occur as a result of the expanded nonattainment area.

Since there would be more frequent offsets, the Department expects that the emission reductions obtained through the 100 ton per year threshold and the new, expanded nonattainment areas would outweigh the 378 tons of reductions obtained for the one offset during the past 13 years from the 50 tons per year threshold and the old, localized nonattainment areas. This historical average of 29 tons of offsets would be offset by at least 50 tons of offsets in the new rule (assuming 0.5 offsets per year × 100 tons for each offset). Since each offset is likely to exceed 100 tons, the net benefit is likely to be even greater.

Summary of CO Justification

The effect of the expanded CO nonattainment areas would more than outweigh the relaxation of the CO applicability threshold from 50 tons per year to 100 tons per year. Accordingly, the General Savings Clause would not be violated. Also, the 100 ton per year CO applicabilty level is consistent with the CAA.

TABLE 1

NEW JERSEY BANKED EMISSION INVENTORY

(from inception to 12/17/92)

Pollutant	Total Banked
TSP	4732 tpy
NO_x	17504
SO_2	12556
CO	6820
VOC	18567
Pb	17

TABLE 2

EMISSION OFFSETS IN NEW JERSEY

Date of Emission Offset	Offset Originator	Offset User	Pollutant	Amount Used (tpy)
*12/31/84	Printpack	Hudson CIA	VOC	150
1985/86/88	Englehard	ECRRF	TSP	256.62
04/01/86	Lilly Tulip	ECRRF	VOC	166
*06/28/88	Continental Can	Bergen CUA	VOC	216
08/29/90	Monsanto	CCRRF	CO	378
08/22/92	American Biltrite	Cogen Technologies	VOC	280

*Emission offset was secured, but new facilities were never built, so offset was never consummated.

TABLE 3

COMPARISON OF FACILITIES AFFECTED BY N.J.A.C. 7:27-18

OZONE REQUIREMENTS

Under the previous rule, facilities emitting more than 50 tons per year of VOC were affected.

- number of facilities that have offset VOC emissions = 4 (over 13 years)

Under the new rule, facilities emitting more than 25 tons per year of VOC or NO_x would be affected.

- projected number of facilities to offset VOC emissions = 5 (per year)
- projected number of facilities to offset NO_x emissions = 5 (per year)

CO REQUIREMENTS

Under the previous CO rule, facilities located in an "old" CO nonattainment area that emit more than 50 tons per year of CO might have been affected if they were new facilities.

- number of 50 tpy facilities in old nonattainment area = 14
- number of facilities that have offset CO emissions = 1 (over 13 years)

Under the new CO rule, facilities located in the "new" CO nonattainment area that emit more than 100 tons per year of CO would be affected if they were new facilities.

- number of 100 tpy facilities in expanded CO nonattainment areas = 42
- projected number of facilities to offset CO emissions = 0.5 (per year)

Assuming that new facilities will have the same distribution of CO emissions as existing facilities results in three times as many facilities requiring CO offsets with the new nonattainment areas and applicability level. Since the applicability level is higher, the total offsets would also be higher under the new rule which specifies the expanded nonattainment areas.

TABLE 4
NJDEPE PERMITTING HISTORY

VOC Permits Exceeding 25 tons per year (gross)*

Year	Permits Issued Statewide
1989	113
1990	121
1991	59
1992	90
Average	96

*Note that many of these would have net emissions less than 25 tons per year.

CO Permits Exceeding 100 tons per year in New Nonattainment Area (gross)

Year	Permits Issued in New, Expanded Nonattainment Area
1989	0
1990	6
1991	1
1992	1
Average	2

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

7:27-1.4 Definitions

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

...

"CFR" means the Code of Federal Regulations.

...

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

...

"EPA" means the United States Environmental Protection Agency.

...

"State" means the State of New Jersey.

...

"USC" means United States Code.

7:27-1.36 Applicability

Compliance with any subchapter of this chapter shall not relieve any person of the obligation to comply with all other applicable provisions of this chapter.

7:27-1.37 Severability

If any portion of this chapter or the application thereof to any person or circumstance is adjudged invalid or unconstitutional by a court of competent jurisdiction, the remainder of this chapter and the application thereof to other persons or circumstances shall not be affected thereby, and shall remain in full force and effect.

7:27-1.38 Liberal construction

This chapter, being necessary to promote the public health and welfare, and to protect the environment, shall be liberally construed to permit the Department to discharge its statutory functions under the Act.

7:27-8.1 Definitions

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

"Air quality simulation model" means a *[mathematical]* procedure, taking into account the dispersive capacity of the atmosphere***, meteorological data, topography,*** and other relevant factors, to predict the concentration of an air contaminant in the ambient air. ***Such procedure may entail use of a mathematical model or a physical model.***

...

"Carbon monoxide" or "CO" means a gas having a molecular composition of one carbon atom and one oxygen atom.

...

"Federally enforceable" means all limitations and conditions on operation, production, or emissions which can be enforced by the EPA pursuant to authorities which include, but are not limited to, those established in:

1. Any standards of performance for new stationary sources (NSPS) promulgated at 40 CFR 60;
2. Any national emission standard for hazardous air pollutants (NESHAP) promulgated at 40 CFR 61;
3. Any provision of an applicable SIP; or
4. Any permit issued pursuant to requirements established at 40 CFR 51, Subpart I; 40 CFR 52.21; 40 CFR 70; 40 CFR 71; or this chapter.

...

"Lead" or "Pb" means elemental lead or any compound containing lead.

...

"Major facility" means a facility which has the potential to emit any ***of the*** air *[contaminant]* ***contaminants*** listed below in an amount which is equal to or exceeds the ***applicable*** major facility threshold level given below *[for that air contaminant. A facility that is a major facility in respect to any one air contaminant shall be deemed to be a major facility in respect to all air contaminants listed below]*. The major facility threshold levels are as follows:

Air Contaminant	Major Facility Threshold Level
Carbon monoxide	100 tons per year
PM-10	100 tons per year
TSP	100 tons per year
Sulfur dioxides	100 tons per year
Oxides of nitrogen	25 tons per year
VOC	25 tons per year
Lead	10 tons per year

...

"Oxides of nitrogen" or "NO_x" means all oxides of nitrogen including, but not limited to, nitric oxide and nitrogen dioxide, except nitrous oxide.

"Ozone" or "O_3" means a gas having a molecular composition of three oxygen atoms.

...

"PM-10" means a class of air contaminants which includes all particulate matter having an aerodynamic diameter less than or equal to a nominal 10 micrometers.

"Potential to emit" means the capability of a source operation or of a facility to emit an air contaminant at maximum design capacity, except as constrained by any Federally enforceable condition. Such Federally enforceable conditions may include, but are not limited to, the effect of installed control apparatus, restrictions on the hours of operation, and restrictions on the type or amount of material combusted, stored, or processed. ***This term shall include fugitive emissions, but shall not include secondary emissions.***

...

"Significant net emission increase" means an emission increase of any air contaminant determined pursuant to the procedures set forth in N.J.A.C. 7:27-18.7 to be a significant net emission increase.

"State implementation plan (SIP)" means a plan for the attainment of any NAAQS, prepared by a state and approved by the EPA pursuant to Section 110 of the Clean Air Act (42 USC 1857 et seq.).

...

"Sulfur dioxide" or "SO_2" means a gas that has a molecular composition of one sulfur atom and two oxygen atoms.

...

"Total suspended particulate matter" or "TSP" means any air contaminant dispersed in the outdoor atmosphere which exists as solid particles or liquid particles at standard conditions and is

measured in accordance with N.J.A.C. 7:27B-1; 40 CFR 60, Appendix A, Methods 5 through 5H; or another method approved by the Department and EPA.

...

7:27-8.3 General provisions

(a)-(j) (No change.)

(k) Any person holding a permit or certificate may decrease any of the following as an amendment of the permit or certificate, provided that the decrease does not entail any change made to equipment or control apparatus or the use thereof, or otherwise constitute an alteration as defined in N.J.A.C. 7:28-8.1:

1. Any maximum allowable rate of emission of any ***air*** contaminant or category of air contaminant limit;

2. Any maximum allowable hours of operation per time period; or

3. Any maximum allowable rate of production.

7:27-8.4 Applications for Permits and Certificates

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

(f) Upon request of the Department, and in accordance with a protocol approved in advance by the Department, the applicant for a permit shall demonstrate, utilizing an air quality impact analysis conducted in accordance with (k) below and, as deemed necessary by the Department, ambient air monitoring and risk assessment, whether the maximum controlled emissions stated on the permit application may cause:

1.-2. (No change.)

3. An increase in ambient air concentration that equals or exceeds the significant air quality effect level, as set forth in Table 1 of N.J.A.C. 7:27-18.4(a), in a nonattainment area for any air contaminant; or

4. (No change.)

(g)-(i) (No change.)

(j) An applicant for a permit shall conduct an air quality impact analysis in accordance with (k) below if:

1. The application is subject to PSD air quality impact analysis requirements set forth at 40 CFR 52; or

2. The proposed maximum allowable emissions of air contaminant would result in a significant net emission increase, as calculated in accordance with N.J.A.C. 7:27-18.7, and:

i. The facility for which the application is submitted is a major facility; or

ii. The emission increase, proposed in the application for any air contaminant, by itself equals or exceeds the major facility threshold level which determines if a facility is a major facility for that air contaminant, as set forth in the definition of the term "major facility" at N.J.A.C. 7:27-8.1.

(k) An air quality impact analysis shall be conducted in accordance with a protocol approved in advance by the Department. The Department shall not approve a protocol unless it takes all relevant site-specific and general factors into account. These factors include, but are not limited to, a land use analysis, proper consideration of topography, a good engineering practice stack height analysis, use of the most recent version of EPA-approved models, identification of the most appropriate meteorological data, and consideration of all relevant averaging times. The protocol shall document how the person proposes to conduct the air quality impact analysis and how the results of the analysis would be presented to the Department. Technical guidance on the preparation of a protocol and procedures for obtaining approval of a protocol may be requested from:

New Jersey Department of Environmental Protection
and Energy
Air Quality Regulation Program
401 East State Street
Trenton, NJ 08625-0027
Attention: Air Quality Evaluation

7:27-8.24 Certification of information

(a) (No change.)

(b) The following documents shall be additionally certified as set forth in (c) and (d) below:

1. Any permit application which is subject to any PSD requirement or to N.J.A.C. 7:27-18.2 of the emission offset rules; or

2. (No change.)

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

7:27-18.1 Definitions

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

"Actual emissions" means the actual rate of emissions of an air contaminant from a source operation, equipment, or control apparatus. The actual rate of emissions, as of a particular date, shall equal the average rate at which the air contaminant was actually emitted during the two calendar years that are immediately preceding the particular date *[and that]* ***provided these*** are representative of normal source operation. The Department may allow the use of a time period different from this ***two*** year period only upon a determination that the different time period is more representative of normal operation. Actual emissions shall be calculated using the actual operating hours, production rates, and types of materials used, processed, stored, or combusted during the selected time period. Generally, the particular date *[may be]* ***is*** the permit application date *[or other]**, **but may be another*** date specified by the Department. For any equipment, source operation, or control apparatus which has not begun normal operations as of the particular date, the Department shall assume that its actual emissions equal its allowable emissions. Actual emissions shall***, for the purposes of this subchapter,*** be expressed in tons per year.

"Aerodynamic diameter" means the theoretical diameter of a nonspherical particle having the same terminal settling velocity as an equally dense, spherical particle of such diameter.

"Air contaminant" means any substance, other than water or distillates of air, present in the atmosphere as solid particles, liquid particles, vapors or gases.

"Air quality impact analysis" means a procedure, entailing the use of *[a]* ***an*** air quality simulation model, for determining whether air contaminant emissions will result in an ambient air concentration that exceeds a standard established for the protection of human health and welfare and the environment.

"Air quality simulation model" means a *[mathematical]* procedure, taking into account the dispersive capacity of the atmosphere, meteorological data, topography, and other relevant factors, to predict the concentration of an air contaminant in the ambient air. ***Such procedure may entail use of a mathematical model or a physical model.***

"Allowable emission" means the rate at which an air contaminant may be emitted into the outdoor atmosphere. This rate shall be based on the maximum rated capacity of the equipment***,*** unless the equipment is subject to Federally enforceable limits which restrict the operating rate, hours of operations***,*** or both. In such cases this rate is based on the most stringent of the following:

1. Applicable standards of performance for new stationary sources (NSPS) as set forth in 40 CFR 60;

2. Applicable national emission standards for hazardous air pollutants (NESHAP) as set forth in 40 CFR 61;

3. Applicable emission, equipment, and operating standards as set forth in this chapter, including those with a future compliance date;

4. Applicable emission limitations specified in a Federally enforceable permit, including limitations with a future compliance date; and

5. Any emission limitation in an applicable State Implementation Plan (SIP).

"Alter" means to effect an alteration of equipment or control apparatus.

"Alteration" has the meaning as defined for this term at N.J.A.C. 7:27-8.1.

"Alternative fuel" means, with respect to any source operation, any fuel whose use is not authorized by any permit or, for a source operation without a permit, this term means any fuel not used in the source operation since December 21, 1976.

"Ambient air quality standard" means a limit on the concentration of an air contaminant in the general outdoor atmosphere as set forth in N.J.A.C. 7:27-13 or in 40 CFR 50.

"Attainment area" means any area of the State which is not a nonattainment area.

"Banking" means the reservation of creditable emission reductions, pursuant to N.J.A.C. 7:27-18.8, for future use as emission offsets.

"Carbon monoxide" or "CO" means a gas having a molecular composition of one carbon atom and one oxygen atom.

"CAA" means the Clean Air Act as amended November 1990 (42 USC 7401 et seq., as amended by Pub. L. 101-549).

"Complete" means, in reference to an application for a permit, that the application contains all of the information necessary, as determined by the Department, for *[processing]* ***commencing technical review of*** the application. Designating an application complete for purposes of *[permit processing]* ***commencing technical review*** does not preclude the Department from requesting or accepting any additional information.

"Contemporaneous" means, in respect to the construction of new or altered equipment, occurring within a time period which includes:

1. The five years prior to the initiation of the construction; and
2. The period between the initiation of construction and the initiation of operation of that new or altered equipment.

"Control apparatus" means any device which prevents or controls the emission of any air contaminant directly or indirectly into the outdoor atmosphere.

"Creditable emission reduction" means a decrease in actual emissions which meets the conditions listed in 1 through *[6]* ***5*** below. A decrease is a creditable emission reduction only to the extent that the pre-decrease level of actual emissions or the pre-decrease level of allowable emissions, whichever is lower, exceeds the new level of allowable emissions. Decreases in allowable emissions attributable to equipment or control apparatus that was permitted, but never operated, shall not be considered a creditable emission reduction. In order to be a creditable emission reduction, the decrease must be:

[1. Contemporaneous with the construction of the new or altered equipment;]

*[2.]***1.*** Quantifiable;

*[3.]***2.*** Federally enforceable;

*[4.]***3.*** Not required pursuant to any Federal or State law, rule, permit, order, or other legal document;

*[5.]***4.*** Not relied on by the Department in the SIP or any revision thereto, adopted by the Department, to demonstrate attainment or maintenance of a NAAQS or to demonstrate reasonable further progress toward attainment of a NAAQS; and

*[6.]***5.*** Verifiable, to the satisfaction of the Department, to have in fact occurred.

"Criteria pollutant" means any air contaminant for which a NAAQS has been promulgated under 40 CFR 50 or for which a NJAAQS has been promulgated in N.J.A.C. 7:27-13.

"Emission offset" means a creditable emission reduction*[,]* approved by the Department for use to offset an increase in allowable emissions of an air contaminant from a facility.

"Equipment" means any device capable of causing the emission of an air contaminant either directly or indirectly into the outdoor atmosphere, and any stack or chimney, conduit, flue, duct, vent or similar device connected or attached to, or serving the equipment. This term includes, but is not limited to, equipment in which the preponderance of the air contaminants emitted is caused by a manufacturing process.

"Facility" means the combination of all structures, buildings, equipment, storage tanks, source operations, and other operations located on one or more contiguous or adjacent properties owned or operated by the same person.

"Federally enforceable" means all limitations and conditions on operation, production, or emissions which can be enforced by the EPA pursuant to authorities which include, but are not limited to, those established in:

1. Any standards of performance for new stationary sources (NSPS) promulgated at 40 CFR 60;
2. Any national emission standard for hazardous air pollutants (NESHAP) promulgated at 40 CFR 61;
3. Any provision of an applicable SIP; or
4. Any permit issued pursuant to requirements established at 40 CFR 51, Subpart I; 40 CFR 52.21; 40 CFR 70; 40 CFR 71; or this chapter.

"Fugitive emissions" means any emissions of an air contaminant released directly or indirectly into the outdoor atmosphere which do not pass through any stack or chimney.

"Lead" or "Pb" means elemental lead or any compound containing lead.

"Lowest achievable emission rate" or "LAER" means a limitation on the rate of emission from any source operation, equipment, or control apparatus which is consistent with the most stringent of the following:

1. The most stringent emission limitation which is contained in the SIP of any state for such class or category of source operation, equipment, or control apparatus, unless the owner or operator of the proposed new or altered equipment or control apparatus demonstrates to the satisfaction of the Department that such a limitation is not achievable by that equipment or control apparatus;
2. The most stringent emission limitation which is achieved in practice by such class or category of source operation, equipment, or control apparatus; or
3. The most stringent emission limitation established in any NSPS or NESHAP applicable to such class or category of equipment or control apparatus.

"Major facility" means a facility which has the potential to emit any ***of the*** air contaminant***s*** listed below in an amount which is equal to or exceeds the ***applicable*** major facility threshold level given below *[for that air contaminant. A facility that is a major facility in respect to any one air contaminant shall be deemed to be a major facility in respect to all air contaminants listed below]*. The major facility threshold levels are as follows:

Air Contaminant	Major Facility Threshold Level
Carbon monoxide	100 tons per year
PM-10	100 tons per year
TSP	100 tons per year
Sulfur dioxide	100 tons per year
Nitrogen oxides	25 tons per year
VOC	25 tons per year
Lead	10 tons per year

"Minimum offset ratio" means the minimum acceptable ratio of emission offsets to increases in the allowable emissions for a facility.

"Motor vehicle" means a vehicle propelled otherwise than by muscular power, excepting motorized bicycles and such vehicles as run only upon rails or tracks.

"National ambient air quality standard" or "NAAQS" means an ambient air quality standard promulgated at 40 CFR 50.

"NESHAP" means National Emission Standards for Hazardous Air Pollutants as promulgated under 40 CFR 61.

"Net air quality benefit" means, in the area affected by a proposed emission increase of an air contaminant, a net decrease in the ambient concentration of the respective criteria pollutant for the air contaminant.

"Net emission increase" means, in respect to any air contaminant emitted at a facility, an increase calculated in accordance with the procedures set forth at N.J.A.C. 7:27-18.7(a).

"New Jersey ambient air quality standard" or "NJAAQS" means an ambient air quality standard promulgated at N.J.A.C. 7:27-13.

"Nitrogen dioxide" or "NO_2" means a gas that has a molecular composition of one nitrogen atom and two oxygen atoms.

"Nonattainment area" means any area of the State:

1. Identified by the Department as one in which the ambient air concentration of a criteria pollutant exceeds an ambient air quality standard; or

2. Designated by the EPA at 40 CFR 81.331 as an area in which the ambient air concentration of a criteria pollutant exceeds the applicable NAAQS.

[3.] "NSPS" means Standards of Performance for New Stationary Sources as promulgated under 40 CFR 60, commonly referred to as New Source Performance Standards.

"Operating certificate" means a "Certificate to Operate Control Apparatus or Equipment" issued by the Department pursuant to the Air Pollution Control Act of 1954, and in particular N.J.S.A. 26:2C-9.2, which is valid for a period of five years from the date of issuance, unless sooner revoked by the Department.

"Oxides of nitrogen" or "NO_x" means all the oxides of nitrogen including, but not limited to, nitric oxide and nitrogen dioxide, except nitrous oxide.

"Ozone" or "O_3" means a gas having a molecular composition of three oxygen atoms.

"Permit" means a "Permit to Construct, Install, or Alter Control Apparatus or Equipment" issued by the Department pursuant to the Air Pollution Control Act (N.J.S.A. 26:2C-1 et seq.), and in particular N.J.S.A. 26:2C-9.2, and N.J.A.C. 7:27-8.

"Person" means any individual or entity and shall include corporations, companies, associations, societies, firms, partnerships and joint stock companies as well as individuals, and shall also include all political subdivisions of this State or any agencies or instrumentalities thereof.

"Plume rise" means the vertical distance from the point at which an effluent stream is discharged into the outdoor atmosphere to the highest point attained by the center line of the effluent stream.

"PM-10" means a class of air contaminants which includes all particulate matter having an aerodynamic diameter less than or equal to a nominal 10 microns.

"Potential to emit" means the capability of a source operation or of a facility to emit an air contaminant at maximum design capacity, except as constrained by any Federally enforceable condition. Such Federally enforceable conditions may include, but are not limited to, the effect of installed control apparatus, restrictions on the hours of operation, and restrictions on the type or amount of material combusted, stored, or processed. ***This term shall include fugitive emissions, but shall not include secondary emissions.***

"Reasonable further progress" or "RFP" means such annual incremental reductions in emissions to the outdoor atmosphere of an air contaminant as are required by the CAA for the purpose of ensuring attainment of the NAAQS for the respective criteria pollutant by the applicable statutory deadline.

"Resource recovery source" means any equipment used for processing solid waste (including refuse derived fuel and sewage sludge) for the purpose of extracting, converting to energy, or otherwise separating and preparing solid waste for reuse. For the purpose of this subchapter energy conversion equipment must use solid waste to provide more than 50 percent of the heat input to be considered a resource recovery source.

"Respective criteria pollutant" means the corresponding criteria pollutant for each air contaminant listed in Table 3 of N.J.A.C. 7:27-18.7. The following are the air contaminants listed in Table 3, and their respective criteria pollutants:

Category of Air Contaminants	Respective Criteria Pollutant
TSP	TSP
PM-10	PM-10
SO_2	SO_2
CO	CO
NO_x	NO_2 and O_3
VOC	O_3
Pb	Pb

"Secondary emissions" means emissions to the outdoor atmosphere which occur as an indirect result of the construction or operation of new or altered source operations, equipment or control apparatus at a facility and which affect the air quality of the same general area as emissions occurring as a direct result of the new or altered source operation, equipment or control apparatus. This term includes, but is not limited to:

1. Emissions from marine vessels or from vehicles running upon rails or tracks where such vessels or vehicles are associated with the construction or operation of the new or altered source operation, equipment or control apparatus. The term does not, however, include emissions resulting from motor vehicle or aircraft traffic; and

2. Emissions from off-site support facilities which would be constructed or whose rate of emissions would otherwise increase as a result of the construction or operation of the new or altered source operation, equipment, or control apparatus.

"Significant air quality *[effect]* ***impact*** level" means an increase, greater than or equal to that specified in Table 1 at N.J.A.C. 7:27-18.4, in the ambient air concentration of a criteria pollutant.

"Significant net emission increase" means an emission increase of any air contaminant determined pursuant to the procedures set forth in N.J.A.C. 7:27-18.7 to be a significant net emission increase.

"Source operation" means any process or any identifiable part thereof that emits or can reasonably be anticipated to emit any air contaminant either directly or indirectly into the outdoor atmosphere.

"Stack or chimney" means a flue, conduit or opening designed, constructed, or used for the purpose of emitting any air contaminant into the outdoor atmosphere.

"State Implementation Plan" or "SIP" means a plan for the attainment of NAAQS, *[adopted]* ***prepared*** by a state and approved by the EPA pursuant to Section 110 of the Clean Air Act (42 USC 1857 et seq.).

"Sulfur dioxide" or "SO_2" means a gas that has a molecular composition of one sulfur atom and two oxygen atoms.

"Total suspended particulate matter" or "TSP" means any air contaminant dispersed in the outdoor atmosphere which exists as solid particles or liquid particles at standard conditions and is measured in accordance with a test method at N.J.A.C. 7:27B-1; 40 CFR 60, Appendix A, Methods 5 through 5H; or another test method approved by the Department and EPA.

"Transportation control measure" or "TCM" means a measure directed toward reducing air contaminant emissions from motor vehicles. Such measures include those identified in Section 108(f)(1)(A), including the removal from use and the marketplace of pre-1980 model year light duty vehicles and pre-1980 model year light duty trucks.

"Volatile organic compound" or "VOC" shall have the meaning defined for this term at N.J.A.C. 7:27-16.1.

7:27-18.2 Facilities subject to this subchapter

(a) The requirements set forth in this subchapter pertain to certain applications, submitted to the Department pursuant to N.J.A.C. 7:27-8, for a permit to construct, install, or alter control apparatus or equipment at a facility. No person applying for a permit is subject to this subchapter unless either (b) or (c) below applies and:

1. The facility for which the application is submitted is a major facility; or

2. The emission increase *[for any]* ***of an*** air contaminant, proposed in the application ***for a permit***, by itself equals or exceeds the major facility threshold level*[. The major facility threshold level determines if a facility is a major facility]* for that air contaminant *[and is]* set forth in the definition of the term "major facility" at N.J.A.C. 7:27-18.1.

(b) *[Except]* ***For a major facility or a facility for which an emission increase is proposed that exceeds the major facility threshold level,*** as provided in (a) above, a person applying for a permit is subject to this subchapter if any allowable emissions proposed in the application would result in a significant net emission increase of any air contaminant listed in Table 3 of N.J.A.C. 7:27-18.7, and if the facility for which the construction or alteration is proposed is located in an area which is any of the following:

1. Nonattainment for the respective criteria pollutant corresponding to that air contaminant. The respective criteria pollutant for each air contaminant is listed in the definition of the term "respective criteria pollutant" at N.J.A.C. 7:27-18.1;

2. Attainment for the respective criteria pollutant, and both (b)1i and ii below are true:

i. The proposed ***significant net*** emission increase would result in an increase in the ambient concentration of the respective criteria pollutant in an area that is nonattainment for the respective criteria pollutant, as determined by an air quality impact analysis required under N.J.A.C. 7:27-8.4(j); and

ii. The increase in the ambient concentration of the respective criteria pollutant equals or exceeds the significant air quality *[effect]* ***impact*** level specified in Table 1 in N.J.A.C. 7:27-18.4, in the nonattainment area for the respective criteria pollutant; or

3. Attainment for the respective criteria pollutant, and the *[allowable emissions proposed in the application]* ***proposed significant net emission increase would result in an increase in the ambient concentration of the respective criteria pollutant that*** would *[result]**:

i. Equal or exceed the significant air quality impact level; and

ii. Result* in a violation of an applicable NAAQS or NJAAQS, as determined by an air quality impact analysis required under N.J.A.C. 7:27-8.4(j).

(c) *[Except as provided in (a) above]* ***For a major facility***, a person applying for a permit is subject to *[this subchapter]* ***N.J.A.C. 7:27-18.3)(b)1 (LAER) and 2 (compliance certification)***, if:

1. Emission offsets for an air contaminant have been previously required at the facility for which the permit is sought; *[and]*

2. The construction or alteration proposed in the application would***, within the contemporaneous period,*** result in a net emission increase, which is not a significant net emission increase, of *[that]* ***the same*** air contaminant *[within the contemporaneous period]* ***for which offsets were required***. A net emission increase shall be calculated pursuant to N.J.A.C. 7:27-18.7 *[for the air contaminant for which offsets were required.]**; **and**

3. The nonattainment area in which the facility is located (or, in the case of a facility located in an attainment area, the nonattainment area whose air quality would have been impacted by emissions from the facility had emission offsets not been secured) has not been redesignated as being in attainment for the respective criteria pollutant as of the date the permit application is submitted to the Department.*

(d) This subchapter shall not apply to any person applying for a permit, if the allowable emissions proposed in the application would result in no net emission increase, as calculated pursuant to N.J.A.C. 7:27-18.7(a).

7:27-18.3 Standards for issuance of permits

(a) The Department shall not issue a permit to any person subject to this subchapter unless such person has demonstrated that the facility will be in compliance with all of the applicable requirements of this subchapter at the time the new or altered equipment commences operation.

(b) Any person subject to this subchapter pursuant to N.J.A.C. 7:27-18.2(a) and 18.2(b)1, (b)2, or (c), shall:

1. Demonstrate that air contaminant emissions from the equipment proposed to be constructed or altered will be controlled to the degree which represents the lowest achievable emission rate (LAER); and

2. Certify, in accordance with N.J.A.C. 7:27-8.24, that all existing facilities in New Jersey, which are owned or operated by the person applying for the permit, or by any entity controlling, controlled by, or under common control with such person, are operating:

i. In compliance with the provisions of this chapter and with all applicable emission limitations and standards promulgated pursuant to the Federal Clean Air Act; or

ii. In conformance with an enforceable compliance schedule approved by the Department.

(c) Any person subject to this subchapter pursuant to N.J.A.C. 7:27-18.2(a) and 18.2(b)1 or 2 shall:

1. Secure emission offsets, in accordance with N.J.A.C. 7:27-18.5, for each air contaminant having a significant net emission increase at the facility; and

2. Submit to the Department an analysis of alternative sites within New Jersey, and of alternative sizes, production processes***, including pollution prevention measures,*** and environmental control techniques, demonstrating that the benefits of the new or altered equipment significantly outweigh the environmental and social costs imposed as a result of the location, construction or alteration, and operation of the new or altered equipment.

(d) Any person subject to this subchapter pursuant to N.J.A.C. 7:27-18.2(a) and 18.2(b)3 shall secure emission offsets, sufficient to eliminate *[any]* ***the proposed significant net emission increase that has been*** predicted ***to result in a*** violation of the NAAQS or NJAAQS.

(e) Any person required to secure emission offsets pursuant to (c)1 or (d) above shall submit to the Department, as a part of the application for the permit, an emission offset demonstration that specifies:

1. The sources of the air contaminant emission reductions to be applied as emission offsets;

2. How the emission reductions shall be effected;

3. How *[achieving]* the permanent reduction of the emissions on or before the commencement of the operation of new or altered equipment shall be *[ensured]* ***made Federally enforceable***; and

4. How the emission offsets to be secured will comply with N.J.A.C. 7:27-18.5.

(f) No person required to secure emission offsets pursuant to (c)1 or (d) above shall commence operation of any new or altered equipment or control apparatus, until such person secures the required emissions offsets and the emission reductions represented by the offsets have in fact occurred.

(g) A person who, prior to November 15, 1992, has submitted a complete application to the Department for a permit which is subject to this subchapter may elect, under the conditions given below, to have the provisions of this subchapter which were in effect prior to *[the operative date of these amendments]* ***April 20, 1993***, rather than the provisions of the subchapter which are in effect on or after *[the operative date of these amendments]* ***April 20, 1993***, apply to the application. The emission offset postponement provisions, set forth at N.J.A.C. 7:27-18.5 prior to *[the operative date of these amendments]* ***April 20, 1993***, are excluded from this election. The emission offset postponement provisions in effect on or after *[the operative date of these amendments]* ***April 20, 1993***, set forth at N.J.A.C. 7:27-18.6, shall apply to all permits *[which the Department determines to be complete]* ***issued*** on or after November 15, 1992, regardless of the date on which the permit application was submitted. To elect to have the provisions which were in effect prior to *[the operative date of these amendments]* ***April 20, 1993*** apply, a person shall:

1. Have received from the Department in writing, prior to November 15, 1992, a determination that the application is complete;

2. Commence the new construction or alteration as proposed in the application no later than 18 months from the date the permit is issued by the Department;

3. Not discontinue the new construction or alteration for a period of 18 months or more; and

4. Pursue the new construction or alteration with due diligence and complete the new construction or alteration within a reasonable time.

(h) Notwithstanding the provisions of (c) or (d) above, no person is required to secure emission offsets for temporary emission increases that occur during and result directly from the construction or installation of the new or altered equipment or control apparatus.

7:27-18.4 Air quality impact analysis

(a) Any person, subject to this subchapter pursuant to N.J.A.C. 7:27-18.2(a) and (b), who proposes to cause a significant net emission increase of an air contaminant listed in Table 3 of N.J.A.C. 7:27-18.7, not including VOC, shall conduct an air quality impact analysis to determine whether the proposed net emission increase would result in an increase in the ambient concentration of the respective criteria pollutant, not including ozone, and shall determine whether the increase in ambient concentration would:

1. Equal or exceed the significant air quality *[effect]* ***impact*** level for the respective criteria polluant as set forth in Table 1; or

2. Taken together with the existing concentration of the criteria pollutant in the ambient air, cause a violation of a NAAQS or a NJAAQS.

TABLE 1
SIGNIFICANT AIR QUALITY *[EFFECT]* ***IMPACT*** LEVELS FOR INCREASES IN AMBIENT AIR CONCENTRATIONS ***IN*** NONATTAINMENT AREAS

	Averaging Time				
Pollutant	Annual	24-Hour	8-Hour	3-Hour	1-Hour
SO_2	1.0 ug/m³*	5 ug/m³		25 ug/m³	
TSP	1.0 ug/m³	5 ug/m³			
NO_2	1.0 ug/m³				
CO			500 ug/m³		2000 ug/m³
Pb		0.1 ug/m³			
PM-10	1.0 ug/m³	5 ug/m³			

*ug/m³ = micrograms per cubic meter

(b) Any person conducting an air quality impact analysis pursuant to (a) above is subject to the air quality impact analysis service fees set forth in the Supplementary Fee Schedule at N.J.A.C. 7:27-8.11.

7:27-18.5 Standards for use of emission reductions as offsets

(a) Only a creditable emissions reduction, as defined at N.J.A.C. 7:27-18.1, may be used to offset an emission increase. ***Such emission reductions shall be:**

i. Contemporaneous; or

ii. Banked in accordance with N.J.A.C. 7:27-18.8.*

(b) Creditable emission reductions may result from:

1. Installing control apparatus to decrease the actual emissions from existing equipment or source operations;

2. Applying fugitive emissions control measures which reduce the rate of actual emissions to less than the allowable emissions;

3. Obtaining emission reductions banked pursuant to N.J.A.C. 7:27-18.8;

4. Permanently curtailing the ***actual*** production rate or operating hours of an existing source operation;

5. Implementing one or more transportation control measures (TCM);

6. Shutting down an existing source operation; ***or***

7. Adopting any other measure approved by the Department, including, but not limited to, pollution prevention measures, that reduces the rate of actual emissions or allowable emissions, whichever is lesser.

(c) ***Any use of emission reductions to offset an emission increase shall result in a net air quality benefit.*** Except as provided in (e), (f) or (g) below, ***such net air quality benefit shall be demonstrated by showing that*** the ratio of emission offsets to the proposed net increase in allowable emissions *[shall exceed]* ***equals or exceeds*** the minimum offset ratio, specified in Table 2 below, that is applicable based on the distance between the facility and the location of the emission reductions being proposed as emission offsets.

TABLE 2
MINIMUM OFFSET RATIO

Air Contaminant	Distance (miles)	Minimum Offset Ratio (Reductions: Increase)
VOC	0-100	1.3:1.0
	100-250	2.6:1.0
	250-500	5.2:1.0
NO_x	0-100	1.3:1.0
	100-250	2.6:1.0
	250-500	5.2:1.0
SO_2	0-0.5	1.0:1.0
	0.5-1.0	1.5:1.0
	1.0-2.0	2.0:1.0
TSP	0-0.5	1.0:1.0
	0.5-1.0	1.5:1.0
	1.0-2.0	2.0:1.0
PM-10	0-0.5	1.0:1.0
	0.5-1.0	1.5:1.0
	1.0-2.0	2.0:1.0
CO	0-0.5	1.0:1.0
	0.5-1.0	1.5:1.0
	1.0-2.0	2.0:1.0

(d) The minimum offset ratio for lead is 1.00:1.00.

(e) The Department may *[approve]* ***accept as showing a net air quality benefit*** a lower minimum offset ratio or a greater distance than that specified in Table 2 if:

1. The Department determines that reasonable further progress toward attainment of the NAAQS or NJAAQS allows a lower minimum offset ratio or greater distance; or

2. The applicant demonstrates to the Department, using an air quality simulation model, that the lower emission offset ratio or greater distance would result in a net air quality benefit.

(f) Notwithstanding (e) above, in no case shall the minimum offset ratio be less than:

1. For CO, 1.00:1.00; and

2. For VOC and NO_x, 1.30:1.00.

(g) Creditable emission reductions may be used as emission offsets only if they are emission reductions of the same category of air contaminant, and must be qualitatively equivalent in their effects on public health and welfare to the effects attributable to the proposed increase.

(h) Reductions in emissions of VOC or NO_x between November 1 and March 31 inclusive, may not be used to offset increased emissions of VOC or NO_x emitted between April 1 and October 31 inclusive.

(i) Emission reductions used previously as emission offsets, or used in calculating the proposed net emission increase, in accordance

with N.J.A.C. 7:27-18.7(a)1, may not be used again as emission offsets.

(j) Except as provided in (k) below, the emission reductions used to offset emission increases shall*, **unless the facility for which the emissions increase is proposed is located in an attainment area,*** be secured from *[the affected nonattainment area. That is, if the facility at which the emission increase is to occur is located in a nonattainment area, the emission reductions shall be secured at]* the applicant's facility or from another facility located in the same nonattainment area as the applicant's facility. *[If]* ***In a case where*** the facility at which the emissions increase is to occur is located in an attainment area, the emission reductions shall be secured from a facility in the nonattainment area whose air quality could be adversely affected by the proposed construction or alteration. ***In both cases, if the area has been designated a nonattainment area by EPA pursuant to 40 CFR 81.331, the emission reductions shall be secured from the same Federally-designated nonattainment area.***

(k) Any emission offsets for lead shall be obtained from:

1. The facility to which the application for a permit pertains; or

2. *[A]* ***Another*** facility which *[is causing]* ***significantly contributes to the same violation of*** the NAAQS or NJAAQS for lead *[to be exceeded]* in the same *[general area]* ***nonattainment area*** as the facility for which an application for a permit has been made.

7:27-18.6 Emission offset postponement

(a) If the Department has authorized a postponement before *[the operative date]* ***April 20, 1993*** of these amendments, for complying with N.J.A.C. 7:27-18.3(c)1 or (d), to any person, the postponement will continue in effect until one year after the emission offsets become available, provided that the person complies with (b) below.

(b) Until emission offsets become available, any person who has received a postponement described in (a) above shall demonstrate to the Department annually that emission offsets are unavailable and shall certify that demonstration in accordance with N.J.A.C. 7:27-8.24.

(c) Any person who has received a postponement described in (a) above shall obtain emission offsets within one year after they become available.

(d) A postponement shall terminate if a person fails to comply with (b) or (c) above.

7:27-18.7 Determination of a net emission increase or a significant net emission increase

(a) Any calculation to determine whether the maximum allowable emissions proposed in an application for a permit would result in a net emission increase or a significant net emission increase at the facility of any air contaminant listed in Table 3 below shall be conducted in accordance with the following:

1. Determine the net emission increase of each air contaminant listed in Table 3 using the following formula:

$$NI = IP + INP + IF + IA - DO - DC$$

Where:

NI = The net emission increase at the facility;

IP = Any increase(s) in the allowable emissions of the air contaminant which occurred during the contemporaneous period and which were authorized by permits issued by the Department;

INP = Any increase(s) in the allowable emissions of the air contaminant which occurred during the contemporaneous period and which came from any equipment or control apparatus for which no permit was in effect at the time of the increase;

IF = Any increase in fugitive emissions of the air contaminant from the facility during the contemporaneous period;

IA = Any proposed increase in allowable emissions of the air contaminant from the new or altered equipment or control apparatus which is the subject of the permit application;

DO = Any increase(s) in the allowable emissions of the air contaminant which occurred during the contemporaneous period, if emission offsets were secured for these increases from the facility or from another facility; and

DC = The sum of all creditable emission reductions at the facility during the contemporaneous period, not including any creditable emission reductions previously used as emission offsets at the facility or any other facility.

2. Compare the net emission increase of each air contaminant, derived pursuant to (a)1 above, to the significant net emission increase level for that air contaminant set forth in Table 3 below. If the net emission increase is equal to or greater than the applicable significant net emission increase level, it is a significant net emission increase.

TABLE 3
SIGNIFICANT NET EMISSION INCREASES

Air Contaminant	Significant Net Emission Increase Levels (tons per year)
SO_2	40
TSP	25
PM-10	15
NO_x	25
CO	100
Pb	0.6
VOC	25

7:27-18.8 Banking of emission reductions

(a) Any person may apply to the Department for the banking of emission reductions to be applied in the future as emission offsets. The applicant shall make the application in writing, submitted on a form obtained from the Department, containing the following information: name and address of person making the application; chemical name of air contaminant; quantity of emission reductions with supporting calculations and documentation; reason for the emission reduction; specification of the equipment or source operations related to the emission reductions; and any additional information reasonably necessary to enable the Department to determine that a creditable emission reduction has been achieved. Such a form may be requested from:

New Jersey Department of Environmental Protection
and Energy
Air Quality Regulation Program
Bureau of New Source Review
CN 027
Trenton, New Jersey 08625-0027

(b) Any application for the banking of emission reductions shall be certified in accordance with N.J.A.C. 7:27-8.24.

(c) An application to bank emission reductions shall be made no later than 12 months after the emission reduction occurs. No emission reductions due to the shutdown of any equipment or source operation shall be eligible for banking, unless the applicant notifies the Department at least 60 days prior to removal of the equipment and provides the Department with the opportunity to inspect the equipment or source operation at least 30 days before it is dismantled.

(d) Any emission reductions submitted to the Department for banking*[,]* shall*, **upon their approval by the Department for banking,*** be an enforceable operating restriction for the facility.

(e) If a State or Federal statute, rule, or regulation decreases an allowable emission limit for an air contaminant, the value of any banked emission reductions of that air contaminant shall be reduced, before discounting pursuant to (f) or (g) below, to equal the allowable emission limits in effect at the time the banked emission reductions are used to offset emission increases. The following example illustrates this reduction:

1. Assume that a CO reduction of 10 tons per year is approved for banking, and that seven years after that approval, the CO limit applicable to the equipment is reduced to four tons per year;

2. If the banked emission reduction is used five years after it was approved for banking, under (f) below its value is discounted by 50 percent, to five tons per year; and

3. If the banked emission reduction is used eight years after it was approved for banking (which is after the date of the change in the applicable CO limit), its value is reduced to two tons per year, as follows: first, from 10 tons per year to four tons per year, to reflect the reduction in the applicable CO limit; and second, from four tons per year to two tons per year, to reflect the 50 percent discount under (f) below.

(f) The value of banked emission reductions obtained from the shutdown or curtailment of operation of any equipment or source operation which remain unused as emission offsets for more than five years after the date the emission reduction is submitted for banking shall be discounted by 50 percent. *[The]* ***As of the date five years after the date of submittal for banking, the*** discounted portion of the banked emission reductions may no longer be used as an emission offset ***by the applicant or by any person to whom the banked emission reductions may have transferred by the applicant***, but shall revert to the State.

(g) Any banked emission reductions obtained from the shutdown or curtailment of operation of any equipment or source operation which remain unused as emission offsets for 10 years after the date they have been submitted for banking, shall revert to the State. *[These]* ***As of the date 10 years after the date of submittal for banking, these*** emission reductions may no longer be used as emission offsets ***by the applicant or by any person to whom the banked emission reductions may have transferred by the applicant***.

(h) Any discount of or reduction in the value of banked emission reductions pursuant to (e), (f) or (g) above shall take effect without further action by the Department.

(i) For the purposes of the discounting provisions set forth in (f) and (g) above, the Department shall treat any emission reductions which have been submitted for banking prior to *[the operative date of these amendments]* ***April 20, 1993***, as if they were submitted for banking on *[the operative date of these amendments.]* ***April 20, 1993.***

(j) Any person applying for banking of emission reductions pursuant to this section is subject to the service fees for banking set forth in the Base Fee Schedule at N.J.A.C. 7:27-8.11.

7:27-18.9 Secondary emissions

(a) Any person subject to this subchapter pursuant to N.J.A.C. 7:27-18.2(a) and 18.2(b)1, (b)2, or (c) shall certify that any increases in secondary emissions under the person's control will meet all requirements of N.J.A.C. 7:27-18.3.

(b) Any person subject to this subchapter pursuant to N.J.A.C. 7:27-18.2(a) and 18.2(b)1, (b)2, or (c) shall certify that any increases in secondary emissions not under the person's control will meet the requirements of only N.J.A.C. 7:27-18.3(c)1.

(c) The certifications required under (a) and (b) above shall be submitted with the permit application and shall be made in accordance with N.J.A.C. 7:27-8.24.

7:27-18.10 Exemptions

(a) If a person demonstrates that a proposed significant net emission increase of an air contaminant which results from the use of alternative fuels in existing fuel burning equipment will not cause an exceedance of the significance level for the respective criteria pollutant in a nonattainment area for that pollutant, and will not prevent reasonable further progress toward attaining any NAAQS, the Department may, in its discretion, exempt the person from compliance with the provisions of this subchapter. No exemption shall be granted unless the person demonstrates, at a minimum, that:

1. The equipment was capable of burning the alternative fuel before December 21, 1976; or

2.-3. (No change.)

4. The alternative fuel is to be used by reason of an order or rule issued under Section 125 of the Clean Air Act.

(b) N.J.A.C. 7:27-18.3(c)1 does not apply to any person submitting an application for:

1. Portable facilities which will be relocated outside of a nonattainment area within six months of commencement of operation; or

2. Temporary source operations which produce an experimental product, and which cease operation within six months of commencement of operation.

(c) The exemption in (b) above may not be applied to the same portable facility or temporary source operation more than once within the lifetime of the portable facility or temporary source operation.

7:27-18.11 Procedures for interstate and intrastate trading

(Reserved.)

7:27-18.12 Civil or criminal penalties for failure to comply

The owner or operator of any facility subject to this subchapter shall be responsible for ensuring compliance with all requirements of this subchapter. Failure to comply with any provision of this subchapter may subject the owner or operator to civil penalties in accordance with N.J.A.C. 7:27A-3 and applicable criminal penalties, including, but not limited to, those set forth at N.J.S.A. 26:2C-19(f)1 and 2. If there is more than one owner or operator of a facility, all owners and operators are jointly and severally liable for such civil *[and criminal]* penalties.

(a)

POLICY AND PLANNING

Emission Statements; Confidentiality

Adopted New Rules: N.J.A.C. 7:27-1.6 through 1.30 and N.J.A.C. 7:27-21

Adopted Amendments: N.J.A.C. 7:27-1.4, 8.4, 8.24, 16.9 and 7:27A-3.10

Adopted Repeals: N.J.A.C. 7:27-8.14 through 8.23

Proposed: September 8, 1992 at 24 N.J.R. 2979(a).

Adopted: February 19, 1993 by Scott A. Weiner, Commissioner, Department of Environmental Protection and Energy.

Filed: February 22, 1993 as R.1993 d.128, **with substantive and technical changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 13:1B-3, 13:1D-9, and 26:2C-1 et seq., in particular N.J.S.A. 26:2C-9(c) and 19.

DEPE Docket Number: 35-92-08.

Effective Date: March 15, 1993.

Operative Date: April 20, 1993.

Expiration Date: N.J.A.C. 7:27A, December 4, 1994;
N.J.A.C. 7:27, Exempt.

Summary of Public Comments and Agency Responses:

The New Jersey Department of Environmental Protection and Energy (the Department) is adopting rules at N.J.A.C. 7:27-21, entitled, "Emission Statements" (subchapter 21). These new rules establish reporting requirements for facilities which emit or have the potential to emit threshold quantities of the following criteria pollutants: volatile organic compounds (VOC), oxides of nitrogen (NO_x), carbon monoxide (CO), sulfur dioxide (SO_2), total suspended particulate matter (TSP), respirable particulate matter (PM_{10}), and lead (Pb). The reporting required pursuant to these rules will satisfy the emission statement requirements and emission inventory reporting requirements of the Federal Clean Air Act (CAA), 42 USC 7401 et seq., and its annual point source reporting requirements. The emission statement requirements are set forth at Section 182(a)(3)(B) of the Clean Air Act Amendments of 1990 (CAAA), 42 USC 7511a(a)(3)(B) of the Clean Air Act (CAA). The emission inventory requirements are set forth at Section 182(a)(3)(A) of the CAAA. The annual point source reporting requirements are set forth at 40 CFR 51.321-323. The Department has merged in these rules the mission statement requirements with the emission inventory reporting requirements and the annual point source reporting requirements in order to eliminate duplication of reporting. Penalties associated with violations of subchapter 21 are adopted at N.J.A.C. 7:27A-3.10.

The Department is repealing the rules on confidentiality at N.J.A.C. 7:27-8.14 through 8.23 and adopting new confidentiality rules at N.J.A.C. 7:27-1.6 through 1.30. These new confidentiality rules are consistent with the confidentiality rules for discharges of petroleum and other hazardous substances at N.J.A.C. 7:1E-7 through 10, but contain provisions tailored to the air program. The new confidentiality rules apply to all confidentiality claims under New Jersey's Air Pollution Control Act (the Act) and to all rules, orders, and other documents under the Act, including, but not limited to, the provisions of subchapter 21.

A public hearing was held on October 9, 1992, at the Department's hearing room at 401 East State Street in Trenton, New Jersey to provide interested parties the opportunity to comment on the proposal. The comment period closed on October 23, 1992. The Department received written comments from 23 persons. One person presented both written and oral comments. One person presented only oral testimony at the public hearing. The commenters were as follows:

1. Neale R. Bedrock; Lowenstein, Sandler, Kohl, Fisher and Boylan
2. Jeffrey Callahan, Executive Director; Union County Utilities Authority
3. Daniel Caramagno, Environmental Engineer; Schering Laboratories
4. Vincent T. Dee, Safety and Environmental Staff Advisor; Exxon Research and Engineering Company
5. Thomas J. Detweiler, Associate Director; Chemical Industry Council of New Jersey
6. Richard Dunk, Senior Environmental Engineer; Jersey Central Power and Light Company
7. D.D. Esch—Bayway Refinery; Exxon Company, U.S.A.
8. Margaret K. Hopkins, Environmental Control Engineer; Ford Motor Company
9. Larry Karas, Environmental Supervisor; Hoechst Celanese Corporation
10. J.A. Keleher, Director; Cherry Hill Public Schools
11. James W. Klickovick, Project Supervisor—Environmental Affairs; Atlantic Electric
12. Diane M. Krell, Environmental Engineer—Manufacturing Division; Merck & Company, Incorporated.
13. Martin E. Mengel, Senior Environmental Specialist; Buckeye Pipe Line Company
14. Richard A. Monkaba, Plant Manager—Linden Assembly; General Motors Corporation
15. Hassan Nekoui, Manager—Environmental Services (Air); Sandoz Pharmaceuticals Corporation
16. Leslie Sue Ritts; Chadbourne and Parke
17. William E. Ryan, M.D., President; Medical Society of New Jersey
18. James A. Shissias, General Manager—Environmental Affairs; Public Service Electric and Gas Company
19. Conrad Simon, Director—Air and Waste Management; United States Environmental Protection Agency Region II
20. William Sullivan, Esq.; Edward Lloyd, Esq.; Stephan Smithson; Rutgers Environmental Law Clinic
21. Barbara Warrin, Project Coordinator—NY Air Toxics Project; Consumer Policy Institute
22. Marissa Wieczorek, Environmental Specialist; Princeton University—Plasma Physics Laboratory
23. Paul E. Wyszkowski, Manager—Environmental Management Department; American Telegraph and Telephone Bell Laboratories

The following is a summary of the comments received on the proposal and the Department's responses. The comments are grouped into the following categories: General (Comments 1-24); Confidentiality Issues (Comments 25-39); Certification Issues (Comments 40-48); Definition of "Emissions Information" at N.J.A.C. 7:27-1.4 and 21.1 (Comments 49-53); N.J.A.C. 7:27-21.1, Definitions (Comments 54-77); N.J.A.C. 7:27-21.2, Applicability (Comments 78-89); N.J.A.C. 7:27-21.3, General provisions (Comments 90-93); N.J.A.C. 7:27-21.4, Procedures for submitting an emission statement (Comments 94-95); N.J.A.C. 7:27-21.5, Required contents of an emission statement (Comments 96-140); N.J.A.C. 7:27-21.6, Issues related to research and development facilities (Comment 141); and N.J.A.C. 7:27-21.6, Recordkeeping requirements (Comment 142). The number(s) in parentheses after each comment identifies the person(s), as listed above, who provided comment.

General

1. COMMENT: This commenter indicated endorsement of the proposed rules, expressing the belief that the rules do not impose burdensome compliance requirements beyond those which are Federally mandated, supporting the designated contaminant threshold levels, supporting the provisions which aid businesses, including small businesses, and lauding the high degree of public input solicited by the Department. (17)

This commenter supports the Department in its proposal to consolidate other emissions reporting requirements, such as the periodic ozone and carbon monoxide emission inventories and annual point source reporting requirements, into its emission statement program. (19)

RESPONSE: The Department recognizes and appreciates support of these rules.

2. COMMENT: These commenters commend the Department for the manner in which it has undertaken its rulemaking process, applauding the utilization of the informal workshops and meetings held to enable a sharing of ideas and information. They indicated that this type of process is helpful and educational to both industry and the Department and sincerely hope that future regulatory undertakings will follow a similar format. (5) (7) (17)

RESPONSE: The Department appreciates support of the public participation process, and has found workgroups to be an effective and informative part of the public participation process. The Department will continue to strive for a high degree of input from the regulated community and from interested parties during the development of rules in order to achieve sound environmental goals without placing unreasonable or ineffective requirements on the regulated community. The Department intends to continue working with the workgroup to discuss and resolve issues related to the implementation of the emission statement program.

3. COMMENT: Since subchapter 21 does not include the actual report forms or the format to be used by industry to complete the emission statement, the Department should be required to make the forms that will be used for reporting available for comments. (12)

RESPONSE: The Department has held workgroup meetings in order to receive comments on the format of the emission statement that will be used pursuant to this rule. The Department informed the workgroup members involved in the pre-proposal workshops and provided notice at the public hearing that it would hold these workshops. The workgroups were held on October 21, 1992 and January 21, 1993. The Department appreciates the opportunity to work with the regulated community and interested parties in this manner and has found the workshops to be a successful way to achieve regulatory goals while addressing the concerns of workgroup members. The Department appreciates the cooperation and valuable input it has received from all workgroup members.

4. COMMENT: Appropriate emission statement forms should be incorporated into and as part of the proposed rules. (12) (13)

RESPONSE: Copies of the emission statement forms for 1992 calendar year information, due in 1993, and instructions are published in a Guidance Document available from the Department. Please note that pre-printed forms, including information the Department has on record for each facility, were mailed to all facilities that the Department has identified to date as being subject to these rules. These forms were mailed on February 26, 1993. As stated at N.J.A.C. 7:27-21.4(c), emission statement forms must be obtained from the Department; facsimiles of the emission statement forms will not be accepted. If one believes that one's facility is subject to the requirements of these rules and has not received the forms by March 5, 1993, please contact the Department in order that an emission statement form and instructions may be sent.

5. COMMENT: It would be useful to have the number and type of specific processes for a particular facility listed first in the emission statement, that is, cleaning, coating, spray painting, drying, etc. Then the emission characterization for each specific process can be described and quantified. This will be helpful in comparing various processes across facilities for emission amounts and levels of control. (21)

RESPONSE: The emission statement forms address this concern. Form A, Part 2, lists all the specific source operations the Department has on record for a facility; and Form A, Part 3, allows a facility to list additional source operations not listed on Form A, Part 2. Form A, Part 4, is for reporting fugitive emissions and laboratory hoods. Form B is for fuel combustion operations. Form C is for storage tank operations. Form D is for batch operations. Form E is for surface coating operations. Form F is for miscellaneous operations. Form G is for wastewater treatment systems. And Form H is for landfill operations. These forms are very similar to the 1990 emission inventory surveys. The Department believes that tailoring different forms for different types of operations aids both the facility in completing the forms and the Department in processing the forms.

6. COMMENT: The Department should provide specific types of facilities (especially those with large above-ground storage tanks) with

a computer diskette containing a program approved by the Department for computing (and storing) emissions data such as an AP-42 program. Menu items such as SCC code choices should be made available within the program for the final report/printout. After data input, the program should print out the emission statements which could, in turn, be electronically transferred to the Department. The Department should develop their own programs or approve those that are available on the market. The Department's efforts to conform with the Federal Paperwork Reduction Act are appreciated. (13)

RESPONSE: It is the goal of the Department to provide this type of information to the regulated community, but such computer programs will not be available for the first year that emission statements are due. The Department is also considering implementing techniques that would allow the electronic submission of emission statements, allow the submission of emission statements on computer diskettes and provide facilities with standard emission factors and calculations. Electronic data submission is an endeavor that is not fully developed; accordingly, the Department will implement an electronic submittal program in 1994 or 1995. However, through the workgroup, the department has identified seven large facilities that have agreed to join a "pilot" program for electronic submittal. These facilities will receive a diskette containing the emission statement database format and will "dump" their data into the diskette. Because this is a pilot program, the number of participants needs to be kept at a minimum. Therefore, the Department is not prepared to accept any additional participant in this pilot program. This pilot program is not user-friendly, but is the first step in developing a full-fledged electronic data submission method in the future.

Reducing the amount of paperwork would be beneficial for both the regulated community and the Department. The Department continues to seek comment and advice on this issue in order that the Department might expedite such a program.

7. COMMENT: Will assistance be provided as indicated? (10)

RESPONSE: The Department will provide telephone hotline support to answer questions regarding completion of the emission statements. Support will be available between March 1, and May 28, 1993, by calling (609) 292-6722 between 10 A.M. and 4 P.M. on weekdays, except State holidays.

8. COMMENT: The Department states that the use of this data will be one component of the State Implementation Plan (SIP) process in order to prepare emissions inventories. We would recommend that the Department add some mechanism of regularly auditing stationary facilities to determine accuracy of reporting. And when California performed audits they found large discrepancies in surveyed responses and actual emissions. (21)

RESPONSE: As part of the Department's normal inspection process, most major facilities are inspected annually; some of these inspections will include verification of submitted emission statement data. Additionally, the Department will analyze the data entered into its database; data which is outside expected bounds will also trigger an audit.

9. COMMENT: Emissions from electric generating facilities are generally the products of fuel combustion (that is, coal, oil or gas). Reference Method testing, calculations incorporating fuel quality and usage, or using documented emission factors are reasonable means (in descending order of accuracy) for identifying and quantifying the emissions of air contaminants required to be reported (N.J.A.C. 7:27-21.2, Applicability, Table 1). However, PM_{10} characterization may present a problem. Particle size distributions of various types of combustion sources (for example, boilers, combustion turbines) for different operating conditions are not well-documented. Furthermore, several existing sources have stack (duct) configurations that are not conducive to the flow criteria necessary to determine representative particle size distribution profiles. Therefore, it is suggested to delete the PM_{10} requirement from the emissions reporting regulations unless enough valid data can be accumulated to justify its inclusion. As an alternative, the Department could require facilities that are major particulate emitters to install and operate ambient PM_{10} monitors in certain maximum impact locations. A data base could then be established that would relate reported TSP (total suspended particulates) emissions to meteorological conditions to ascertain if reporting PM_{10} emissions is justified. If ambient PM_{10} concentrations comply with AAQS, it would appear that PM_{10} emissions reporting would not be necessary. The use of TSP as a surrogate for PM_{10} should then satisfy the Federal reporting requirements. (6)

If PM_{10} is a component of TSP (Total Suspended Particulate), why must an entity report both components separately? Many of the current Certificates to Operate do not specify PM_{10} emissions separately. As a result, this rule could force additional, costly testing for that component of TSP. The fact that PM_{10} is a component of TSP could, in fact, confuse the inventory of particulate matter by introducing the possibility of double counting those emissions. (11)

RESPONSE: PM_{10} is a component of TSP; although both are criteria pollutants which have separate Ambient Air Quality Standards. These rules require the reporting of PM_{10} pursuant to the provisions of the Annual Point Source requirements at 40 CFR 51.321-323. Whether or not ambient air quality standards are met, facility specific ambient PM_{10} monitors would not provide the specific information which is required to be submitted. Therefore this requirement cannot be deleted. However, information regarding PM_{10} emissions is not required to be submitted until 1994, for the emissions of 1993.

Performing stack tests for PM_{10} is not the only acceptable means to calculate PM_{10} emissions. AP-42 has PM_{10} emission factors for selected source operations. The Department will provide additional guidance on acceptable methods to calculate PM_{10} emissions in the instructions for the emission statement to be submitted in 1994.

10. COMMENT: This commenter appreciates the opportunity to submit comments regarding the above-referenced proposed rules. In general, this commenter supports the proposal, but stresses the importance of consistency with EPA guidance on Section 182(a)(3)(B) of the CAAA. This commenter recognizes that the proposed rules are designed to accomplish a broader range of objectives, but consistency with EPA guidance, where relevant, aids efficiency in emission inventory design for multi-state operations. (8)

RESPONSE: The Department has made a sincere effort to develop these rules as consistently as possible with the EPA guidance. Even though these rules are designed to accomplish a broader range of objectives than Section 182(a)(3)(B) of the CAA amendments of 1990, 42 USC 7511a(a)(3)(B), the parts of these rules relevant to that section are consistent with EPA guidance. Because of the broader range of objectives, additional requirements, consistent with the Federally mandated emission inventory program and consistent with the annual point source surveys, have been incorporated into these rules.

11. COMMENT: The Department has specified in the preamble that these rules are based upon draft EPA guidance for emissions statements. However, the Department is designing these rules to accomplish a broad range of objectives than the EPA guidance. Unfortunately, the Department anticipates developing the annual emissions statement reporting forms based upon final EPA guidance and the 1990 emissions survey forms. In light of the fact that the EPA guidance is not final, the Department and the regulated community would be better served if these rules were to address the minimum reporting requirements until such time as the EPA has issued final guidance. Such an approach could potentially avoid conflict and allow the regulated community more time to react to this proposed rule, thereby assuring better accuracy of emissions statements. (11)

RESPONSE: The requirements of 40 CFR 51.321-323, and Section 182(a)(3)(B) and Section 182 (a)(3)(A) of the CAAA and associated guidance documents are available and were used in developing the emission statement program. These rules only require information pursuant to these current requirements. EPA's emission statement guidance is not expected to change significantly, and the Department is confident that the latest draft guidance from EPA is an appropriate basis for these rules. The Department and EPA have discussed issues regarding program design to ensure conformity with final guidance. If EPA's guidance changes significantly, the Department will propose amendments to N.J.A.C. 7:27-21.

The Department was required to adopt these rules as part of New Jersey's State Implementation Plan (SIP) by November 15, 1992. If the Department did not adopt these rules by May 15, 1994, New Jersey would be subject to severe penalties which could have included loss of Federal highway funds. The administrator of EPA Region II wrote a letter to the Governor of New Jersey on January 15, 1993. This letter states that if the Department did not adopt the emission statement rule and submit it to EPA by February 22, 1993, EPA would have published a notice in the Federal Register stating that New Jersey had failed to meet this SIP requirement. Therefore, the Department has no latitude in delaying these requirements another year. However, as stated in the response to Comment 95 below, the Department has extended the 1993 submittal date from April 15 to May 31 in order to allow facilities at least 90 days to complete the emission statement and submit it to the Department.

12. COMMENT: Will all the states in the Ozone Transport Region use a similar reporting format? Agreement among the states on records such as these might make everyone's work easier when you are doing complex ozone models. (21)

RESPONSE: The Department has shared the proposed rules, adopted rules, draft forms and final forms with the Mid-Atlantic Regional Air Management Association (MARAMA) and the North East States for Coordinated Air Use Management (NESCAUM) in the spirit of interstate cooperation and in the hopes that other states would use them to develop programs consistent with New Jersey's.

13. COMMENT: After comparing the proposal with requirements of the Federal Operating Permit Rule (40 CFR 70), two commenters have found significant differences between the two and recommends that the Department adopt its emission statement rule to closely follow 40 CFR 70 in order to avoid duplication of effort. (3) (5)

RESPONSE: These rules are modelled upon EPA guidance for the emission statement requirements pursuant to Section 182(a)(3)(B) of the CAAA, 42 USC 7511a(a)(3)(B). The Department has attempted to minimize duplication of effort by merging the requirements of the emission inventory and the annual point source reports required at 40 CFR 51.321-323. The Department is currently developing a proposal for operating permits pursuant to 40 CFR 70 and expects to propose the rules in mid-1993. In this future regulatory action, the Department will attempt to reconcile any differences between N.J.A.C. 7:27-21 and the operating permit rules and eliminate any unnecessary duplication of reporting requirements. If necessary, the Department will amend N.J.A.C. 7:27-21 when proposing its rules pursuant to 40 CFR 70.

14. COMMENT: Subchapter 21 requires reporting of actual emissions. Pending Operating Permit requirements may be based on maximum allowable emissions which could be substantially higher than actual emissions. Although we are in concurrence with the Department that permits should allow for maximum or "potential" emissions to account for possible operational/combustion fluctuations, emission fees should be based on actual emissions reported under subchapter 21. A company should not be penalized by being assessed fees on emissions that did not occur. (6)

RESPONSE: The operating permit rule is expected to be proposed in mid-1993. A number of alternatives are under consideration at this time as to the basis for these fees, including basing the fees on actual emissions. An opportunity for comment will be provided when those rules are proposed.

15. COMMENT: Will fees be waived for public agencies? Will fees be based upon the size of the plant and the potential for environmental contamination? (10)

RESPONSE: These rules do not require fees to be paid to the Department. However, as mentioned in the previous response, fees pursuant to the future operating permit requirements is expected to be proposed by mid-1993. Comment will be accepted on these issues when the operating permit rules are proposed.

16. COMMENT: These commenters indicate that the requirements found within the proposed rules (and other rules) create duplication of effort by requiring multiple reports on similar materials or information, often with different due dates. Some examples of other reporting requirements include the Federal Superfund Amendments and Reauthorization Act Section 313 (SARA 313) reports and the Department's Annual Batch Plant reporting requirement. By consolidating reporting efforts across all divisions of the Department, industry would be able to streamline their work, and it would be possible to avoid duplication of effort for both the Department and the regulated community. Accordingly, facilities would be able to collect and calculate all information at one time and submit all required information on one due date. (5) (12)

RESPONSE: Although the Department agrees that combining all reporting requirements of the Department would reduce duplication of effort for both industry and the Department, it is not within the Department's means to do so at this time. In particular, over the past year, the Department made a conscious effort to combine the emission statement requirements with New Jersey's Community Right to Know Program. In this attempt, the Department identified significant obstacles. For example, the required dates for submission differed, the applicability criteria for reporting is significantly different, and the two databases in which the information is stored currently do not have the ability for information exchange. Also, the required contents of these two reporting requirements are quite different. The Department is committed to resolve these problems and is working toward achieving this objective. One step the Department is currently taking to reduce duplicative reporting is the development of the Air Information Management System (AIMS). This new air pollution computer system is being designed to overcome some of these problems. The Department is currently evaluating how to merge as many reporting requirements as possible in order to reduce duplication of effort.

In addition, the Department is developing a program for facility-wide multimedia permits. This program may prove to be an appropriate vehicle for coordinating multimedia reporting requirements.

17. COMMENT: These commenters indicate that the Department's estimated cost to comply with subchapter 21 (cited in the Economic Impact statement in the proposal document) is too low, especially because there is no de minimus level for source operations. Based on the cost to complete the 1990 Emission Inventory Survey, to include all sources would multiply reporting costs three to five times. Further, these costs represent the reworking of existing data already reported under batch, pilot plant and non-reactive permits. This reworking of data is impractical and can increase the chances for error. It is recommended that the emission statement format reflect the permit formats. Thus, treating a non-reactive process, pilot plant or batch plant as a source for reporting will reflect the 40 CFR Part 70 permit system. (3) (5)

RESPONSE: The rules include a provision that gives facilities an option to minimize the cost of reporting emissions from small source operations, N.J.A.C. 7:27-21.5(i). This option may reduce the economic burden of reporting sources of emissions that are relatively small compared to a facility's potential to emit. The emission statement forms have been revised from the 1990 emission inventory survey forms to address the concerns regarding batch processes. Form D has been designed for batch processes. The required information more closely parallels the information reported for batch permits. By allowing an option for facilities to report small source operations and by creating a form specifically for batch processes, the Department believes that it has significantly reduced the burden on facilities which must submit emission statements to the Department. The Department will continue to solicit input from all in order to improve the emission statement program to reduce the burden while ensuring the appropriate environmental objectives are met.

18. COMMENT: Is consideration being given to organizations that have converted boilers that burn heavy fuel (for example, no. 6 fuel oil) to cleaner burning Natural Gas, thereby greatly reduce NO_x pollution? (10)

RESPONSE: The answer to this concern is embedded in the threshold for reporting. The reporting threshold for NO_x is 25 tons per year. If converting a boiler from no. 6 fuel oil to natural gas reduces a facility's potential to emit NO_x to below the reporting threshold and the facility does not exceed any other reporting threshold, the facility would not be required to submit an emission statement. Using AP-42 emission factors, on a gross heat input rate basis, a boiler burning no. 6 fuel oil will emit approximately four times more NO_x than a boiler burning natural gas.

19. COMMENT: Will updating of stack permits be requested before submission of reports is mandated? Cases will exist where stack permits are based upon: year round requirements and boilers are used only six months per year; fuels have been changed; building uses have changed; stack permits are required because control devices are used (the control device being as minimal as a cardboard filter), etc. (10)

RESPONSE: The requirement for a facility to submit an emission statement is based upon the facility's "potential to emit" during the calendar year for which the emissions are to be reported (see N.J.A.C. 7:27-21.2). If the facility's potential to emit meets or exceeds any of the reporting thresholds at any time during the calendar year, an emission statement must be submitted for the facility. Any amendment or alteration of a permit, pursuant to N.J.A.C. 7:27-8, that would decrease the facility's potential to emit below all reporting thresholds does not absolve the facility from the reporting requirements until the subsequent calendar year. The adopted rules require the submittal of actual data, notwithstanding any differences between actual data and permit information.

20. COMMENT: The Inventory of 1990 Annual Emissions of VOCs, NO_x and CO Survey distributed by the Department for completion used several different report formats. The document was very time-consuming and difficult to complete because the forms did not match the current reporting formats required for compliance with an approved permit. For example, the inventory requests information on a per source basis. In a pilot plant permit, emissions are reported quarterly to the Department by each experiment for each pollutant category and not on a per source

basis. The effort needed to trace emissions back to each piece of equipment used in hundreds of experiments over the year and the chemicals used in each experiment is extremely burdensome. Due to the low emissions and the burdens associated with tracking, a pilot plant should be allowed to group emissions into an area source and report only these emissions by pollutant categories. (12)

RESPONSE: The Department agrees that reporting on a per experiment basis is reasonable and appropriate for pilot plant operations. Pilot plant operations may be reported on Form D of the emission statement. Form D allows the reporting of information that more closely resembles the format provided for in pilot plant permits.

21. COMMENT: While the CAA Amendments have a number of absolute deadlines for areas in non-attainment of the National Ambient Air Quality Standards (NAAQS) to ensure that the NAAQS is finally obtained, there is also a mandate to achieve attainment as expeditiously as possible. This is not mentioned in the rule, although it should be uppermost in the Department's thinking. (21)

RESPONSE: Attainment and maintenance of all ambient air quality standards is the driving force behind nearly all of New Jersey's Air Pollution Control Code (N.J.A.C. 7:27). As stated in the summary of the proposal, one of the Department's objectives of these rules is to track progress toward the attainment of the NAAQS for ozone.

22. COMMENT: The May 1991 EPA document titled, "Procedures of the Preparation of Emission Inventories for Carbon Monoxide and Precursors of Ozone," Volume I, outlines the data collection methods on p. 2-12. It states:

"Point source methods include mail surveys, plant inspections, use of agency permit and compliance files and source listings. Area source methods include modified point source methods, local activity level surveys, apportioning of state and national data, per capita emission factors and emissions-per-employee factors."

While the emission statements that the Department will require are clearly more than a survey, it just may not be enough. The Ozone Transport Commission estimates that this region will need a 70 to 90 percent reduction in VOCs as well as 50 to 60 percent reductions in NO_x and even then such levels of reductions may not bring all areas into attainment. Clearly we think Draconian measures may be needed even if the emissions inventories are completely validated and every source is identified. (21)

RESPONSE: The CAA requires the State to perform a demonstration of attainment of the NAAQS for ozone by November 15, 1994. This demonstration will involve the use of the Urban Airshed Model which takes into account the effects of atmospheric chemistry, meteorology and emissions. The results of this effort will determine if any reductions above and beyond the emission reductions required at Sections 182(b)(1)(A) and 182(c)(2) of the CAAA will be needed to attain the NAAQS for ozone. The information collected pursuant to these rules will serve to track emission reductions and to identify and quantify source categories where future emission reductions can be achieved.

23. COMMENT: One commenter recommended continuous emissions monitoring as the only way to ensure that facilities are not exceeding permitted levels of pollutant emissions. The situation with fugitive emissions is probably much worse. In fact, the commenter is not sure that fugitive emissions have ever been measured at all in New Jersey. (21)

One commenter recommended that continuous emission monitors (CEMs) should be required by the Department at all applicable facilities in order to collect meaningful data. (2)

RESPONSE: The Department concurs that CEMs are the best way to ensure continuing compliance for emissions from a stack. However, it is too costly to require the installation of CEMs on all stacks. Therefore, CEMs tend to be required for sources that emit large quantities of pollutants and sources with unpredictable or variable emissions. Fugitive emissions must usually be estimated based on emission factors, material balance calculations or monitoring studies of fugitive emission sources.

24. COMMENT: We are amazed that the Department estimates only 1,000 facilities will be covered by these new rules, when you have a reporting threshold of only 10 tons for VOCs. Is the Department considering only the EPA list of major sources for inclusion rather than all those point sources with the potential to emit 10 tons of VOCs? Under the CAA of 1990 the definition of a major source changes. We would have thought a large number of previously small or area sources would not be covered under these lower emissions levels as major sources. And surely the Department can't be considering fugitives here. We would have estimated that some counties in New Jersey would have 1,000 facilities when previously small sources are included and fugitive emissions are counted as well. (21).

RESPONSE: The Department estimated the number of sources affected by this rule by careful review of the Air Pollution Enforcement Data Base System (APEDS) and its 1990 emission inventory point source database. APEDS contains over 23,000 active facilities which have air pollution control permits within the State. The emission inventory point source database contains all facilities which submitted emission inventory surveys in 1990. The Department used the reporting thresholds within the rule as criteria for whether a facility would be subject to the rules (for example, 10 tons per year for VOCS). This is an appoximate number. The Department expects that a few of the identified facilities have shut down since the Department completed its study and that there are a few new facilities that did not exist when the study was completed. However, the Department does not expect that its estimated number of facilities subject to this rule will change significantly. The Department will make an additional scan of APEDS in its preparation to send forms to all facilities the Department has on record in order to catch new facilities on record and identify facilities that have shut down.

The Department's current air pollution control requirements apply to sources, including those that have relatively small emissions. Because New Jersey has not attained the NAAQS for ozone, there have been many regulatory actions in the past requiring emission reductions. For example, the Department has required "state-of-the-art" control for many years for all sources which are required to obtain a permit or certificate. As years progressed, the Department has regulated more and more sources of ozone precursors and smaller and smaller sources. Because of New Jersey's current stringent air pollution control requirements, many sources have potential emissions below the reporting thresholds.

Confidentiality

25. COMMENT: Confidentiality claims should be limited to be consistent with Federal law under SARA Title III (the Emergency Planning and Community Right to Know Act). (21)

RESPONSE: The Department has modelled these confidentiality rules on other confidentiality rules in the New Jersey Administrative Code with which the Department has had successful experience. The Department feels that it is more important to be consistent with its own tested rules than to be consistent with the various Federal confidentiality regulations. Additionally, the definition of "emissions information" at N.J.A.C. 7:27-1.4 and 21.1 (which defines certain information which may not be claimed as confidential) is consistent with EPA's official policy on confidentiality.

26. COMMENT: To improve clarity, definitions for confidentiality such as "asserted confidential information," "claimant," "class confidentiality determination," "confidentiality copy," "confidential information," "confidentiality claim," "confidentiality determination," "contract," "contractor," "final public copy," "preliminary public copy," "record," "requester," "substantial damage" and "substantiation" used at N.J.A.C. 7:1E-1 should be incorporated into the definition section at N.J.A.C. 7:27-1.4. (12)

RESPONSE: The Department agrees that these definitions cited at N.J.A.C. 7:1E-1 would provide clarification to the rules and has inserted the definitions at N.J.A.C. 7:27-1.4. As stated in the proposal Summary (24 N.J.R. 2982), these rules on confidentiality were intended to be consistent with those in N.J.A.C. 7:1E. However, the Department does not believe that the term "contract" requires a definition because it is not necessary to define the term in order to explain to whom confidential information may be given.

27. COMMENT: To improve clarity, the terms "source operation," "equipment" and "control apparatus" (used in the definition of "emission information") should be defined at N.J.A.C. 7:27-1.4. (12)

RESPONSE: The Department agrees that these definitions cited at N.J.A.C. 7:27-8 would provide clarification to the rules and has inserted the definitions at N.J.A.C. 7:27-1.4.

28. COMMENT: At N.J.A.C. 7:27-1.6(a), we suggest that the following **bolded** text be added to the following phrase for clarity and to assist applicants in determining what type of information is considered confidential (from the current N.J.A.C. 7:27-8.14(a)):

(a) Any person required to submit information to the Department under this chapter, or allow the Department to obtain such information, which such person believes in good faith to constitute confidential information **such as trade secrets, proprietary information or information related to national security**, may assert a ... (12)

RESPONSE: The commenter's concern is addressed in the definitions of the terms "confidential information" and "substantial damage" as added at N.J.A.C. 7:27-1.4.

29. COMMENT: N.J.A.C. 7:27-1.9(b) should be revised to require the Department to make a confidentiality determination within a specific time period, such as 60 days, or a reasonable time period, not "at any time." (14)

RESPONSE: N.J.A.C. 7:27-1.14, Treatment of information pending confidentiality determination, addresses the commenter's concern. This section states that all assertedly confidential information will be treated as confidential until the Department has made a final determination that the assertedly confidential information is not confidential information. Thus, even if the Department's final determination is delayed, the assertedly confidential information will be protected in the interim.

30. COMMENT: N.J.A.C. 7:27-1.10(c), as proposed, will require a claimant to seek an immediate hearing to protect information it asserts is confidential if the Department makes an adverse determination. It would be less costly for the claimant and the Department if the claimant were allowed to substantiate its claim prior to a negative decision. This proposed rule should be amended to allow the claimant the option of providing such substantiation. (1)

RESPONSE: Ample provision has been made in the rule for such substantiation at N.J.A.C. 7:27-1.10 and 1.11.

31. COMMENT: At N.J.A.C. 7:27-1.11 the substantiation requirements for confidentiality claims are overly burdensome and should be streamlined to expedite both source preparation and agency review. If a source has submitted a confidentiality claim to the Department, paragraphs (a)1 and (a)2 are intuitive and, therefore, unnecessary. (8)

RESPONSE: The Department believes these provisions are necessary to set forth the minimum required information the Department will need to substantiate a confidentiality claim. This is especially important in light of the fact that these provisions could affect small businesses without experience in these matters, nor easy access to consultants.

32. COMMENT: The materials which the affected companies can submit as confidential should be explicitly stated within the new regulations.

As currently stated, the reporting companies can reserve as confidential any information which the claimant can "substantiate." N.J.A.C. 7:27-1.11. Although several criteria are provided to describe the Department's decision process on this issue, the fundamental purpose of the confidentiality claims is not listed.

Presumably, the proposed regulations purport to protect proprietary information, as implied by the phrase "substantial harmful effects which disclosure would have upon the claimant's competitive position" (N.J.A.C. 7:27-1.11(a)4). If this is the case, the Department should explicitly state that proprietary information is exclusively protected. Further, the Department should explicitly state how proprietary information is categorized.

As written, the proposed regulations would allow companies to protect their emissions data, and any other types of otherwise public information, as confidential. Such a confidentiality shield would prohibit citizens' groups from monitoring the compliance of local facilities and inhibit private enforcement remedies available by law. Any information which specifically relates to the emissions of the reporting companies should not be allowed to attain a confidential status.

Provided that such an explicit exception for emission data is listed in the final regulations, and provided that the Department identifies specific criteria identifying the types of material which may qualify as confidential, this commenter supports the proposed regulations concerning Emissions Statements. (20)

RESPONSE: These rules do not allow companies to protect their emissions data as confidential. As stated at N.J.A.C. 7:27-1.18, "emissions information," as defined at N.J.A.C. 7:27-1.4, is not confidential information. The only information a facility may claim as confidential is that which meets all requirements of the definition of "confidential information" at N.J.A.C. 7:27-1.4, and which is not specifically excluded by a class confidentiality determination as that for "emissions information."

33. COMMENT: At N.J.A.C. 7:27-1.12(b), the substantiation required by the Department is so extensive that in most cases 30 days will not be sufficient time to comply. In addition, requiring the consent of third parties in order to obtain an extension is unduly burdensome. In both cases, the confidentiality issue will not be resolved at this earlier stage and a claimant will be forced to request a hearing. (1)

RESPONSE: Because a confidentiality claim is generally based on the types of factors which must be substantiated pursuant to N.J.A.C. 7:27-1.12, it is unlikely that a confidentiality claim will be submitted by a person who does not already have the materials at hand. Therefore, 30 days is not an unreasonable time in which to compile and submit them. In many cases, no third party will be involved. In cases where a third party is involved, the rule balances the public's interest in openness of government activities against the private interests of the claimant.

34. COMMENT: The following bolded text should be added to the N.J.A.C. 7:27-1.16 to allow for the claimant to verify any changes in their original confidential copy prior to disclosure to the public:

After the Department makes a final confidentiality determination that a record contains confidential information, the Department shall prepare a final public copy of the record based upon the final confidentiality determination. **The claimant shall have the opportunity to review the final public copy prior to disclosure.** The Department may then disclose the final public copy to any person, without restriction or limitation. (12)

RESPONSE: The Department will consider this change in a future rulemaking.

35. COMMENT: This commenter supports "class confidentiality determinations" as outlined at N.J.A.C. 7:27-1.17 as a good example of streamlining agency review. (8)

RESPONSE: The Department recognizes the commenter's support of this provision.

36. COMMENT: Regarding N.J.A.C. 7:27-1.17, the proposal does not specify how and by what criteria class confidentiality determinations will be made. In order to protect the regulated community, the Department should be required to publish a notice of all class confidentiality determinations in the New Jersey Register and allow for public comment before final promulgation. (1)

RESPONSE: The Department has made one class confidentiality determination and it was proposed at N.J.A.C. 7:27-21.18. It states "emissions information, as defined at N.J.A.C. 7:27-1.4, is not confidential information." The Department has not changed this upon adoption. Any future class confidentiality determinations will be made through the usual rulemaking practices of the Department.

37. COMMENT: At N.J.A.C. 7:27-1.21(a)3, the Department should be required to inform a source prior to release of confidential information. Clear disclosure restraints must be defined (that is, individuals authorized to receive confidential information, handling/storage of confidential materials, time requirements for return of materials to the Department, and clear requirements restricting use of confidential information). (8) (14)

RESPONSE: The Department's procedures for handling confidential materials are set forth at N.J.A.C. 7:27-1.27 and 1.28. Provisions regarding the Department's use of confidential information are set forth at N.J.A.C. 7:27-1.19 through 1.27. Provisions explaining the circumstances under which claimants will be notified prior to disclosure are set forth at N.J.A.C. 7:27-1.25. In only two cases are claimants not notified prior to disclosure. First, when disclosure is required to alleviate an imminent danger pursuant to N.J.A.C. 7:27-1.21, there will rarely be time for prior notice to the claimant. Second, the rules provide that confidential information may be disclosed to another public agency, but only if that agency has the legal authority both to compel the information directly from the claimant and to keep such information confidential. Under these circumstances, prior notice to the claimant would be useless since the claimant could not prevent the other agency from obtaining the information directly from the claimant.

38. COMMENT: At N.J.A.C. 7:27-1.22(a), "promptly after the Department discloses" should be revised to read "prior to the Department disclosing." The claimant should be notified prior to the disclosure of any confidential information. (14)

RESPONSE: Please see the response to Comment 37 above for an explanation of why the Department is not changing N.J.A.C. 7:27-1.22(a) or 1.21(a)3 upon adoption.

39. COMMENT: Regarding N.J.A.C. 7:27-1.26(b), denial of a hearing request will deprive a claimant of due process of law. This section of the proposal should be deleted in its entirety. (1)

RESPONSE: There are only four reasons why the Department may deny a hearing request: the claimant fails to provide all required information, the Department receives the request after disclosure of the assertedly confidential information, the Department has been ordered to release the information by a court or other legal entity with the power and authority to compel disclosure, or if the Department determines that disclosure is necessary to alleviate an imminent danger to the environment or to public health or safety. A release of information for any of

these reasons would not violate the claimant's due process. In the first, the claimant could prevent disclosure by complying with the rule. In the second, the claimant could prevent disclosure by filing the claim simultaneously with the information. In the third, the Department has no power to provide a hearing, since it is not authorized to withhold the information. In the fourth, the process due the claimant must be balanced against the danger to the public.

Certification Issues

40. COMMENT: N.J.A.C. 7:27-21.5(a) requires the person who submits an emission statement to certify the absolute accuracy of the information. We feel the requirement, as outlined in the proposal, is burdensome and has been proposed without discussion of the need for this requirement. The stated goal of the proposed subchapter 21 is to enable the State of New Jersey to comply with the Federal Clean Air Act Amendment (CAAA) mandates. We see no CAAA certification requirement for emissions statements. Certification of reports is required in Title V of the CAAA, but this certification is very different than that required by N.J.A.C. 7:27-8.24. (7)

RESPONSE: Certification of emission statements is required at 42 USC 7511a(a)(3)(B)(i). In response to this comment and several other comments on the issue of certification of emission statements, the Department has adopted certification provisions which will clarify the Department's original intent in requiring certification for emission statements and satisfy EPA requirements. Those clarifications include the following:

1. A section entitled "Certification of information" has been adopted at N.J.A.C. 7:27-21.7 specifically addressing certification of emission statements only. Any references to the certification language in N.J.A.C. 7:27-8.24 have been removed from the adopted regulation.

2. The Department has added a sentence to the certification language, which is required to be submitted with the emission statement, to take into account that some of the data included in the emission statements are based on estimates.

3. The Department has clarified that a higher level responsible official is required to sign the emission statement certification.

The Department found it necessary to codify as a specific section provision incorporating the certification requirements primarily to accommodate data contained in the statement which will be based on estimates and sound professional judgment. The Department believes that the emission statement rule will be one of only a few regulations where individuals will be required to certify that estimated data is the result of good faith application of sound professional judgment.

After the Department proposed the emission statement rule, EPA adopted its operating permit regulation pursuant to Title V of the CAAA, at 40 CFR Part 70. 40 CFR Part 70.6(a) requires that all reporting requirements be incorporated into the operating permit, and 40 CFR Part 70.5(d) requires that all reports submitted must contain a certification by a responsible official of the truth, accuracy and completeness of the report. The Federal operating permit regulation also contains a definition of "responsible official." The term is almost identical to the higher ranking official described at N.J.A.C. 7:27-8.24.

In light of the Federal operating permit requirements, the Department has incorporated the Federal definition of responsible official and the requirement that the emission statement be certified by the responsible corporate official in the adoption of this regulation.

In order to maintain consistency with the proposed rules, ensure accountability of the data and provide the name of the individual who is actually preparing emission statement data and with whom the Department's officials will be working in the future, the Department retained the lower level certification requirement for the individual with direct knowledge of and responsibility for the information contained in the emission statement.

41. COMMENT: These commenters indicate that it is not appropriate to require certification of annual emissions data, because engineering judgment is required to manipulate many variable parameters into a single annual emissions number, often in the form of estimates. Therefore, in the absence of the Department's concurrence on specific judgment, it is difficult to certify that the information provided is true, accurate and complete. (7) (18)

Any person who prepares an emission statement must use engineering judgment to determine which calculation method best represents the emissions; which data properly characterizes emissions, and which data is valid data among many other considerations. Since no guidance is given in the proposed regulations or elsewhere on the specific judgment decision, it is difficult to certify that the information provided is true and accurate and complete. (7)

With regard to the certification of information submitted pursuant to the emission statements, it should be understood that much of this information will be in the form of estimates. Estimates by their nature will likely differ from the actual data. (18)

RESPONSE: Certification is required by the CAA at 42 USC 7511a(a)(3)(B)(i). As indicated in the previous response, the Department acknowledges the difficulty in certifying data that is based on engineering judgment and estimates. Accordingly, the Department has incorporated into the certification language adopted at N.J.A.C. 7:27-21.7 the following statements: "I certify under penalty of law that I believe the information provided in this emission statement is true, accurate and complete," and "For those portions of the above information based on estimates, those estimates are the result of good faith application of sound professional judgment using techniques, factors, or calculations approved by the Department or EPA, or generally accepted in the trade". In addition, in the instructions which accompany the emission statement forms, the Department has identified numerous ways of determining emissions.

42. COMMENT: Some difficulties with the certification requirement are functions of the method the Department will use to collect the emissions data. Some examples are:

The Department in prior emissions surveys has printed specific source data on forms which then must be completed by the owner/operator. The responsible person must then certify that all data, including that which is supplied by the Department, is true and correct.

Information such as projected changes in emissions or operations cannot be certified.

Seasonal variation of fugitive emissions which are calculated on a statistical basis cannot be certified. (7)

RESPONSE: The person certifying the information is responsible for submitting correct information. The Department will pre-print information it has on record concerning the facility. If the person submitting the emission statement does not update the pre-printed information, they are certifying that the pre-printed information is correct for the applicable year. If the person submitting the emission statement provides new information for the applicable year, then the person is certifying that only the new information is correct. For example, if the Department pre-prints the physical location of the facility (the street address) and the person does not indicate any change, then when certifying the emission statement, the individual is certifying that the street address is currently correct. If the person changes the street address, then when certifying the emission statement, the individual is certifying that the changed address is correct, not that the pre-printed address is currently correct.

Projections can also be certified, as long as they are clearly identified as a projection. As with estimates, the signatory is not certifying that the projection will come true, but merely that, at the time of the signing of the certification, the projection is the most likely scenario considering available information and the best exercise of their judgment. The certification language has been clarified to indicate this interpretation.

Fugitive emissions, while usually based upon uncertain estimation techniques, do reflect levels of business activity, and therefore seasonal variations can be calculated with sufficient accuracy to be certifiable. Again, the certification language has been modified to account for estimates.

43. COMMENT: One additional difficulty is posed by the emission statement certification requirement. N.J.A.C. 7:27-8.24(b)2 states "any emissions statement or report which indicates that a violation has or may have occurred of any provision or condition of a permit or certificate or any applicable law, regulation or rule shall be additionally certified." Nowhere in N.J.A.C. 7:27-21 is there listed a requirement to check calculated emissions data for indication of a violation. Since most permits are written based on calculated hourly emissions it is unclear what constitutes an annual emissions violation, or a seasonal emissions violation. This additional certification requirement should be eliminated from emissions statements. (7)

RESPONSE: In the adoption of these rules, the Department has eliminated the reference to N.J.A.C. 7:27-8.24 in its entirety. The Department agrees that the emission statement is not the forum for reporting violations.

44. COMMENT: Should the Department continue to require certification, we suggest the following more appropriate certification from 40 CFR Part 122—EPA Administered Programs: NPDES, listed at 122.22(d) certification. "I certify under penalty of law that this document

and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

This wording recognizes the many people and organizations involved in preparing an emissions statement and we feel properly certifies an effort to produce a quality output. (7)

RESPONSE: As indicated in previous responses, the Department has adopted certification provisions which are consistent with 40 CFR Part 70. The certification language for the responsible official also incorporates language to account for the official's inquiry of those officials immediately responsible for obtaining the emission statement information.

45. COMMENT: At N.J.A.C. 7:27-8.24(a) and (c), the word "incomplete" should be deleted from the required statements of certifcation. The certifying individual should not be subject to criminal penalties for incomplete submissions. (8)

RESPONSE: Failure to submit complete information is the biggest problem the Department currently has with submittals. Therefore, certification of completeness is very important to ensure that the Department has all the required information. Otherwise, a facility could simply omit information without any penalty on the person responsible for supplying the information. This would severely hamper the Department in obtaining an accurate picture of emissions in New Jersey.

46. COMMENT: At N.J.A.C. 7:27-8.24(c), the requirement to have an application, emission statement, or report indicating a violation has occurred signed-off by a level of at least vice-president is too high of a level, particularly in a large corporation. The position of the person making the certification should be commensurate with the responsibility of the individual and their direct knowledge of the information being certified. We suggest that the certification should be changed to indicate "the highest ranking individual on-site with direct responsibility over operations." (12)

Certification should be required only at the level of an individual intimately familiar with the details of the operation and the related technical information. (18)

RESPONSE: As indicated in the previous responses, the adopted certification language allows a corporate official of a large corporation (over 250 employees) or with sales or expenditures exceeding $25 million) to delegate the responsibility for certifying emission statements to a duly authorized representative of the corporation if the representative is responsible for the overall operation of one or more manufacturing, production or operating facilities. For smaller corporations the president, vice-president, secretary or treasurer can request approval from the Department that a plant manager or equivalent be authorized to certify the emission statement. These requests should be directed to the Assistant Director for Air and Environmental Quality Enforcement in the Department of Environmental Protection and Energy. This is indicated in the definition of "responsible official" at N.J.A.C. 7:27-21.1, Definitions.

47. COMMENT: At N.J.A.C. 7:27-8.24(a) and (c), the phrase ", to the best of my knowledge and belief" should be added to the certification statements in both sections after the word "is" and before the word "true", which is consistent with other similar certification statements. (14)

RESPONSE: The Department has adopted a two-level certification for the emission statement regulation. The certification by the individual with direct knowledge of and responsibility for the information states that such individual believes the information provided in the emission statement is true, accurate and complete. Additionally, for those portions of the information that are based on estimates, the certification states that the estimates are the result of good faith application of sound professional judgment using techniques, factors or calculations approved by the Department or EPA or generally accepted in the trade. The second level of certification, to be signed by the responsible official, does provide that this official has personally examined and is familiar with the information and that this belief as to the truth and accuracy of the information is based on an inquiry of the individuals immediately responsible for obtaining the information. This certification language is consistent with EPA's operating permit regulation and satisfies the issue raised by this commenter.

48. COMMENT: Some information, although correct at the time of submission, may change in the future. An example is the number of employees at a facility. If inspections by the Department indicate differences in the certified information, whether in the estimated emissions or changes to other specific data, those circumstances should be considered when determining whether or not a violation has occurred. It is recommended that the rule include a recognition that under circumstances of this nature no violation would exist. (18)

RESPONSE: The Department recognizes that some information will change from year to year. Accordingly, certification of the required information applies only to the data submitted in the emission statement which is certified. If information changes after that, the certification will not apply to it, so no penalty can be assessed based on that certification.

Definition of "emissions information" at N.J.A.C. 7:27-1.4 and 21.1

49. COMMENT: In the definition of the term "emission information," the Department states that none of this information may be claimed as confidential. This commenter is concerned that depending on the content of the emission statement forms and whether the information requested under emission parameters is required in a sequential manner, a competitor could figure out the process by the detailed emission parameters. The forms need to be constructed in such a way to allow confidentiality to be addressed or the Department should modify the rules so that confidentiality may be claimed on some of the emission parameter information. (12)

RESPONSE: The definition of "emissions information" is a generic term that specifies what information may not be claimed as confidential. Of all the information required to be submitted and not designated as "emissions information," process rate data is most likely the primary field of concern that may be claimed as confidential. Allowing facilities to claim process rate data as confidential will protect a company from competitors finding out how much product they produce. Speciation of VOCs is not required in this rule. Therefore the exact chemical makeup of VOC emissions will not be available to persons attempting to gain a competitive advantage by analyzing a competitor's emission statement information.

When the Department transmits the emission statement data to EPA's Aerometric Information Retrieval System (AIRS), the Department will automatically designate process rate fields as confidential.

50. COMMENT: Is all the information contained in the definition of "emissions information" required for reporting? The Department's request for this information far exceeds the requirement of what is necessary for emissions reporting as required by Section 182(a)(3)(B) of the CAAA, and is unnecessary and overly burdensome for the source. The definition of "emission information should parallel USEPA federal requirements. (3) (5) (8)

RESPONSE: The rules at N.J.A.C. 7:27-21 do not require all of the information in the definition of "emissions information" to be reported. This is a generic definition that details the full range of what information, submitted to the Department pursuant to any provision of N.J.A.C. 7:27 et seq., may not be claimed confidential. This definition has been modelled from EPA's policy on confidentiality, 40 CFR 2.301(a)(2)(i).

51. COMMENT: In the definition of "emissions information," the section concerning Emissions Parameters, in the examples given for Emissions type, mentions "a specific toxic compound." Does this infer that the Department is intending to require reporting for parameters other than VOC, NO_x, CO, SO_2, TSP, PM_{10}, and/or Pb? Additionally, many existing certificates to operate do not address specific compounds of VOC, and therefore such data is not available for inclusion into an emissions statement. Requiring such information could have an adverse financial impact upon the regulated community for testing services. (11)

RESPONSE: N.J.A.C. 7:27-21 does not require facilities to report data for air contaminants other than VOC, NO_x, CO, SO_2, TSP, PM_{10} and Pb. The example mentioned in the comment only implies that emissions of specific toxic compounds may not be claimed as confidential if they are reported to the Department as part of any submittal pursuant to the provisions of N.J.A.C. 7:27. However, as mentioned in the Summary of the Hearing Officer's Report in this notice of adoption, the Department plans to adopt amendments to the emission statement rules in 1994 in order to include Hazardous Air Pollutants (HAPs) as defined in Title III of the CAAA. If, after this future rulemaking, toxic compounds are required to be reported pursuant to N.J.A.C. 7:27-21, then they could not be claimed as confidential.

N.J.A.C. 7:27-21 does not require VOCs to be speciated. However, if the person submitting an emission statement requests that the Depart-

ment calculate emissions from a storage tank, the specific compound(s) contained in such storage tank need to be reported in order for the Department to complete the calculation.

52. COMMENT: The phrase "Emission information means, with reference to any source operation, equipment, or control apparatus" is too broad and vague without limiting the reference to equipment, source operations and control apparatus regulated under subchapter 8. Since there is no clarification that this only applies to equipment regulated under subchapter 8, one can assume that even photocopy machines and vacuum cleaners would require their emissions to be reported. For clarity we suggest insertion of the following **bolded** text:

"Emissions information" means, with the reference to any source operation, equipment, or control apparatus **regulated under 7:27-8:**" (12)

RESPONSE: The term "emissions information" is a class confidentiality determination that specifies what information may not be claimed as confidential. The term does not specify applicability to the rule nor does it specify the required contents of an emission statement. These specifications are indicated at N.J.A.C. 7:27-21.2 and 21.5, respectively.

53. COMMENT: The definition of "emissions information" includes data that is not required by the Clean Air Act, by Federal regulation or in the emission statement and would be extremely burdensome for the owner or operator to generate. Specifically, the following should be deleted from the definition.

1. In Item 1, delete "frequency, concentration";
2. Delete Item 2 in its entirety since it is redundant with Item 1 above;
3. From the list of data fields, delete the following emission parameters. These emission parameters are not relevant to the emission statement or are extremely burdensome for the owner or operator to generate:

Delete "Description of terrain and surrounding structures (for example, the size of the area, with adjacent structures and terrain description such as mountainous, urban or rural);"

Delete "concentration (for example, the amount of an emission stream constituent relative to other stream constituents, expressed as parts per million (ppm), volume percent, or weight percent);"

Delete "Density of the emission stream or average molecular weight (for example, density expressed as a fraction or multiple of the density of air; molecular weight)." (14)

RESPONSE: The definition of the term "emissions information" does not determine what information must be reported. Required contents of the emission statement is found at N.J.A.C. 7:27-21.5.

Regarding the commenter's first point, the frequency and concentration of air contaminants emitted are not proprietary information and are necessary for the Department and EPA in order to model air quality, to evaluate permits, and to verify compliance with appropriate rules and regulations.

Regarding the commenter's second point, "Item 2" is not redundant with "Item 1" because one specifies data associated with air contaminants which have actually been emitted and the second specifies data associated with air contaminants authorized to be emitted.

Regarding the commenter's third point, these fields are not necessarily required to be reported pursuant to the requirements of N.J.A.C. 7:27-21; they are only part of a list of information which may not be considered confidential. Concentration and density of emissions streams are not proprietary information and are necessary for the Department and EPA in order to model air quality, to evaluate permits, and to verify compliance with appropriate rules and regulations. Description of terrain and surrounding structures is essential for air quality modelling.

N.J.A.C. 7:27-21.1, Definitions

54. COMMENT: The term "actual control efficiency" should be defined. (19)

RESPONSE: The term "control efficiency" is already defined at N.J.A.C. 7:27-21.1. The modifier "actual" is used to indicate that the design control efficiency is not to be reported.

55. COMMENT: The term "actual emissions" should be changed to "estimated actual emissions" since using best engineering judgment and AP-42 factors are only estimates. Only information directly obtained from stack tests or CEMS could be considered actual. (12)

RESPONSE: The Department agrees that an "actual emissions" reported pursuant to these rules is in some way an estimate. The Department has addressed this issue in the certification language, which specifies that some of the information may be based on estimations.

56. COMMENT: The definition of "air contaminant" is overly broad when compared to the Part 70 Rule and the CAAA intent behind emission statements. The "air contaminant" definition should be replaced with the Federal "regulated air pollutant" definition and modified to contain only contaminants related to non-attainment. This will reflect the intent behind Air Emission Statements and the Part 70 Rule. To require reporting by "air contaminant" (that is, chemical species) would be burdensome as experienced in the completion of the 1991 CAAA Survey. (3) (5)

RESPONSE: Only the air contaminants listed at N.J.A.C. 7:27-21.2 Table 1 are required to be reported. All of these air contaminants are part of the definition of "regulated air pollutant" as defined at 40 CFR 70. Although 42 USC 7511a(a)(3)(B) only requires the reporting of VOC and NO_x, this rule is designed to achieve other reporting objectives for criteria pollutants (as stated in the proposal). Speciation is not required. However, if a facility opts to have the Department calculate emissions from VOC storage tanks, the facility must provide the exact chemical compounds stored in the tanks in order for the Department to complete the calculations.

57. COMMENT: In the definition of "capture efficiency" which means the amount of an air contaminant collected by a control apparatus serving the source operation, expressed as a percentage of the total amount of the air contaminant emitted by the source operation, the term **collected** should be deleted and replaced with the term **controlled** since not all control devices capture emissions (for example, condensers). (12)

RESPONSE: N.J.A.C. 7:27-21 includes a definition for "control efficiency" as well as a definition for "capture efficiency." The phrase "amount ... collected by a control apparatus" indicates the effect of the collection system that serves the control device, usually ducts and hoods that route the emissions from a source to the control apparatus.

58. COMMENT: The definition of "facility" is inconsistent with that listed at N.J.A.C. 7:27-8.1 and should be changed to conform with it. (1)

RESPONSE: When proposing this rule, the Department added the sentence "This term does not include delivery vessels" to the definition for "facility" in order to clarify that tailpipe emissions from delivery vessels should not be counted as part of a facility's "potential to emit." It is clear that the Department needs to improve this clarification. The commenter is also correct that this creates a discrepancy between the definition of the same term in other chapters of the Air Pollution Control Code. The Department has removed the sentence in question from the definition of the term "facility" in order to retain consistency with the same definition at N.J.A.C. 7:27-8.1 and has added a subsection to N.J.A.C. 7:27-21.2 to express how certain emissions from delivery vessels affect a facility's "potential to emit," in order to retain the intended clarification.

The following subsection has been added to N.J.A.C. 7:27-21.2:

(b) With respect to the provisions of (a) above, emissions associated with any delivery vessel loading operation shall be included in determining a facility's potential to emit. Emissions from any delivery vessel, used as a storage tank, which is subject to the requirements of N.J.A.C. 7:27-16.2 pursuant to N.J.A.C. 7:27-16.2(m) also shall be included in a facility's potential to emit. All other emissions associated with delivery vessels (for example, motor vehicle tailpipe emissions, locomotives, and tugboats) shall be excluded from a facility's potential to emit.

Tailpipe emissions from delivery vessels are estimated by the Department through the highway mobile source inventory and the area source emission inventory.

Additionally, at N.J.A.C. 7:27-21.3, the Department has clarified that the same emissions from delivery vessels that are included in determining a facility's potential to emit also need to be included in the emission statement submittal.

59. COMMENT: The definition of "delivery vessel" should be expanded to include only those vessels used in inter-facility or commercial transportation. (3) (5)

RESPONSE: The term "delivery vessel" is used within subchapter 21 in order to clarify how certain emissions from delivery vessels affect a facility's potential to emit and in order to clarify which delivery vessel operations are required to be reported. The definition of "delivery vessel" included in this rule is a generic one and includes both vessels used in inter-facility and those used for commercial transportation as well as intra-facility delivery vessels.

60. COMMENT: It is recognized that the definition of "fugitive emissions" came from the EPA "Guidance." However, fugitives are difficult to quantify. The Federal pre-proposal on fugitive emissions for Hazardous Air Pollutants acknowledges this with a statistical leak detection program rather than a program where actual emissions can be quantified. Until reasonable methods for determining fugitives is available, this category should be suspended from consideration. (3) (5)

RESPONSE: Fugitive emissions must be reported pursuant to EPA guidance on emission statements. Because fugitive emissions from all facilities in the State are a significant source of air pollution, it is important that all facilities subject to the rule report fugitive emissions so as to carry out the intent of the CAA, and federal regulations and guidance pursuant to the CAA, that States develop a comprehensive picture of all sources of air pollution. The person submitting an emission statement should use whatever means is available to estimate fugitive emissions from the facility. Facilities that have already implemented a leak detection and repair program should use data from that program to estimate fugitive emissions. There are other methods to estimate fugitive emissions. Several organizations, for example, EPA and API, have developed emission factors for fugitive emissions. As stated at N.J.A.C. 7:27-21.5(l) a facility may use a method "which is reasonably available and which best estimates the actual emissions."

61. COMMENT: The definition of "fugitive emission" is too broad. The way it is defined it could include dust emission from construction activities. The definition should be clarified or the rule should be changed to indicate that only fugitive emissions from permitted sources should be reported. (12)

RESPONSE: The need for fugitive emission information extends beyond fugitive emissions from permitted sources. The instruction booklet which is provided with the emission statement forms lists some examples of types of fugitive emissions for clarification.

62. COMMENT: The definition of lead should include lead compounds. (21)

RESPONSE: The definition of lead includes "any compound containing lead," as indicated in the proposal.

63. COMMENT: The definition of "manufacturing process" is inconsistent with that listed at N.J.A.C. 7:27-8.1 and should be changed to conform with it. (1)

RESPONSE: The commenter is correct that there are discrepancies between the definition of "manufacturing process" as proposed at N.J.A.C. 7:27-21.1 and the definition of this term at N.J.A.C. 7:27-8.1. The definition of the term "manufacturing process" proposed at N.J.A.C. 7:27-21.1 also included compressors in the list of examples, whereas the definition at N.J.A.C. 7:27-8.1 does not. Also compared with the same definition at N.J.A.C. 7:27-8.1, one word is out of order. The Department agrees that the definition of the term "manufacturing process" at N.J.A.C. 7:27-21.1 should be consistent with the same definition at N.J.A.C. 7:27-8.1 and has changed the definition at N.J.A.C. 7:27-21.1 in order to achieve this consistency. However, because the list of manufacturing processes within the definition is not all inclusive, no person should construe from this action that compressors are excluded from the definition of "manufacturing process."

64. COMMENT: Clarification is needed with regard to the carbon monoxide season particularly with regard to when it starts and ends and in what year. (18)

RESPONSE: The "peak carbon monoxide season" is defined at N.J.A.C. 7:27-21.1 to be December 1 throuth the last day of February, inclusive. For the emission statement submittal due in 1993 for the emissions of 1992, the "peak carbon monoxide season" is December 1, 1991, through February 29, 1992. This clarification is also provided in the instructions for the emission statement forms.

65. COMMENT: "Peak ozone season" is defined as the inclusive period June 1 through August 31. However, pending Reasonably Available Control Technology (RACT) regulations for NO_x would define the ozone season as being the period May through September. It would seem that definitions and reporting periods for each subchapter in N.J.A.C. 7:27 should be consistent. (6) (11)

RESPONSE: Because the proposed NO_x RACT rules and the emission statement rules implement very different aspects of New Jersey's air pollution control program, these terms need not necessarily be the same. The "peak ozone season" defined in this rule is a subset of the "ozone season." The "ozone season" is defined by EPA; it is promulgated at 40 CFR 58 Appendix D. New Jersey's ozone season is defined as April 1 through October 31. New Jersey is required to monitor ambient ozone concentrations during this season. The peak ozone season is the contiguous three month period of the year during which the highest ozone exceedance days have historically occurred. For New Jersey, the peak ozone season is June through August. Emission statement and emission inventory requirements mandate that New Jersey collect certain data for the peak ozone season. In future rulemakings, the Department will attempt to make the definitions of "ozone season" and control periods for the ozone season as consistent as possible while still meeting the differing goals of each subchapter.

66. COMMENT: With respect to the definition of "potential to emit," it is unclear whether "any Federally enforceable condition" includes a "certificate to operate." (1)

RESPONSE: N.J.A.C. 7:27-8 constitutes a component of New Jersey's State Implementation Plan (SIP). The SIP is Federally enforceable. Both permits and certificates issued by the Department pursuant to N.J.A.C. 7:27-8.1 may require conditions or limits. Therefore, these conditions or limits are federally enforceable.

67. COMMENT: The term "process level" is vague and confusing. The term should either be redefined or deleted throughout the document since the information requested under N.J.A.C. 7:27-21.5(d), (f) and (h) could be included under the source operation information under N.J.A.C. 7:27-21.5(c), (e) and (g). In addition, as defined it is difficult to determine whether process level pertains to a batch process, a source operation, a pilot plant or a piece of equipment. (12)

RESPONSE: "Process level" is defined as "the operation of a source, specific to the kind or type of fuel, input material, or mode of operation." This applies to all source operations including all batch operations, pilot operations, and other pieces of equipment. For further clarification, the following example is provided: A facility, which is subject to N.J.A.C. 7:27-21, owns and operates a boiler which is designed and permitted to burn natural gas or fuel oil. This boiler was fueled with natural gas for six months and burned fuel oil in the remainder of the year. The source operation information as required at N.J.A.C. 7:27-21.5(c) applies to the operation of the boiler regardless of the type of fuel used. The process level information required at N.J.A.C. 7:27-21.5(d) applies to the emissions information, control apparatus information, and process rate data for each type of fuel.

68. COMMENT: The time periods used to define "Seasonal throughput" are inconsistent with other reporting time frames, and using them will cause undue and unnecessary burdens on the regulated community. This definition will require that records of production throughput will need to be kept on a different time basis than the emissions generated by those production processes. This will also lead to the reporting of quarterly percent of yearly operating activity being on a different time basis than other regulatory reporting. Reporting of the air emissions required by this regulation, as well as other programs such as SARA and Right-To-Know, are on a calendar year basis. These commenters recommend therefore, for consistency purposes, and to eliminate the need to keep two sets of production records, that the Department should include the following time periods in the definition of "seasonal throughput":

January through March;
April through June;
July through September; and
October through December. (5) (12)

RESPONSE: The Department cannot change the definition of the term "seasonal throughput." The Department has had extensive discussions with EPA regarding this issue and has determined that the definition cannot be changed because this information must be submitted to EPA's Aerometric Information Retrieval System (AIRS). Because AIRS can only accept seasonal throughput based on the time periods in the proposed definition, the Department has no latitude in changing this definition. Also, two of the time periods of the seasonal throughput, December through February and June through August, coincide with the peak ozone season and the peak carbon monoxide season.

69. COMMENT: To avoid confusion, the term "seasonal throughput" should be changed to reflect the actual day of the month, not just the month. The days as **bolded** below should be added.

December **1** through February **28/29**
March **1** through May **31**
June **1** through August **31**
September **1** through November **30** (12)

RESPONSE: The Department agrees that adding days in the definition of the term "seasonal throughput" adds clarification and has changed the definition to address the comment.

70. COMMENT: The definition of "source operation" is inconsistent with that listed at N.J.A.C. 7:27-8.1 and should be changed to conform with it. (1)

RESPONSE: The Department agrees that the definition of "source operation" at N.J.A.C. 7:27-21.1 contains the extraneous phrase "including any fugitive emissions." This phrase does not provide any clarification to the rule and has been removed from the definition at N.J.A.C. 7:27-21.1 in order to retain consistency with the same definition at N.J.A.C. 7:27-8.1.

71. COMMENT: Regarding the definition of "source operation," in 40 CFR 70 and in the EPA draft "Guidance on the Implementation of an Emission Statement Program":

"Stationary source" means any **building, structure, facility, or installation** that emits or may emit any regulated air pollutant or any pollutant listed under section 112(b) of the Act.

In this proposal:

"Source operation" means a **process or any identifiable part thereof** emitting or having the potential to emit any air contaminant either directly or indirectly into the outdoor atmosphere, including any fugitive emissions.

These two definitions are not compatible. The Federal definition should be adopted and Air Emission Statements reported by stationary source as defined in Part 70. (3) (5)

RESPONSE: The Federal definition of "source operation" is equivalent to New Jersey's definition of "facility." The Federal equivalent of New Jersey's definition of "source operation" is "point." In developing this rule based on Federal guidance, the Department used terms consistent with terms currently used in N.J.A.C. 7:27.

72. COMMENT: The term "stack equivalent" should also allow for grouping of stacks within close proximity (not necessarily manifolded together) for the purposes of determining emissions. For example, grouping emissions from a pilot plant permit where the emissions are tracked per experiment and would be burdensome to report on a per source and per stack basis. (12)

RESPONSE: In order to address the practical concerns of reporting operations which are normally grouped or are otherwise difficult to report, the Department has developed procedures for the reporting of batch/pilot plant operations and lab hoods. Batch operations and pilot plant operations may be reported on Form D. Laboratory hoods may be reported on Form A, Part 4. These procedures will allow such operations to be reported for the group of sources.

73. COMMENT: We would like to commend the Department making the definition of VOC consistent with 40 CFR 51.100(s) as applied in subchapter 21. (6) (16) (18)

RESPONSE: The Department appreciates your support.

74. COMMENT: The compounds that are excluded from the definition of a VOC by the U.S. Environmental Protection Agency should also be excluded from the New Jersey definition. (14)

RESPONSE: The compounds excluded from the definition of VOC are exactly the same as those EPA excludes. Furthermore, since the text of the definition references EPA's list (40 CFR 51.100(s)1), any additional compounds excluded from EPA's list will automatically be excluded in the definition at N.J.A.C. 7:27-21.1.

75. COMMENT: These commenters strongly support the Department's consideration to revise the definitions of VOC in related subchapters (for example, N.J.A.C. 7:27-16) making them more consistent with EPA's definition at 40 CFR 51.100(s), as indicated in the Summary of the proposal. The revised definition should exclude the same list of organic compounds from the term, specifically chemicals that are negligibly photochemically reactive and therefore do not significantly participate in the formation of ground level ozone. (8) (16) (18)

These commenters support the petition for rulemaking by the Alliance for Responsible CFC Policy to make such a change throughout the New Jersey Air Pollution Control Regulations. In this way, the Department also can assure that pollution controls for VOC emissions will be imposed on reactive compounds that will result in beneficial improvements of air quality. In addition, if EPA changes the definition by adding or deleting compounds from the list of substances excluded from the federal definition of VOC, presumably then the State's definition would be amended immediately, rather than requiring separate rulemaking action. (16)

RESPONSE: The Department is currently working on a proposal that would make the definition of VOC consistent with EPA's definition throughout the Air Pollution Control Code. This proposal is expected to be published by April 1993. As mentioned in the previous response, any compound added to 40 CFR 51.100(s)1 would automatically be added to the list of compounds excluded in the definition of VOC and a notice of administrative correction will be published in the New Jersey Register. This language will also be included in the future proposal to change the definition of VOC throughout the Air Pollution Control Code.

76. COMMENT: In the definition of "volatile organic compound" the second sentence should be **deleted:**

"For purposes of determining compliance with emissions limits and emissions reported pursuant to this subchapter, VOC shall be **measured by test methods** approved by the Department and EPA (for example, N.J.A.C. 7:27B-3)." (Emphasis added.)

Stack testing requirements would be overly burdensome from a manpower, cost and time perspective. Testing requirements are unnecessary if adequate alternative data is available, and contradicts N.J.A.C. 7:27-21.5(l), Table II which states:

"The method used for quantifying actual emissions for a source operation for use in preparing emission information required in . . . d(1) above shall be the method from Table 2 **which is reasonably available and which best estimates the actual emissions from the source operation** . . ." (Emphasis added.)

Stack testing requirements also contradict N.J.A.C. 7:27-21.5(d)1iv which states: "The emission statement shall include . . . any emission factor used to determine actual emissions." (8)

The sentence beginning "For purposes of" should be deleted. The example used should be deleted since stack testing would be an overly burdensome method to determine compliance with this subchapter, and it is contradictory to the codes specified in Table 2 which have been provided to allow for alternative quantification methods. (14)

RESPONSE: The Department has adopted the definition of VOC consistent with the equivalent definition of VOC proposed in the NO_x RACT rule. In doing so, the phrase "and emissions reported under this subchapter" is eliminated. Associated with this change, the definition of "organic substance" is no longer necessary since it is incorporated into the definition of VOC and has been removed. The adopted definition of VOC more closely conforms with EPA's definition.

77. COMMENT: In the definition of "VOC," CFC-113 should be identified as 1,1,2-trichloro-1,2,2-trifluoroethane. (19)

RESPONSE: The error has been corrected upon adoption.

N.J.A.C. 7:27-21.2, Applicability

78. COMMENT: The example given in subsection (a) is confusing and should probably be deleted. (19)

The last sentence of section (a) should be deleted. It is a rather trivial example that does not provide any further clarification.

Add the following sentence: "Emission statements are required, starting with the 1992 calendar year, for any air pollutant exceeding the thresholds in Table 1." (14)

RESPONSE: The Department agrees with this comment and has replaced the sentence in question as suggested.

79. COMMENT: N.J.A.C. 7:27-21.2(a) does not adequately address the issue of fugitive emissions. The definition of "potential to emit" includes the term "source operation" which includes fugitive emissions. It thus appears that fugitive emissions must be taken into account when determining whether a reporting threshold has been exceeded. However, the definition of "potential to emit" includes a limitation for "federally enforceable conditions" which would include a permit. If the permit does not contain conditions for fugitive emissions, they apparently do not need to be counted. This section needs to be clarified. (1)

RESPONSE: A facility must include fugitive emissions in a facility's potential to emit when determining if the facility is subject to the rule, pursuant to N.J.A.C. 7:27-21.2. However, because fugitive emissions usually contribute a small portion of a facility's potential to emit, precise calculation of a facility's fugitive emissions will rarely be needed to determine whether a facility must submit an emission statement, especially of the quantity of emissions from all other sources exceed the reporting threshold at N.J.A.C. 7:27-21.2 Table 1.

As for the comment that, if a permit does not contain conditions for fugitive emissions, they do not need to be counted, this assumption is incorrect. Potential to emit is intended to reflect the maximum possible emissions of a facility. Emissions can be limited by the physical capabilities of the equipment, or by federally enforceable limits such as permit limits. If there is no federally enforceable limit on the facility's fugitive emissions, the "potential to emit" must reflect the maximum design capacity of the equipment to produce fugitive emissions. If there is a permit limit on fugitive emissions, then only fugitives allowed under the permit would be included in the calculation of potential to emit.

80. COMMENT: Under the Part 70 requirements, only "regulated air pollutants" (that is, Pb, ozone, VOC, CO, etc.) are identified for permitting. For emission statements, the "regulated air pollutants" list is further reduced to pollutants related to non-attainment of air quality. (3) (5)

RESPONSE: The air contaminants subject to N.J.A.C. 7:27-21 are currently VOC, NO_x, CO, SO_2, TSP, PM_{10} and Pb; these constitute all of the criteria pollutants associated with ambient air quality standards and the precursors to the formation of ground level ozone. The Federal definition of "regulated air pollutant" at 40 CFR 70.2 also includes Class

I and Class II ozone depleting compounds subject to Title VI of the CAA, compounds subject to any standard under Section 111 of the CAA (NSPS), and Hazardous Air Pollutants (HAPS) subject to Section 112 of the CAA. In this rulemaking, the Department has not included these additional compounds. However, it is very likely that the Department will amend these rules at a later date to include additional pollutants, such as HAPS.

81. COMMENT: These commenters recommend that facilities and "research and development facilities" should be separated as allowed under 40 CFR Part 70. They suggest that the first sentence of N.J.A.C. 7:27-21.2(a) should read:

"Any owner or operator of a facility or research and development facility is subject ..."

They also suggest that the following sentence should be added to the end of N.J.A.C. 7:27-21.2(a):

"If a facility or research and development facility are co-located they shall be considered separate reporting entities under this subchapter." (3) (5)

RESPONSE: For the purpose of this rule, there is no substantial difference between a facility that has research and development operations and one that does not. The Department needs information from all facilities that trigger the reporting thresholds at N.J.A.C. 7:27-21.2, regardless of whether such facilities perform research and development operations.

As stated in the preamble to 40 CFR 70, States have the option to treat research and development portions of a facility as a separate facility in the operating permit program. The Department has not yet reached a conclusion regarding this option. This issue will be addressed when the Department proposes its operating permit rules pursuant to 40 CFR 70 by mid-1993. The Department will provide opportunity for comment when proposing the operating permit rules.

82. COMMENT: We respectfully point out that inclusion of certain types of commercial facilities in the program (through N.J.A.C. 7:27-21.2, Applicability) may cause undue burden on their personnel and financial resources without significant benefit to the environment. It is recommended that an exemption be provided for commercial (non-manufacturing) facilities, such as hospitals and schools, stand-alone research and development sites, at which the primary sources of Table 1 Air Contaminants (specifically NO_x) would be furnaces or boilers used primarily for heating the facilities.

In northern climates, such as New Jersey, heating plants are sized for the most severe low temperature conditions. Such heating capacity (used for determining annual air emission capacity) would be utilized in mid-winter, when the ozone problem is at a minimum. During summer months, when contaminant (ozone) problems are most severe, use of, and emissions from, heating plants would be minimal. Therefore, the new rules would be made more reasonable by excluding the above non-industrial establishments from extensive data collection and reporting and likely eventual classification as major sources. (4)

RESPONSE: The Department cannot exempt commercial facilities as mentioned in the comment without seriously undermining the intent of the rules as mandated by the Federal law and Federal regulations. However, as indicated in the instructions and N.J.A.C. 7:27-21.5 Table 2, the Department gives facilities the option to let the Department calculate emissions from fuel burning operations, storage tanks, wastewater treatment operations and landfill operations. This option is provided to reduce the burden for facilities, including "non-industrial" facilities.

83. COMMENT: The Department has specified in the summary that emissions statements pertaining to the emissions of SO_2, TSP, PM_{10}, and Pb are not required to be submitted until 1994 for the emissions of 1993. The Department has not addressed what, if any, emissions statements for the calendar year 1992 will be required. If the Department is going to develop the emissions statement reporting forms based upon final EPA guidance, the 1992 emissions inventory (if required) may not benefit from those guidelines and cause confusion in the interim. (11)

RESPONSE: N.J.A.C. 7:27-21.3 states that data regarding VOC, NO_x and CO are required to be submitted for the emissions of 1992 in 1993. SO_2, TSP, PM_{10}, and Pb are not required to be reported until 1994 for the emissions of 1993. The Department has merged the requirements of the new emission statement program (42 USC 7511a(a)(3)(B)) with the emission inventory requirements currently in place. The Department is federally mandated to adopt this rule. The Department cannot wait for final EPA guidance in light of possible sanctions against New Jersey. However, EPA's most recent guidance document is very detailed and is adequate for the purpose of developing this rule. EPA's emission statement guidance is not expected to change significantly, and the Department is confident that the latest draft guidance from EPA is an appropriate basis for this rule. The Department and EPA have discussed issues regarding program design to ensure conformity with final guidance. If EPA's guidance changes significantly, the Department will propose amendments to N.J.A.C. 7:27-21.

84. COMMENT: Applicability is triggered if a facility has the potential to emit greater than the threshold in Table 1. Most batch plant permits and pilot plant permits have a large potential to emit although their actual emissions may be much less. We suggest that the Applicability should really be triggered on the actual emissions instead of potential emissions. (12)

It is our interpretation that under this proposed new rule, the Department will require all facilities "that emit" any air contaminant at a rate greater than or equal to the applicable threshold to submit annual emission reports. In addition, it appears that a facility's "potential to emit," and not "actual emissions" are to be used to determine whether this subchapter 21 requirement applies. It is in this context that we are concerned. It appears that a facility's potential to emit would be based on the sum of all allowable emissions from permitted operations along with emissions at maximum design capacity for all sources which have no permit. (23)

RESPONSE: The Department believes that it is impractical for the reporting threshold to be based on actual emissions. If the Department knew or could easily determine facilities' actual emissions, there would be no need for these rules. The Department has records on how much permitted sources are allowed to emit in accordance with permit conditions and has records of information facilities submitted in the 1990 emission inventory surveys. However, the Department does not have on record recent operating data from sources, such as whether a source operated twice as much in 1992 as it did in 1990, or whether a source was not used at all. If the applicability for this rule were based on actual emissions, the Department would have no way to determine whether a particular facility would be subject to the rules. Basing applicability on potential emissions gives the Department a better way of determining who is subject to the rule because the Department has information on facilities' allowable emissions. Because facilities also have information on their allowable emissions, this should aid facilities in determining whether they are subject to subchapter 21.

85. COMMENT: On Table 1, the Threshold for VOC is 10 tons per year. This level is not consistent with EPA's 25 ton per year total HAPs and the 10 ton per year for an individual HAP. The threshold level should be changed to be consistent with the Major Facility definition under the Clean Air Act Amendments. (12)

RESPONSE: VOC is not the same as the pollutant category Hazardous Air Pollutants (HAPs). The reporting threshold for VOC is based upon emission inventory requirements. 42 USC 7511a(a)(3)(B) does not specify that emission statements apply only to major facilities.

86. COMMENT: Under certain conditions (for example, control apparatus malfunction), a facility's actual emissions may exceed its potential to emit. Therefore, subsection (a) should be changed to read as follows: Any owner or operator of a facility ... **which emits,** or has the potential to emit, ... (19)

RESPONSE: The Department agrees with the rationale of this comment and has made the suggested change.

87. COMMENT: All facilities meeting the applicable emissions thresholds are required to provide emission statements. Unpermitted, as well as nontraditional sources, such as publicly owned treatment works (POTWs), hazardous waste, treatment, storage and disposal facilities (TSDFs), and government facilities must be included (19)

RESPONSE: The Department agrees with this comment. Subchapter 21 does include such facilities. In the implementation of the rules, the Department has designed emission statement forms for the reporting of wastewater treatment (Form G) and landfill operations (Form H) for clarification and ease of reporting. There is no exception for government facilities in these rules.

88. COMMENT: If a facility previously subject to the emission statement reporting requirement believes it is now no longer subject to the emission reporting requirement, the source should provide justification to the Department, at least for the first year it falls below the threshold. This is preferable to simply not providing an emission statement. (19)

RESPONSE: The Department agrees with this comment and will propose to amend N.J.A.C. 7:27-21 to address this issue in a future rulemaking, expected to be adopted in 1994.

89. COMMENT: All Federal, State and municipal facilities should be included in requirements to file emission statements. (21)

RESPONSE: As proposed, N.J.A.C. 7:27-21 applies to all facilities that meet or exceed the reporting thresholds listed at Table 1. This includes such Federal, State and municipal facilities. No change has been made upon adoption to alter this requirement.

N.J.A.C. 7:27-21.3, General provisions

90. COMMENT: The last sentence of N.J.A.C. 7:27-21.3(a) should be deleted because it does not provide any further clarification. (14)

RESPONSE: The Department agrees and has removed the last sentence upon adoption.

91. COMMENT: We have conducted stationary source test programs and have found that emissions from our laboratory operations are well below the threshold levels for the listed air contaminants. However, due to the utilization of fossil fuel fluid boilers at the facility for space heating, it appears that NO_x emissions will trigger the reporting requirements for one of our sites.

Although we have no objection in reporting emission from our boiler units, the additional requirement under N.J.A.C. 7:27-21.3(a), which stipulates that if the facility's potential to emit equals or exceeds the reporting threshold for VOC or NO_x, the facility must report information for both VOC as well as NO_x, is impractical for major R&D laboratory facilities. (23)

RESPONSE: The Department cannot alter the requirement that if a facility triggers either VOC or NO_x, it must report both. Both of these air contaminants are precursors of ground level ozone. Reporting of ozone precursors is a clear requirement as provided in EPA's guidance. The Department has provided facilities some flexibility for reporting the emissions of small source operations at N.J.A.C. 7:27-21.5(i). In addition, Form A, Part 4 allows facilities the option of combining and reporting total number of laboratory hoods and the total emissions from those hoods rather than having to list each hood and its emissions separately.

Additionally, as indicated in the Summary of Agency-Initiated Changes below, pursuant to the provision at N.J.A.C. 7:27-21.5(k), the Department is amending the rule to require that if the reporting threshold for VOC, NO_x, or CO is triggered, all three air contaminants must be reported. This is mandated by the emission inventory requirements.

92. COMMENT: If a facility meets the emission reporting threshold requirement for one or more pollutants, it is suggested that the other pollutants be reported as well. (19)

RESPONSE: In accordance with emission inventory requirements, the Department currently requires that if a facility meets the reporting threshold for VOC, NO_x, or CO, it must report all three air contaminants. The Department agrees with this comment and will consider amending N.J.A.C. 7:27-21 in a future rulemaking, expected to be adopted in 1994, to require that if a facility meets the reporting threshold for any of the air contaminants at N.J.A.C. 7:27-21.2 Table 1, the facility must report all air contaminants.

93. COMMENT: In subsection (b), the phrase "and applicable criminal penalties ..." should be deleted. Criminal penalties for non-compliance with this subchapter are extreme and inappropriate. (8) (14)

RESPONSE: Criminal penalties are authorized pursuant to N.J.S.A. 26:2C-19 and are necessary to deter violation of the rules. The Department would usually seek administrative penalties for non-compliance with this rule. The Department would only seek criminal penalties in extreme cases. When the Department seeks such criminal penalties, they can only be assessed after the Department has proven criminal wrongdoing in court.

N.J.A.C. 7:27-21.4 Procedure for submitting an emission statement

94. COMMENT: The major disappointment in the workgroup process arises from the April 15 required statement submittal date. A requirement currently exists to submit an annual SARA 313 Emissions statement by July 1 of each year. Much effort is spent gathering data, analyzing the data and calculating annual emissions. Acceptable data sets, usually based on financial data to insure some degree of validation, have been identified to characterize actual emissions. Once valid data is available early in the year, the emissions statement work may begin.

Our experience shows that valid emissions data is normally not available at our site to evaluate an emissions inventory by the fourth month of the year. We are concerned that requiring submissions by April 15 each year will reduce the value of the inventory by sacrificing work quality for an early product. We continue to seek coordination of this submittal with the SARA 313 submittal, which is required by July 1 each year. (7)

During "work group" discussions in 1991, it was unanimously felt that the deadline for submission was inadequate, and inconsistent with other reporting requirements including right-to-know information, which must be filed July 1 of each year. The proposed rule has extended the date originally proposed to April 15, however in some cases that may still not offer the regulated community sufficient time to perform the extensive amount of work necessary to prepare and submit both of these surveys. Although the Department may not be able to universally extend the deadline, due to EPA mandated deadlines, additional time should be allowed where requested. This may be addressed in the form of a variance or extension provision within the proposed rule. (18)

RESPONSE: Because EPA emission statement guidance and the due date for the annual point source reports indicate that State agencies must submit data to EPA by July 1, the Department cannot allow facilities to submit the forms to the Department as late as July 1. The Department must process all of the emission statements, including adding additional data elements, performing emissions calculations and performing quality analysis and control. No allowance for extensions are provided in the rules governing submission of emission statements.

95. COMMENT: One commenter suggests that the Department should be required to publish forms by December 31 of the year that reporting must be completed in order to allow companies four and a half months to complete the surveys. Another commenter suggests that forms should be sent out to the regulated community by January 15 of the year the emission statements are due. (12) (13)

RESPONSE: The Department agrees that facilities need to receive the emission statement forms in a timely manner in order to allow the facilities sufficient time to complete them. The Department believes that three months is appropriate. Because the 1992 emission statement forms had not been available to facilities until February 26, 1993, the Department has extended the due date only for the 1992 calendar year emission statements until May 31, 1993. See adopted N.J.A.C. 7:27-21.4(a)1. For subsequent years, it is the Department's goal to make the emission statement forms available at least 90 days before April 15.

N.J.A.C. 7:27-21.5 Required contents of an emission statement

96. COMMENT: Much of the information proposed in the section concerning emissions parameters is information which the Department already possesses. During a permit application, much of that information is supplied by an applicant to the Department. By requesting this information on an emissions survey, the Department is forcing the regulated community to submit information to which the Department currently has access, thereby increasing the effort on the regulated community and increasing the potential for additional data input errors. (11)

RESPONSE: The Department is aware that, for many facilities, some of the information required at N.J.A.C. 7:27-21.5 is information the Department has on record. Accordingly, the Department will pre-print information currently on record before sending the emission statement forms to facilities. The facility is then responsible to make sure that this information is up-to-date and correct. However, there may be some facilities and/or sources, required to submit information, which the Department does not have on record; these facilities will be required to submit the required information, verify any pre-printed information and supply all additional information. For these reasons the Department has required that facilities supply all the information at N.J.A.C. 7:27-21.

97. COMMENT: The calendar year of emissions must be reported. (19)

RESPONSE: The Department will pre-print the calendar year of emissions on the emission statement forms.

98. COMMENT: Stack parameter information (that is, height and diameter) should be reported on the initial statement. (19)

RESPONSE: The emission statement forms indicate that stack height and stack diameter need to be submitted for additional source operations not on the Department's current records. See Form A, Part 3.

99. COMMENT: The process rate data should be reported in the units prescribed by the AIRS Facility Subsystem Source Classification Code Table. See EPA document "AIRS Facility Subsystem Source Classification Codes and Emission Factor Listing for Criteria Air Pollutants" EPA 450/4-90-003. (19)

RESPONSE: All process rate data shall be reported in the units prescribed by AIRS except for process rate data submitted on Form D. The Department will ensure that the process rate data submitted on Form D will be converted into units prescribed by AIRS.

100. COMMENT: While standard emission factors will prove useful early in the implementation of the Act, there should be plans to validate

and corroborate those emissions factors at different facilities with several types of equipment and varying dates of installation. (21)

RESPONSE: The Department believes that initiatives to improve the accuracy of emission factors, at least for some source categories, are under way. One such program is underway at the South Coast Air Quality Management District. As such work is completed and the results become available, the Department will consider developing guidance regarding their use.

101. COMMENT: It is unclear whether you are requiring specific information on the type of VOC (where possible) emitted. This should be required. (21)

If a breakdown of various chemical groups is utilized in modeling ozone compliance strategies, then these chemical groups should be identified in the regulations so that companies can utilize the same chemical groups when reporting. By grouping chemicals, the level of analysis and associated costs required to complete the reports can be greatly reduced, specifically for batch manufacturers. This method would provide the Department the level of detail required for evaluating SIP compliance, while reducing the burden on the manufacturer. (5)

The following additional emissions data element is suggested to be reported under subsection (c) for VOC: Speciated VOC emissions. (19)

RESPONSE: Because the Department has adopted this rule in order to satisfy the minimum reporting requirements as mandated by the Federal government, speciation of VOC is not required in this rule. For modeling purposes, standard EPA SCC factor files will be used. The SCC factor files use speciated VOC emissions based on what type of source is emitting the VOCs. However, speciation of VOC is required if a facility requests that the Department calculate the emissions from VOC storage tanks. In such a case, the facility must provide the Department the exact chemical contents of the tank in order for the Department to complete the calculation.

102. COMMENT: At N.J.A.C. 7:27-21.5(b)6, the use of latitude and longitude or UTM Coordinates in the emissions report should not be required to be completed. Facility address should be sufficient for the Department, and an additional field for mailing address should be incorporated since a mailing address is not necessarily the same as the facility address. The use of latitude and longitude or UTM Coordinates could cause aggravation to the regulated community by requiring surveys and searching for background information which would otherwise not be readily available. (11).

RESPONSE: EPA guidance clearly indicates that latitude and longitude coordinates are a required field. For facilities currently on Departmental records, the Department will pre-print both the UTM coordinates and the corresponding latitude and longitude. Facilities are required to validate these. The Department believes that this requirement is not extraordinarily burdensome. This information only has to be verified one time, unless the facility changes its location. Both the mailing address and the facility's street address are additional required fields; see N.J.A.C. 7:27-21.5(b)3 and 4.

103. COMMENT: N.J.A.C. 7:27-21.5(b)6 should be changed to require the reporting of facility latitude and longitude and delete the reference to UTM coordinates. EPA's locational data policy now requires the reporting of facility latitude and longitude. (19)

RESPONSE: The Department currently uses UTM coordinates as the locational coordinates within its current Air Pollution Enforcement Data System (APEDS). The Department is currently developing an improved data base for facility data, the Air Information Management System (AIMS). The new system will use latitude and longitude as the locational coordinates for facilities. In the meantime, the Department will translate UTM coordinates into latitude and longitude when submitting the emission statement data to EPA.

104. COMMENT: The following additional facility data elements should be reported under N.J.A.C. 7:27-21.5(b) when available:

Latitude and longitude method code
Latitude and longitude textual description
Latitude and longitude estimation of accuracy
Number of employees
Plant contact
Plant phone number (19)

RESPONSE: The number of employees, plant contact and the plant contact's phone number are fields on the emission statement forms. As these data elements are included in the emission statement guidance and pursuant to N.J.A.C. 7:27-21.5(k), the Department has clarified the rule to include these data elements. The Department will consider including the other suggested data elements in a future rulemaking.

105. COMMENT: At N.J.A.C. 7:27-21.5(c), the **and** should be deleted and replaced by an **or** as indicated below. Since most sources emit only VOC or only NO_x, generally only combustion sources emit both VOC and NO_x. (12)

RESPONSE: This rule is intended to cover sources which emit either VOC or NO_x or both. This has been clarified in the rule. If a source (at a facility that triggers the reporting threshold for VOC or NO_x) emits both VOC and NO_x, the facility must supply information on both VOC and NO_x. Combustion sources are good examples why this is needed. Additionally, as mentioned in the agency initiated changes, if VOC, NO_x, or CO is triggered, all three air contaminants must be reported. This is mandated by the emission inventory requirements.

106. COMMENT: The following are suggested additional operating data elements which could be included at N.J.A.C. 7:27-21.5(c) and (e):

Days per week of operation during the peak ozone season
Weeks of operation during the peak ozone season
Start time on both the normal operating schedule and on a typical peak ozone season day
End time on both the normal operating schedule and on a typical peak ozone season day (19)

RESPONSE: The Department will consider these suggested data elements in a future rulemaking for revisions to this rule.

107. COMMENT: The emission statements should only apply to those source operations, equipment or control apparatus that are permitted. Therefore the **bolded** phrase "**regulated under 7:27-8 and**" should be inserted into N.J.A.C. 7:27-21.5(c), (e) and (g). (12)

RESPONSE: Since there are many source operations and equipment which emit or have the potential to emit significant quantities of air contaminants that are not subject to N.J.A.C. 7:27-8, the Department cannot limit this rule in a way which would exempt such sources operations and equipment from N.J.A.C. 7:27-21. This would seriously undermine the intent of the CAA. 42 USC 7511a(a)(3)(B) does not prescribe that only permitted sources need to comply with the emission statement rule. Any facility which meets the applicability requirements of N.J.A.C. 7:27-21 must report the information prescribed at N.J.A.C. 7:27-21.5(c), (e) and (g) for all source operations which emit or have the potential to emit any of the applicable air contaminants.

108. COMMENT: At N.J.A.C. 7:27-21.5(d)1iii, in the phrase "The code for the method used to quantify the actual emissions (see (l) and Table 2 below)." It is not clear what "(see (l) . . .)" refers to. We suggest that the Department clarify this sentence to make the intent clear. (12)

RESPONSE: The "(see (l) and Table 2 below)" refers to subsection (l), which is eight subsections after subsection (d), and Table 2 which immediately follows subsection (l). The Department is aware that some confusion might have arisen with respect to this reference because the Department used a print font in which the letter "l" and the number "1" looked identical in the proposal document which was sent to interested parties and filed with the Office of Administrative Law (OAL). The Department has since changed the font used in air pollution control code rulemaking documents which are sent to interested parties and filed with OAL.

109. COMMENT: At N.J.A.C. 7:27-21.5(d)2, the terms "actual control efficiencies" and "actual capture efficiencies" should be changed to "**estimated** control efficiencies and **estimated** capture efficiencies." Since most data is estimated using factors or best engineering data, it is difficult to certify that the actual efficiencies are true, accurate and complete. Only in cases where information is obtained from stack tests or CEMS can the efficiencies be considered actual. (12)

RESPONSE: The Department has addressed this issue in the certification language, which specifies that some of the information may be based on estimations.

110. COMMENT: At N.J.A.C. 7:27-21.5(d)2, (f)2 and (h)2, the rule should provide for the reporting of information on the use of more than two (that is, tertiary) capture and control devices and their efficiencies (capture and control efficiencies) if used by a source. (19)

RESPONSE: The Department agrees that a source operation may utilize more than two control apparatus. The Department has clarified that the rule provides for tertiary control. The emission statement forms also reflect this clarification.

111. COMMENT: At N.J.A.C. 7:27-21.5(d)2ii, (f)2ii, and (h)2ii, if the actual capture efficiency is unavailable, the "capture device" design efficiency, not the "control apparatus" design efficiency, should be reported. (19)

RESPONSE: The Department agrees that capture efficiency is a function of the capture device, not the control apparatus. The Department has changed the language to clarify this.

112. COMMENT: At N.J.A.C. 7:27-21.5(d)3i, (h)3i, and (f)3i, the information under "Process Rate Data" should be clarified to indicate whether the information pertains to a per source, per process or per piece of equipment. (12)

RESPONSE: The text at subparagraphs (d), (f) and (h) specifies that the information should be reported at the "process level." That is, the information for the source operation must be given with respect to each type of fuel, input material or mode of operation. If a particular source operation only burns one type of fuel, has one set of input material, or operates under one mode of operation, the annual process rate would be the total amount of fuel burned, raw material used, or product generated for the year. If the source operation burned more than one type of fuel, has more than one set of input material, or operates under more than one mode of operation, then the annual process rate for each type fuel, for each set of input material or for each product produced must be reported.

113. COMMENT: It is stated, at 24 N.J.R. 2983, paragraph 5, that, "The emissions that were released during the peak ozone season are to be divided by the number of days in which the source was operated." At 24 N.J.R. 2995, N.J.A.C. 7:27-21.5(d)1ii, under Emissions Information, the statement, "The average actual emissions of VOC and NO_x in pounds per day of operation during the peak ozone season," should be clarified in the final regulations. In other words, "day of operation" should be defined so that the average actual emissions are not divided by the number of days in the total ozone season. Clarification should resemble a statement similar to that which is presented at 24 N.J.R. 2983, paragraph 5, and which is listed above. (22)

RESPONSE: The Department agrees that additional clarification is needed. Accordingly the Department has provided clarification of this calculation in the instructions for the emission statement forms.

114. COMMENT: A problem that existed in preparing past emission inventories still presents a problem. Although some of it was discussed at the "work group" meeting earlier this week regarding the format of the survey forms, more clarification of these terms is still needed. Specifically, "average" has to be defined with regard to time of day and time of year. The utility industry would define "average" and what is "typical" very differently from what others might and what has been suggested in the rule, that is total emission for a given period divided by that period. (18)

RESPONSE: The Department no longer uses the word "typical" to describe information required for the peak ozone season. This word was previously used for the 1990 emission inventory surveys. Because of the ambiguity of the word, the Department now specifies an average over the number of days a source operation operates during a specific period. Guidance as to how to calculate information for the peak ozone and peak carbon monoxide seasons is provided in the instructions for the emission statement forms. For example, if a source operation does not operate every day during the peak ozone season, one would calculate the average daily actual emissions during the peak ozone season by dividing the total emissions of a source for the period by the number of days the source operated during that period, not by the 92 days in the peak ozone season.

115. COMMENT: N.J.A.C. 7:27-21.5(d)2 differs from EPA guidance. If this paragraph is retained then it should state the following:

i. Current primary and secondary control apparatus identification codes (see Table 3 below)

ii. Current combined (if primary and secondary control equipment is used) control equipment efficiency (%). (3) (5)

RESPONSE: Overall control efficiency is the product of the capture and control efficiencies. The forms for the 1992 emission statements specify that overall control efficiency should be reported. However, to report overall control efficiency, a facility needs to know the capture and control efficiencies (taking into account any downtime). Therefore, even though the rule specifies capture and control efficiencies, overall control efficiency as specified in the forms for the 1992 emission statements is equivalent.

116. COMMENT: N.J.A.C. 7:27-21.5(d)2, (f)2, and (h)2 should provide guidance as to how an applicant will address control apparatus information and associated emissions in the case where a control apparatus begins operation mid-way through a control season or calendar year. (11)

RESPONSE: Capture and control apparatus efficiencies required at N.J.A.C. 7:27-21.5(d)2, (f)2, and (h)2 should indicate the efficiencies over the entire reporting period, including consideration of maintenance degradation and downtime. Average capture and control efficiencies should be used for the period in question.

117. COMMENT: The following are suggested additional process rate data elements that could be reported at N.J.A.C. 7:27-21.5(d)3 for VOC:

Design capacity

Fuel use data (that is, heat content)

Tank data (that is, vapor pressure, vapor mole percent, diameter, height, age, loading type, color, fixed roof tank information, and floating roof tank information)

Solvent usage data (that is, solvent purchased, and solvent reprocessed) (19)

RESPONSE: The emission statement forms include design capacity for fuel combustion sources, that is, maximum heat input rate. The heat content of the fuel used is not on the forms because the Department requires reporting of the type of fuel used and the Department can determine the heat content of fuels from standard lists. The emission statement forms include tank diameter, tank height, color, fixed roof information, loading type and floating roof information. For facilities that request the Department to calculate emissions from storage tanks, the Department will determine vapor pressures from the chemicals the facilities list. The Department will not ask for vapor mole pressure because the Department does not presume mixing. The tank age is not necessary to estimate emissions and will not be required to be reported. Fugitive emissions from use of solvents are to be included in the estimation of fugitive emissions on Form A, Part 4.

118. COMMENT: At N.J.A.C. 7:27-21.5(d)iv, (f)v, and (h)iii, the addition of "any emissions factor used to determine actual emissions" as a requirement for completion of an emission statement is redundant, especially in light of the fact that the Department is publishing and requiring completion of the field for codes pertaining to each method used to quantify the actual emissions. The subject facility should be given the option to include either the emissions factor or the method code. Additionally, there may be instances where an AP-42 emissions factor may have been used to estimate emissions when a permit application was first filed, however, that emissions factor may have been revised since the original application. Such a situation could cause a conflict between the permitted and estimated emissions as the result of a change to the AP-42 emissions factors. (11)

RESPONSE: If an emission factor is used to determine the emissions from a source operation, the Department needs to know the number and units used in order to verify it. The commenter is concerned that permit allowable emissions will differ from estimated actual emissions due to a change in AP-42 emission factors. However, estimated actual emissions and permit allowable emissions are expected to be different because permit allowable emissions are based on worst case analysis and the estimated actual emissions are based on actual operating parameters. If the facility believes that it is exceeding permit allowable emissions, it should seek a revision of the permit.

119. COMMENT: The reference to actual emissions of CO during the peak ozone season at N.J.A.C. 7:27-21.5(e) seems irrelevant. True, reporting annual emissions of CO is relevant, and even calculating average CO emissions during the CO season is warranted. However, since CO attainment is predominantly of concern during the colder months, as established within the oxygenated fuel regulations, the need for additional calculations during the ozone season will only serve to increase the burden upon the regulated community and the Department. Additionally, such information introduces another point of entry for error on the part of the regulated community (in calculations) and the Department (in data entry and interpretation). The same comment holds true for the requirement to report similar data with respect to all other affected contaminants (SO_2, VOC, etc.) during the ozone season. (11)

RESPONSE: VOC, NO_x and CO all play a role in the formation of ground level ozone. Pursuant to the EPA mandated emission inventory requirements, actual emissions of VOC, NO_x and CO during the peak ozone season are required. Actual emissions of the other air contaminants required to be reported in this subchapter are only required to be reported in tons per year, not in pounds per day of operation during the ozone season; see N.J.A.C. 7:27-21.5(h)1.

120. COMMENT: N.J.A.C. 7:27-21.5(i) allows for the reporting of emissions from certain source operations to be estimated at one ton per year (0.1 tons per year for lead emissions). The emission statement regulation should require the reporting of actual emissions. (19)

RESPONSE: This provision only applies to small source operations and does not prohibit facilities from estimating the actual emissions from small source operations. The Department encourages facilities to perform estimations of their emissions from small source operations where practical. However, this provision allows a facility to choose a conservative estimate for small source operations which might otherwise be very burdensome to determine.

121. COMMENT: Proposed N.J.A.C. 7:27-21.5(i) requires small source operations, defined as less than one ton per year for all emissions but lead (Pb), to report emissions to the Department in certain situations. Clarification is required concerning the applicability of this requirement, since proposed N.J.A.C. 7:27-21.3, General provisions, only requires emissions to be reported if "the facility's potential to emit equals or exceeds the applicable threshold set forth at N.J.A.C. 7:27-21.2 Table 1" (that is, 10 TPY VOC or 25 TPY NO_x). Does proposed N.J.A.C. 7:27-21.5(i) apply only in the case where the facility must report both VOC and NO_x emissions under proposed N.J.A.C. 7:27-21.3(a) because its emissions of one of those emissions exceeds an applicable threshold?

If N.J.A.C. 7:27-21.5(i) only applies to VOC and NO_x emissions when one of the applicable thresholds is exceeded, we submit that the emissions threshold defining a "small source" should be less than the applicable N.J.A.C. 7:27-21.2 threshold—in other words, **less than** 10 TPY for VOC, 25 TPY for NO_x etc. (16)

RESPONSE: The term "source operation" is different from the term "facility." The applicability requirements at N.J.A.C. 7:27-21.2 are based on the facility's total potential to emit from all sources within the facility. Therefore, if a facility does not emit or have the potential to emit any of the air contaminants listed at Table 1, at levels which meet or exceed the thresholds at Table 1, then the facility is not subject to the requirements of the subchapter (including the requirements at N.J.A.C. 7:27-21.5(i)). The provision at N.J.A.C. 7:27-21.5(i) provides a facility (which is required to submit an emission statement pursuant to N.J.A.C. 7:27-21.2) flexibility on how to report any small source operations within the facility. For example, if a facility is required to report its CO, VOC and NO_x emissions pursuant to the applicability requirements at N.J.A.C. 7:27-21.2, then information pertaining to all sources of CO, VOC and NO_x which have a potential to emit one ton per year or greater must be reported pursuant to N.J.A.C. 7:27-21.5(c) through (f). The facility has the option to report all small source operations (with a potential to emit less than one ton per year) pursuant to the provision of N.J.A.C. 7:27-21.5(i) instead of reporting the information required at N.J.A.C. 7:27-21.5(c) through (f) for each small source.

122. COMMENT: The provision at N.J.A.C. 7:27-21.5(i), which allows emissions of small source operations to be reported with a lower level of detail, is not appropriate for R&D laboratory facilities such as ours, which contain large numbers of potential laboratory apparatus units in the various laboratories contained within the facility. (23)

RESPONSE: The Department believes that the provisions for flexibility currently in the rule are appropriate for R&D operations which would otherwise be difficult to report. All source operations within a facility which must submit an emission statement pursuant to the applicability requirements at N.J.A.C. 7:27-21.2 must report all source operations which emit or have the potential to emit any of the applicable air contaminants. This is required whether or not the facility is a research and development facility. N.J.A.C. 7:27-21.5(i) has been designed to give facilities flexibility on how to report the information. Additionally, Form D has been designed to better accommodate batch and pilot operations, and Form A, Part 4 allows facilities to provide the total number of laboratory hoods and the total estimated emissions from those hoods. In developing these provisions, the Department has balanced the concerns of reporting R&D operations with the environmental objectives of the rule and believes these provisions are appropriate for R&D operations.

123. COMMENT: We would advise against providing flexibility for some small source operations in reporting as at N.J.A.C. 7:27-21.5(i). Large areas of the State are in severe non-attainment. Small sources collectively may be the largest contributors of VOCs and NO_x because of poor maintenance, ancient equipment, etc. Instead it might be appropriate to provide technical assistance to those sources, funded out of the permit program. (21)

RESPONSE: This provision does not exempt reporting of small source operations, which may collectively contribute to significant quantities of air contaminants emitted to the atmosphere. It merely allows an option for facilities to use a more simplified reporting mechanism which is appropriate for small sources. If a facility chooses this option, the corresponding emissions reported to the Department are based on a conservative estimate.

Facilities may also opt to have the Department calculate emissions from fuel burning operations, storage tanks, wastewater treatment operations and landfill operations. Assistance in completing the emission statement is provided by detailed instructions in the instruction booklet and by calling (609) 292-6722 between 10 A.M. and 4 P.M. on weekdays between March 1, and May 28, 1993.

124. COMMENT: Under N.J.A.C. 7:27-21.5(i)1i, the information that constitutes "a description of each source operation" should include the type of information the Department is looking for, for example, a description of each source operation including the size of the unit, type, etc. (12)

RESPONSE: For source operations currently on record, the description will be pre-printed on Form A, Part 2. For source operations not on record, this information will be requested on Form A, Part 3.

125. COMMENT: Although under N.J.A.C. 7:27-21.5(i) an applicant may decide to complete the reduced reporting indicating one ton per source, this section or somewhere in the rule it should discuss the fee situation. For example, a small company not having the manpower resources of a large company may opt for reduced reporting. Then in the future, this information may be used for determining fees. Now the small company that did not have the manpower to complete the detailed reporting must pay higher more burdensome fees. We suggest that language be included to discuss the fee system. (12)

Emission fees and control device requirements will be based on Emissions Statement data. Emission fees and thousands of dollars of control requirements would be forced on a facility based on unreliable and excessive fugitive reporting. In light of these severe difficulties the reporting of fugitive emissions should be dropped. (3) (5)

RESPONSE: The rule does not address fees. The operating permit rules, expected to be proposed in mid-1993, will contain provisions for the Federally mandated emission fees. One option authorized by the CAA is to base fees on emissions reported pursuant to these rules. The Department will provide opportunity for comment on fee related issues when proposing the operating permit rules.

126. COMMENT: Under N.J.A.C. 7:27-21.5(j), the term "Cumulative Total Fugitive Emissions" should be changed to "Cumulative Total Fugitive Emission **Estimates**' since only factors and maybe a few measurements are taken to determine the fugitive emissions. (12)

RESPONSE: The Department has addressed this issue in the certification language, which specifies that some of the information may be based on estimations.

127. COMMENT: N.J.A.C. 7:27-21.5(j) requires that all fugitive emissions be reported. Buckeye Pipeline Company is a common-carrier liquid product pipeline company that transports gasoline, no. 2 fuel oil, diesel fuel, kerosene, and turbine fuel (aviation kerosene). Any fugitive emissions would likely be insignificant and in order for the emissions to become significant, the equipment would likely be leaking liquid fuel. Therefore, any VOC fugitive emissions that might occur (at flanges, pumps, and valves) are insignificant, due to the nature of the pipeline business. It is necessary to avoid extensive testing and monitoring of insignificant fugitive emissions. (13)

RESPONSE: The cumulative total of fugitive emissions from facilities in New Jersey is significant. If the fugitive emissions at a facility are insignificant, then reporting should be relatively easy. Testing and monitoring are not the only methods used to determine fugitive emissions; material balance and emission factors may also be used to estimate fugitive emissions.

128. COMMENT: An issue raised by the proposal which small businesses wish to challenge is whether "all fugitive emissions" should be included in the definition of "potential to emit," for purposes of State reporting. Proposed N.J.A.C. 7:27-21.5(j). Preamble at 24 N.J.R. 2982, Col. 1. Since fugitive emissions by definition cannot be measured as they exit a stack, vent or other opening from a piece of emissions equipment, there is great difficulty quantifying such emissions for purposes of determining applicability of these rules. Because no AP-42 factor for fugitive emissions appears to be applicable to many industries like our own that potentially will be required to submit emissions statements, we are very concerned about being able to calculate fugitive emissions accurately. This issue is of particular concern since the applicability threshold is so low—that is, 10 tons per year and certifications are required.

Instead of defining "potential to emit" to include fugitives from all industries, we recommend that the Department require fugitive emissions

to be included only in determining "potential to emit" for source categories for which there are State or Federal new source hazardous air pollutions and/or other industry-wide requirements. This is how the Federal air pollution control regulations work for determining the applicability of new source review requirements under the Clean Air Act. In this way, sources which do not have experience in calculating fugitive emissions can concentrate on determining stack and vent emissions using emissions factors or other measurements.

Alternatively, these concerns could be resolved if the applicability of emissions statements under N.J.A.C. 7:27-21.3 were based on actual historical emissions, not potential to emit. This appears to be all that is required by the Federal Clean Air Act. See Section 182(a)(3)(B) of the CAA. In the end, it will be more confusing for sources and the Department to reconcile the use of potential to emit for applying the requirement and the actual emissions which appear to be what must be reported under N.J.A.C. 7:27-21.5. (16)

RESPONSE: The Department believes that potential to emit is a more appropriate way to determine applicability to the subchapter than actual emissions. Potential to emit is more readily determined than actual emissions for the most significant sources at a facility. This way a facility does not need to go through a laborious effort to determine if it needs to report. Generally, a facility will be able to determine whether it triggers a reporting threshold without going through a detailed analysis of its fugitive emissions. Fugitive emissions are, in most cases, a small part of a facility's potential to emit. However, because fugitive emissions from all facilities in the State are a significant source of air pollution, it is important that all facilities subject to the rule report fugitive emissions so as to carry out the intent of the CAA, and Federal regulations and guidance pursuant to the CAA, that states develop a comprehensive picture of all sources of air pollution.

129. COMMENT: With regard to N.J.A.C. 7:27-21.5(j), at present no reliable method for accurately determining fugitive emissions is available. To rush into reporting fugitive emissions without a clear understanding of their nature and calculation is not recommended. This section should be dropped. (3) (5)

Under N.J.A.C. 7:27-21.5(j)2 and 3, this information is not available without completing monitoring for fugitive emissions during the peak seasons. The Department should give guidance on how to determine these fugitive emissions. (12)

More guidance and definitive wording should be included for determining "fugitive emissions." The characterization of fugitive emissions without extensive testing at such locations as duct joints, flanges, valves, storage piles, conveyors, etc. may prove to be only a "best guess" estimate. Consequently, the inherent errors associated with air quality impact analyses would be compounded by including the erroneous numbers reported as fugitive emission factors. This would result in undue burdens on both the Department and industry if the results indicated a noncompliance situation. While it is recognized that certain industries generate substantial fugitive emissions, which may be greater than those emitted from stacks or vents, certain companies (for example, electric utilities) could have negligible fugitive emissions. If it could be demonstrated that fugitive emissions are insignificant (that is, are nonexistent or do **not** impact areas beyond that facility's boundaries), the facility should be granted an exemption from determining and reportring fugitive emissions. (6)

RESPONSE: The Department understands that methods for determining fugitive emissions are still evolving. However, the cumulative total of fugitive emissions from all facilities in New Jersey are too significant to ignore. Further, if fugitive emissions are not calculated and reported, then the methods of calculation will never improve. Facilities should use the methods reasonably available which best estimate their fugitive emissions. A few documents for reference on how to calculate fugitive emissions are listed in the instructions for completing the emission statement. As better methods become available, the Department will reference these methods in subsequent instructions for completing the emission statement.

130. COMMENT: The first sentence of N.J.A.C. 7:27-21.5(k), requiring information required by Federal regulations or guidance, should be deleted, since it refers to ambiguous information. (14)

RESPONSE: The Department believes that this provision is important. This provision will enable the Department to maintain an effective program over the years by ensuring that information critical to objectives of this rule will be gathered.

131. COMMENT: These commenters support the provision at N.J.A.C. 7:27-21.5(l) that, when choosing an emission method to calculate actual emissions, the source submitting the emission statement may select the method which is "readily available" and best estimates the actual emissions. (6) (8)

RESPONSE: The Department appreciates this comment in support of the rule.

132. COMMENT: This commenter objects that the method for determining actual emissions would be set in the conditions incorporated in future operating permits as stated at N.J.A.C. 7:27-21.5(l). This approach would be unnecessarily restrictive. Sources should maintain the flexibility to provide the best available estimates of actual emissions without permit condition restraints. (8)

The Summary of the proposal mentions that the method utilized for determining actual emissions may also be set in the conditions incorporated in any future operating permit. The Department must surely realize that the Operating Permit Rule is far from being developed, and linking emissions statements to the Operating Permit Rule at this time will seriously jeopardize the accuracy of the inventory since the impact and strategies associated with the Operating Permit Rule are as yet not developed. (11)

The Department proposed to incorporate emission calculation methods as set conditions to be incorporated into future operating permits. If the facility calculation method changes, is it proposed that the change will be reflected as a permit modification, such as, a minor modification or administrative permit amendment, to the operating permit? Clarifications reflecting this issue should be incorporated into N.J.A.C. 7:27-21. (22)

RESPONSE: The Department intends to qualify methods of determining actual emissions in the future operating permit program only where there are concerns about the accuracy and/or consistency of reported actual emissions. This provision is intended to enable the Department to provide specific procedures as part of the operating permit where appropriate to clarify actual emission reporting for the facility, the Department and the public. Implementation of this will be further defined in the proposal for the operating permit rules, expected to be proposed by mid-1993, upon which there will be an opportunity for comment.

133. COMMENT: Under N.J.A.C. 7:27-21.5(l), the term "method" should be changed to method**(s)** to indicate that several different methods may be used to calculate emissions under N.J.A.C. 7:27-21.5(d)1, (f)1, (h)1 or (i)2. (12)

RESPONSE: When supplying the method for determining emissions, the facility should use the primary method. The primary basis for the emissions should be used (that is, CEM data, stack test, AP-42, other emission factor or engineering judgement).

134. COMMENT: N.J.A.C. 7:27-21.5(l) should be revised to read as follows: "... from Table 2 which is reasonably available and which **the reporting entity believes** best estimates the actual emissions from the source operation, unless ..." This will give the reporting entity the discretion necessary to assure that the proper estimating methods are used in determining emissions for the purpose of emissions reporting. (11)

RESPONSE: As this was the Department's intent, N.J.A.C. 7:27-21.5(l) has been clarified as suggested.

135. COMMENT: The title of Table 2 should be changed from "Codes for Methods of Quantifying Actual Emissions" to "Codes for Methods of Quantifying **Estimated** Actual Emissions. The term estimated should be added since only a source test or other measurement can give the actual emissions. (12)

RESPONSE: The Department has addressed this issue in the certification language, which specifies that some of the information may be based on estimations.

136. COMMENT: At N.J.A.C. 7:27-21.5(d)2, control apparatus information requirements are unclear for liquid petroleum products tanks (for example, identification codes for tank secondary seals, control efficiencies, etc.). (13)

RESPONSE: The Department has clarified this concern in the emission statement forms. Form C allows one to indicate which controls a storage tank utilizes. The Department will convert these into the appropriate codes before submitting the data to EPA.

137. COMMENT: A method for reporting emissions from Continuous Emissions Monitoring (CEM) systems should be included in Table 2, Codes for Methods of Quantifying Actual Emissions. (19)

RESPONSE: The Department agrees and has added the category "Emissions Based on Continuous Emission Monitoring" to Table 2, Codes for Methods of Quantifying Actual Emissions.

138. COMMENT: In Table 3, Control Apparatus Identification Codes should be changed as follows to correspond with EPA's codes:

Method code 077 should be changed to 079.

The following codes should be added:

Installation of Secondary Seal for Floating Roof Tank	097
Moving Bed Dry Scrubber	098
High Efficiency Particulate Air Filter	101 (19)

RESPONSE: The Department has changed code 077 to 079 and has added the additional categories to Table 3, Control Apparatus Identification Codes.

139. COMMENT: It is unclear what the requirements, if any, are for relatively minor emissions of CO, inhalable particulates (PM_{10}) and total suspended particulates (TSP) as they relate to pipeline breakout station operations. (13)

RESPONSE: These emissions may be reported as fugitive emissions on Form A, Part 4.

140. COMMENT: One commenter expressed concern that the proposed rules stop short of what is required to protect the environment and protect the citizens of New Jersey. Even some current permits and certificates impose vigorous testing and reporting requirements, such as annual stack testing for total suspended particulates; continuous emission monitoring for oxides of nitrogen; volatile organic compounds; carbon monoxide and sulfur dioxide limits on air contaminants (for example, hydrogen chloride, sulfuric acid, heavy metals and ammonia) that are not required to be reported in the proposed rule; and quarterly compliance results. This commenter recommends that all major sources of toxic emissions, such as heavy metals and toxic organic compounds, should be reported to the Department pursuant to this rule. (2)

RESPONSE: The Department agrees that hazardous air pollutants (HAPs) should be reported in the emission statements as soon as feasible. The Department has adopted these rules in order to satisfy the minimum reporting requirements as mandated by the Federal government. The Department is currently planning to amend these rules in the future, expected to be adopted in 1994, to include the reporting of HAPs. As for the current permitting requirements mentioned in the comment, the results of stack tests, continuous emission monitoring data, compliance reports and other such information represent real data a facility can use and will help a facility to complete the emission statement.

Issues related to research and development facilities

141. COMMENT: Several commenters suggested that research and development (R&D) operations should be treated differently from other operations, and that R&D operations should either be exempted from the requirements of the emission statement rules (5) (9) (15) (23) or should be treated as a separate facility (3) (5) (12). The following reasons for this suggestion were given:

- R&D operations require frequent process changes. (3) (5) (12) (15) (23)
- In the preamble to EPA's operating permit rules at 40 CFR Part 70, States are given the option to treat R&D portions of a facility as a separate facility. (3) (5) (12)
- Emissions from some R&D operations (such as some lab processes and lab hoods) are not permitted. (9)
- Emissions from R&D operations are not large enough to be of concern and are not cost effective to calculate. (9) (15)

RESPONSE: The Department recognizes the uniqueness of R&D operations. However, the Department cannot exempt R&D operations from these rules without seriously undermining the intent of the rules—to obtain a report of all point source emissions from affected facilities. The Department is not testing R&D portions of a facility as a separate facility in these rules because this special treatment would effectively exempt a significant number of R&D operations from the emission statement requirements, also undermining the intent of the rules. Contrary to portions of the comment, R&D operations emit significant quantities of air contaminants.

In recognizing the uniqueness of R&D operations, the Department has provided some special flexibility to report such operations. Batch and pilot plant operations may be reported on Form D. The information required on Form D closely follows information required for the batch/pilot plant reports submitted pursuant to permits. The information required on Form D, such as emissions per batch, batch run time and batches per week, is readily reportable and fulfills the objectives of the rule. Additionally, the Department recognizes the difficulties in reporting emissions from laboratory hoods. Therefore, the total number of laboratory hoods and the total emissions associated with those hoods may be reported as provided on Form A, Part 4.

N.J.A.C. 7:27-21.6, Recordkeeping requirements

142. COMMENT: Many corporations have central offices which are not located near the facilities being surveyed, in fact, no personnel report to several affected facilities associated with the utility industry. As a result, surveys of this type are often prepared at corporate offices. The Department is proposing that a facility affected by this regulation maintain records at that facility. Such a practice has no merit, and serves only to waste paper in those many cases where a corporate office is responsible for the survey. It is suggested that the proposed rule be revised to state that the person responsible for completing the survey must maintain the records for the specified period of time, since that person is the one who will ultimately be responsible for answering any concerns of the Department with respect to a particular survey(s) (11)

RESPONSE: The Department's requirement that copies of emission statements be kept at the facility has merit. Enforcement officers need to be able to verify if the facility had submitted an emission statement when inspecting a facility, especially when inspecting a facility whose corporate headquarters is located in another state or another country. This does not preclude the storage of duplicate records at another site. To further clarify this requirement, the Department has amended N.J.A.C. 7:27-21.6(a).

Summary of Hearing Officer's Recommendations and Agency Response:

Nancy Wittenberg, Director of the Department's Office of Energy, served as the hearing officer at the August 5, 1992, public hearing held at the Department's hearing room at 401 East State Street in Trenton, New Jersey. After reviewing the oral testimony presented at the public hearing, Director Wittenberg recommends the following:

The Department should amend N.J.A.C. 7:27-21 in a future rulemaking to include the reporting of sources of Hazardous Air Pollutants (HAPs), which include 189 heavy metals and organic toxic organic compounds, and the emissions of HAPs associated with those sources.

The Department agrees with the hearing officer's recommendation and will propose to add the reporting of sources of HAPs and the emissions associated with those sources in a future rulemaking, expected to be adopted in 1994. Director Wittenberg's recommendations are set forth in more detail in the hearing officer's report. A copy of the record of public hearing, which includes the hearing officer's report, is available upon payment of the Department's normal charges for copying ($0.75 per page for the first ten pages, $0.50 per page for the following ten pages, and $0.25 per page for additional pages). The record of public hearing is 35 pages. The Department will charge $16.25 for one copy. Persons requesting copies should contact:

ATTN: DOCKET #35-92-08
Department of Environmental Protection and Energy
Office of Legal Affairs
401 East State Street
CN 402
Trenton, New Jersey 08625-0402

Summary of Agency-Initiated Changes:

The following changes have been made upon adoption:

At N.J.A.C. 7:27-1.4, the word "shall" has been removed from the introductory sentence because it neither implies a future tense nor an obligation for one to perform.

As a correction of punctuation, the Department has removed a comma from paragraph 2 of the definition of the term "emissions information" at N.J.A.C. 7:27-1.4.

A comma was inadvertently omitted in the proposal of N.J.A.C. 7:27-1.12(b), after "alloted time," and has been added.

The Department has removed "characteristics," from the proposed N.J.A.C. 7:27-1.17(a), as it is redundant.

The Department has added the word "the" before the word "requirements" at N.J.A.C. 7:27-1.26(a).

The following changes have been made to correct typographical errors in the proposal at N.J.A.C. 7:27-21.1: the word "setting" has been changed to "settling" in the definition of "aerodynamic diameter;" the correct abbreviation for chlorodifluoromethane (HCFC-22) is given in the definition of "volatile organic compound;" and the correct isomer designation HCFC-124 is identified in the definition of "volatile organic compound."

The Department has added a provision at N.J.A.C. 7:27-21.3 in order to clarify that receipt of a facility's emission statement does not necessarily constitute the Department's belief that the information contained in such emission statement is accurate and complete.

Typographical errors at proposed N.J.A.C. 7:27-21.5(d)1iii, (f)1iv, and (h)1iii have been corrected. In the references to subsection (l), the "1's (number one) have been corrected as "l's (letter l).

Pursuant to the provision at N.J.A.C. 7:27-21.5(k), the Department has clarified the rules to require that if the reporting threshold for VOC, NO_x, or CO is triggered, all three air contaminants must be reported. This is mandated by the emission inventory requirements.

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

7:27-1.4 Definitions

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

***"Assertedly confidential information" means information which is the subject of a confidentiality claim, for which a confidentiality determination has not been made.**

"Claimant" means any person who submits a confidentiality claim under this subchapter.

"Class confidentiality determination" means a confidentiality determination made by the Department under N.J.A.C. 7:27-1.17, for a class of information.*

. . .

***"Confidential copy" means a record (or copy thereof) submitted to or obtained by the Department, containing information which the claimant asserts is confidential information.**

"Confidential information" means information which the Department determines, in accordance to the procedures at N.J.A.C. 7:27-1.6 et seq., to have satisfied all of the following substantive criteria:

1. The claimant has asserted a confidentiality claim with respect to the information, in compliance with the procedures required by N.J.A.C. 7:27-1.6 through 1.8, and such confidentiality claim has not expired by its terms, been waived or withdrawn;

2. The claimant has shown that disclosure of the information would be likely to cause substantial damage either to the claimant's competitive position or to national security;

3. The claimant has taken reasonable measures to protect the confidentiality of the information, and intends to continue to take such measures;

4. The information is not, and has not been, available or otherwise disclosed to other persons whether by the claimant (except in a manner which protects the confidentiality of the information) or without the consent of the claimant (other than by subpoena or by discovery based on a showing of special need in a judicial proceeding in which the claimant was required to disclose the information to such other persons, as long as the information has not become available to persons not involved in the proceeding);

5. The information is not contained in materials which are routinely available to the general public, including without limitation, initial and final orders in contested case adjudications, press releases, copies of speeches, pamphlets and educational materials;

6. The claimant has not waived the confidentiality claim for the information; and

7. No law, regulation (including, without limitation, N.J.A.C. 7:27-1.18 or any other regulations of the Department), or order by a court or other tribunal of competent jurisdiction specifically requires disclosure of the information or provides that the information is not confidential information.

"Confidentiality claim" or "claim" means, with respect to information that a person is required either to submit to the Department or to allow the Department to obtain, a written request by such person, meeting the requirements of N.J.A.C. 7:27-1.6 et seq., that the Department treat such information as confidential information.

"Confidentiality determination" means a determination by the Department that assertedly confidential information is or is not confidential information.

"Contract" means an agreement between the Department and a contractor, for which the Department has determined that it is necessary for the contractor to have access to confidential information to enable the contractor to perform the duties required by such agreement.

"Contractor" means a person, other than an employee of the Department, who has entered into an agreement with the Department to perform services or to provide goods for the Department.

"Control apparatus" means any device which prevents or controls the emission of any air contaminant directly or indirectly into the outdoor atmosphere.*

. . .

"Emissions information" means, with reference to any source operation, equipment, or control apparatus:

1. Information necessary to determine the identity, amount, frequency, concentration, or other characteristics (to the extent related to air quality) of any air contaminant which has been emitted by the source operation, equipment or control apparatus;

2. Information necessary to determine the identity, amount, frequency, concentration, or other characteristics (to the extent related to air quality) of any air contaminant which, under an applicable standard or limitation, the source operation*[,]* was authorized to emit (including, to the extent necessary for such purposes, a description of the manner or rate of operation of the source operation), or any combination of the foregoing; and

3. A general description of the location and/or nature of the source operation to the extent necessary to identify the source operation and to distinguish it from other source operations (including, to the extent necessary for such purposes, a description of the device, installation, or operation constituting the source operation).

The following list includes specific data fields which the Department considers to constitute emissions information. This list is not exhaustive and, therefore, other data might be found, in a proper case, to constitute emissions information:

Facility Identification
Plant name and related point identifiers
Address
City
County
AQCR (Air Quality Control Region)
MSA, PMSA, CMSA (Metropolitan Statistical Areas)
State
Zip Code
Ownership and point of contact information
Locational Identifiers:
Latitude & Longitude or UTM Coordinates
SIC Code (Standard Industrial Classification)
Emission point, device or operation description, information
SCC Code (Source Classification Codes)

Emissions Parameters

Emission type (for example, nature of emissions such as CO, particulate or a specific toxic compound, and origin of emissions such as process vents, storage tanks or equipment leaks)

Emission rate (for example, the amount released to the atmosphere over time such as pounds per hour or tons per year)

Release height (for example, height above ground level where the air contaminant is emitted to the atmosphere)

Description of terrain and surrounding structures (for example, the size of the area, with adjacent structures and terrain descriptions such as mountainous, urban, or rural)

Stack or vent diameter at point of emissions (for example, the inside diameter of vent at the point of emission to the atmosphere)

Release velocity

Release temperature

Frequency of release (for example, how often a release occurs in events per year)

Duration of release (for example, the time associated with a release to the atmosphere)

Concentration (for example, the amount of an emission stream constituent relative to other stream constituents, expressed as parts per million (ppm), volume percent, or weight percent)

Density of the emissions stream or average molecular weight (for example, density expressed as fraction or multiple of the density of air; molecular weight)

Boiler or process design capacity (for example, the hourly gross heating value of fuel input to a boiler at its maximum design rate or maximum pounds per hour product rate)

Emission estimation method (for example, the method by which an emission estimate has been calculated such as material balance, stack test, use of AP-42 emission factors, etc.)

Percent space heat (for example, the percent of fuel used for space heating)

Hourly maximum design rate (for example, the greatest operating rate that would be expected for a source in a one hour period)

Control apparatus information (for example, type of primary and secondary control apparatus, capture efficiency, and control efficiency)

***"Equipment" means any device capable of causing the emission of an air contaminant either directly or indirectly to the outdoor atmosphere, and any stack or chimney, conduit, flue, duct, vent or similar device connected or attached to, or serving the equipment. This term includes, but is not limited to, a device in which the preponderance of the air contaminant emitted is caused by a manufacturing process.**

"Final public copy" means a copy of a record submitted to or obtained by the Department, identical to the confidential copy except that any confidential information has been blacked out; provided, however, that if the record is not in a form in which the confidential information can be concealed by blacking out, the "final public copy" shall be a copy of such record from which such confidential information has been deleted, containing notations stating where deletions have been made.*

...

"Preliminary public copy" means a copy of a record held by the Department, identical to the confidential copy except that any assertedly confidential information has been blacked out; provided, however, that if the record is not in a form in which confidential information can be concealed by blacking out, the "preliminary public copy" shall be a copy of such record from which such confidential information has been deleted, containing notations stating where deletions have been made.

...

"Requester" means a person who has made a request to the Department to inspect or copy records which the Department possesses or controls.

...

"Source operation" means any process or any identifiable part thereof that emits or can reasonably be anticipated to emit any air contaminant either directly or indirectly into the outdoor atmosphere.

...

***"Substantial damage" means damage which is material and of real worth, value or effect. This term does not include damage which is speculative, contingent, or nominal.**

"Substantiation" means information which a claimant submits to the Department in support of a confidentiality claim pursuant to N.J.A.C. 7:27-1.11.*

...

7:27-1.6 Procedure for making a confidentiality claim

(a) Any person required to submit information to the Department under this chapter, or allow the Department to obtain such information, which such person believes in good faith to constitute confidential information, may assert a confidentiality claim by following the procedures set forth in this subchapter.

(b) A claimant shall submit to the Department (at the address provided in N.J.A.C. 7:27-1.8) a confidential copy and, upon the Department's request, a preliminary public copy of any record containing assertedly confidential information. The preliminary public copy shall carry a notation stating that confidential information has been deleted. The Department may disclose the preliminary public copy to any person, without restriction or limitation.

(c) The claimant shall label the first page of the confidential copy "CONFIDENTIAL COPY." At the top of each page of the confidential copy, which page contains information that the claimant asserts is confidential information, the claimant shall place a boldface heading reading "CONFIDENTIAL." The claimant shall clearly underscore or highlight all information in the confidential copy which the claimant asserts to be confidential, in a manner which shall be clearly visible on photocopies of the confidential copy.

(d) The claimant shall seal the confidential copy in an envelope displaying the word "CONFIDENTIAL" in bold type or stamp on both sides. This envelope shall be enclosed in another envelope for transmittal to the Department. The outer envelope shall bear no markings indicating the confidential nature of the contents.

(e) The claimant shall send the package containing the confidential copy to the Department by certified mail, return receipt requested, or by other means providing a receipt for delivery.

(f) The claimant shall include in the package a written designation of a person to receive notices pursuant to N.J.A.C. 7:27-1.7.

7:27-1.7 Designation by claimant of an addressee for notices and inquiries

A claimant shall designate a person as the proper addressee of communications from the Department under N.J.A.C. 7:27-1.6 through 1.30. To designate such a person, the claimant shall submit the following information to the Department in writing: the name and address of the claimant; the name, address, and telephone number of the designated person; and a request that all Department inquiries and communications (oral and written), including without limitation the inquiries and notices listed in N.J.A.C. 7:27-1.8(a), be directed to the designee.

7:27-1.8 Correspondence, inquiries and notices

(a) The Department shall direct all correspondence, inquiries and notices to the person designated by the claimant pursuant to N.J.A.C. 7:27-1.7, including without limitation the following:

1. Notices requesting substantiation of claims, under N.J.A.C. 7:27-1.10(a)1ii;
2. Notices of denial of confidentiality claims and proposed disclosure of information, under N.J.A.C. 7:27-1.13(a)1;
3. Notices concerning shortened comment and/or waiting periods under N.J.A.C. 7:27-1.21(a);
4. Notices of disclosure under N.J.A.C. 7:27-1.22; and
5. Notices of proposed use of confidential information in administrative proceedings, under N.J.A.C. 7:27-1.25.

(b) A claimant shall direct all correspondence, inquiries, notices and submissions concerning confidentiality claims under this chapter to the Department at the following addresses:

1. With respect to permits and certificates:
   Bureau of New Source Review
   Environmental Regulation Program
   Department of Environmental Protection
   and Energy
   401 East State Street, Second Floor
   CN 027
   Trenton, New Jersey 08625-0027
2. With respect to emission statement submittals:
   Bureau of Air Quality Planning
   Department of Environmental Protection
   and Energy
   401 East State Street, Seventh Floor
   CN 418
   Trenton, New Jersey 08625-0418
3. With respect to compliance reports or enforcement actions:
   Assistant Director, Air & Environmental Enforcement
   Division of Facility Wide Enforcement
   Department of Environmental Protection
   and Energy
   CN 422
   Trenton, New Jersey 08625-0422

7:27-1.9 Time for making confidentiality determinations

(a) The Department shall make a confidentiality determination:

1. If the Department receives a request, by a person to whom the Department is restricted from disclosing confidential information pursuant to N.J.A.C. 7:27-1.26 through 1.30, to inspect or copy records containing assertedly confidential information which is the subject of a confidentiality claim; or

2. Before taking any action which is inconsistent with the requirements for treatment of confidential information set forth in N.J.A.C. 7:27-1.26 through 1.30.

(b) The Department may, in its discretion, make a confidentiality determination at any time.

7:27-1.10 Notice of initial confidentiality determination, and of requirement to submit substantiation of claim

(a) If the Department initially determines that any of the assertedly confidential information may be confidential information, the Department shall:

1. Notify each claimant who is known to have asserted a claim applicable to such information, and who has not previously been furnished with notice with regard to the information in question, of the following:

i. That the Department is in the process of making a confidentiality determination with respect to the claimant's claim:

ii. That the claimant is required to substantiate the claim as required by N.J.A.C. 7:27-1.11;

iii. The address of the office to which the claimant's substantiation must be addressed;

iv. The time allowed for submission of substantiation, pursuant to N.J.A.C. 7:27-1.12;

v. The method for requesting a time extension under N.J.A.C. 7:27-1.12(b); and

vi. That a claimant's failure to furnish substantiation within the time allocated in N.J.A.C. 7:27-1.12 shall operate as a waiver of the claimant's claim.

2. Furnish, to any requester whose request for inspection or copying of the information is pending, notice that:

i. The information which is the subject of the request may be confidential information;

ii. The Department must undertake further inquiry before granting or denying the requester's request; and

iii. After the Department has made a confidentiality determination concerning the information which is the subject of the request, the Department will grant or deny the request.

(b) The Department shall send the notice required by (a)1 and 2 above by certified mail, return receipt requested, or by other means providing a receipt for delivery.

(c) If the Department is able to determine whether all of the assertedly confidential information is or is not confidential information, without the need for submission of substantiation under N.J.A.C. 7:27-1.11, such determination shall have the effect of a final confidentiality determination pursuant to N.J.A.C. 7:27-1.13. The Department shall provide such notices of the determination as are required by N.J.A.C. 7:27-1.13.

7:27-1.11 Substantiation of confidentiality claims

(a) If the Department has determined that any assertedly confidential information may be confidential information, and notified the claimant pursuant to N.J.A.C. 7:27-1.10(a) and (b), the claimant shall substantiate the confidentiality claim by submitting information to the Department in the following areas within the time allotted in N.J.A.C. 7:27-1.12:

1. Measures taken by the claimant to prevent disclosure of the information to others;

2. The extent to which the information has been disclosed to others, and the precautions taken to prevent further disclosure;

3. If the Department, EPA or any other agency has previously made a confidentiality determination relevant to the pending confidentiality claim, copies of all such confidentiality determinations;

4. A description of any substantial harmful effects which disclosure would have upon the claimant's competitive position, an explanation of why such harmful effects are substantial, and an explanation of the causal relationship between disclosure and such harmful effects;

5. The period of time for which the claimant desires that the Department treat the assertedly confidential information as confidential information; and

6. Any other substantiation which is relevant in establishing that the assertedly confidential information is confidential information.

(b) The claimant may assert a confidentiality claim for any information submitted to the Department by the claimant as part of his or her substantiation pursuant to this section. If the claimant fails to assert a confidentiality claim for such information at the time of submission, the claimant shall be deemed to have waived all such claims with respect to the information.

7:27-1.12 Time for submission of substantiation

(a) The claimant shall submit substantiation within 30 days after the date of the claimant's receipt of the written notice provided under N.J.A.C. 7:27-1.10(a)1.

(b) The Department may, in its discretion, extend the time allotted for submission of substantiation pursuant to (a) above if, before the expiration of the allotted time*,* the claimant submits a written request for the extension of such allotted time; provided, however, that except in extraordinary circumstances, the Department shall not approve such an extension of time in connection with a request to inspect or copy assertedly confidential information pursuant to N.J.S.A. 47:1A-1 et seq. without the consent of any person whose request to inspect or copy the allegedly confidential information under N.J.S.A. 47:1A-1 et seq. is pending.

(c) If a claimant fails to submit substantiation within the time allotted pursuant to this section, the claimant shall be deemed to have waived all confidentiality claims with respect to the information for which the substantiation was required.

7:27-1.13 Final confidentiality determination

(a) If, after review of all the information submitted pursuant to N.J.A.C. 7:27-1.10 and 1.11, the Department determines that the assertedly confidential information is not confidential information, the Department shall take the following actions:

1. The Department shall so notify the claimant by certified mail, return receipt requested. The notice shall state the basis for the determination, that it constitutes final agency action concerning the confidentiality claim, and that the Department shall make the information available to the public on the 14th day following receipt by the claimant of the written notice. The notice shall include a copy of the final public copy to be made available to the public.

2. On or after the 14th day following receipt by the claimant of the written notice required by (a)1 above, the Department shall send written notice of the determination to any requester with a pending request to inspect or copy the information which was the subject of the confidentiality claim. The Department shall send the notice by certified mail, return receipt requested.

(b) If, after review of the substantiation submitted pursuant to N.J.A.C. 7:27-1.11, the Department determines that the assertedly confidential information is confidential information, the Department shall treat such information as confidential information in accordance with N.J.A.C. 7:27-1.26 through 1.30. The Department shall send written notice of the determination to the claimant and to any requester with a pending request to inspect or copy the information which was the subject of the confidentiality claim. The notice shall state the basis for the determination and that it constitutes final agency action. The Department shall send the notice by certified mail, return receipt requested.

7:27-1.14 Treatment of information pending confidentiality determination

The Department shall treat assertedly confidential information as confidential information, until the Department has made a final determination that the assertedly confidential information is not confidential information.

7:27-1.15 Availability of information to the public after determination that information is not confidential

If the Department determines that assertedly confidential information is not confidential information pursuant to N.J.A.C. 7:27-1.13(a), the Department may disclose such information to any person on the date which is 14 days after the claimant's receipt of the written notice of the confidentiality determination.

7:27-1.16 Preparation of final public copy

After the Department makes a final confidentiality determination that a record contains confidential information, the Department shall prepare a final public copy of the record based upon the final confidentiality determination. The Department may disclose the final public copy to any person, without restriction or limitation.

7:27-1.17 Class confidentiality determinations

(a) The Department may make a class confidentiality determination if the Department finds that the items of information within the class share one or more characteristics, which *[characteristics,]* would cause the Department to determine consistently that such information is or is not confidential information.

(b) A class confidentiality determination shall clearly identify the class of information to which it applies. Such identification shall include a list of the common characteristics shared by all information within the class.

(c) A class confidentiality determination shall state that all of the information in the class is or is not confidential information.

7:27-1.18 Classes of information which are not confidential information

Without limiting the ability of the Department to determine that information not listed in this section is not confidential information, emissions information, as defined at N.J.A.C. 7:27-1.4, is not confidential information.

7:27-1.19 Disclosure of confidential information to other public agencies

(a) The Department may disclose confidential information to any other State agency or to a Federal agency if:

1. The Department receives a written request for disclosure of the information from a duly authorized officer or employee of the requesting agency;

2. The Department notifies the other agency of any pending confidentiality claim concerning the requested information, or of any confidentiality determination regarding the requested information;

3. The other agency has furnished to the Department a written opinion from the agency's chief legal officer or counsel stating that under applicable law the agency has the authority to compel the person who submitted the information to the Department (or allowed the Department to obtain such information) to disclose such information to the requesting agency;

4. The other agency has adopted regulations or operates under statutory authority that will allow it to preserve confidential information from unauthorized disclosure, and agrees in writing to refrain from disclosure and to safeguard the information in accordance with the requirements of N.J.A.C. 7:27-1.27 and 1.28, unless:

i. The requesting agency has statutory authority both to compel production of the information and to disclose it; or

ii. The claimant has consented to disclosure of the information by the requesting agency; and

5. The requesting agency agrees not to disclose the information further unless:

i. The requesting agency has statutory authority both to compel production of the information and to make the proposed disclosure; or

ii. The claimant has consented to disclosure of the information by the requesting agency.

7:27-1.20 Disclosure of confidential information to contractors

(a) The Department may disclose confidential information to a contractor, if it complies with the procedure established under (b) below, and if:

1. The Department determines that such disclosure is necessary in order for the contractor to perform the work required by the contract;

2. The contract provides that the contractor and the contractor's employees shall use the confidential information only for the purpose of performing the duties required by the contract, shall refrain from disclosing the confidential information to anyone other than the Department, shall store all records containing the confidential information in locked cabinets in secure rooms, and shall return to the Department all originals and all copies of the information (and any abstracts or extracts therefrom, or any records containing any of the confidential information) when the confidential information is no longer necessary to enable the contractor to perform obligations under the contract, or at any time upon the request of the Department; and

3. If the claimant so requests, the contractor contracts with the claimant to refrain from further disclosure of the confidential information.

(b) Before disclosing confidential information to a contractor under (a) above, the Department shall notify the claimant of the proposed disclosure in writing, delivered by certified mail, return receipt requested, at least 14 days before making the disclosure. The notice shall state the information to be provided, the identity of the contractor, and the scheduled date of disclosure. If, at least three working days before the scheduled date of disclosure, the claimant delivers to the Department information sufficient to establish that the proposed disclosure would be likely to cause substantial damage either to the claimant's competitive position or to national security, the Department shall refrain from making the disclosure.

7:27-1.21 Disclosure to alleviate an imminent and substantial danger

(a) If the Department finds that disclosure of confidential information would serve to alleviate an imminent and substantial danger to public health, safety or the environment, the Department may, in its discretion, take one or more of the following actions:

1. Reduce the time allotted for providing substantiation pursuant to N.J.A.C. 7:27-1.12, and notify the claimant of such reduction;

2. Advance the date on which the Department may disclose information which the Department has determined is not confidential information, pursuant to N.J.A.C. 7:27-1.13(a), and notify the claimant of such advance; or

3. Immediately disclose the confidential information to any person whose role in alleviating the danger to public health and the environment makes such disclosure necessary. Any disclosure pursuant to this paragraph shall be limited to information necessary to enable the person to whom it is disclosed to carry out the activities in alleviating the danger. Any disclosure made pursuant to this paragraph shall not be deemed a waiver of a confidentiality claim and shall not be grounds for any determination that information is no longer confidential information.

7:27-1.22 Notice to claimants of disclosure of confidential information

(a) Promptly after the Department discloses confidential information pursuant to N.J.A.C. 7:27-1.19, 1.20 or 1.21, the Department shall notify any claimant from whom the Department has obtained confidential information of the disclosure. Such notice shall be in writing, and shall contain the following information:

1. The date on which disclosure was made;

2. The name of the agency or other person to which the Department disclosed the confidential information; and

3. A description of the confidential information disclosed.

7:27-1.23 Disclosure by consent

(a) The Department may disclose confidential information in accordance with the written consent of the claimant.

(b) A claimant's consent to a particular disclosure shall not operate as a waiver of a confidentiality claim with regard to further disclosures, unless the authorized disclosure is of such nature that the disclosed information is no longer confidential information.

7:27-1.24 Incorporation of confidential information into cumulations of data

Nothing in this chapter shall be construed as prohibiting the incorporation of confidential information into cumulations of data subject to disclosure as public records, provided that after consultation with the claimant, the Department has determined that such disclosure is not in a form that would foreseeably allow persons, not otherwise having knowledge of such confidential information, to deduce from it the confidential information or the identity of the person who supplied it to the Department.

7:27-1.25 Disclosure of confidential information in rulemaking, permitting, and enforcement proceedings

(a) Notwithstanding any other provision of this subchapter, the Department may disclose confidential information in rulemaking, permitting and enforcement proceedings.

(b) The following procedures shall apply to the disclosure of confidential information by the Department in rulemaking, permitting and enforcement proceedings:

1. The Department may disclose confidential information in an adjudicatory hearing, subject to the protection from making the information available to the public which the administrative law judge may impose under the Uniform Administrative Procedure Rules, N.J.A.C. 1:1 including without limitation N.J.A.C. 1:1-14.1.

2. The Department may disclose confidential information in any enforcement, permitting, or rulemaking proceeding which does not involve an adjudicatory hearing, pursuant to the following procedure:

i. The Department shall inform the claimant that the Department is considering using the information in connection with the proceeding and shall afford the claimant a reasonable period for comment;

ii. The claimant shall submit comments to the Department within the time allotted pursuant to (b)2i above, concerning the proposed uses of confidential information, including comments which may support a determination that the confidential information is not relevant to the proceeding, or that the disclosure of the confidential information in the proceeding is not necessary to serve the public interest;

iii. The Department may disclose the confidential information in the proceeding if, upon consideration of comments submitted pursuant to (b)2ii above, the Department determines that the information is relevant to the subject of the proceeding, that the use of the information in the proceeding will serve the public interest, and that it materially impairs such service of the public interest to limit the use of the information to a manner which preserves its confidentiality; and

iv. The Department shall give the affected person at least five days notice prior to using the information in the proceeding in a manner which may result in the information being made available to the public.

7:27-1.26 Hearing before disclosure of information for which a confidentiality claim has been made

(a) A claimant may request an adjudicatory hearing to contest disclosure of any information for which a confidentiality claim has been made, at any time before disclosure. The request shall be in accordance with ***the*** requirements of N.J.A.C. 7:27A-3.4(a), and shall be delivered to the Department at the following address:

Department of Environmental Protection
and Energy
Office of Legal Afairs
ATTENTION: Adjudicatory Hearing Requests
401 East State Street
CN 402
Trenton, New Jersey 08625-0402

(b) The Department may deny a request for an adjudicatory hearing under (a) above if:

1. The claimant fails to provide all information required under N.J.A.C. 7:27A-3.4(a);

2. The Department receives the request after disclosure of the assertedly confidential information occurs;

3. The Department has been ordered to disclose the information by a court of competent jurisdiction, or by any other person or entity with the power and authority to compel disclosure; or

4. The Department determines that disclosure is necessary to alleviate an imminent danger to the environment or to public health or safety, as provided in N.J.A.C. 7:27-1.21.

(c) All adjudicatory hearings 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.

(d) At the adjudicatory hearing, the respondent shall have the burden of showing that the proposed disclosure is not in accordance with this N.J.A.C. 7:27.

(e) Pending the completion of the adjudicatory hearing, the Department will refrain from disclosing the assertedly confidential information, unless:

1. The Department has been ordered to disclose the information by a court of competent jurisdiction, or by any other person or entity with the power and authority to compel disclosure; or

2. The Department determines that disclosure is necessary to alleviate an imminent danger to the environment or to public health or safety.

7:27-1.27 Nondisclosure of confidential information

Unless specifically required by any Federal or State law, regulation or order, court order, or applicable court rule, the Department shall not disclose confidential information to any person other than as provided in N.J.A.C. 7:27-1.20 through 1.26.

7:27-1.28 Safeguarding of confidential information

(a) Submissions to the Department required under this chapter will be opened only by persons authorized by the Department to be engaged in administering this chapter.

(b) Only those Department employees whose activities necessitate access to information for which a confidentiality claim has been made may open any envelope which is marked "CONFIDENTIAL."

(c) The Department shall store any records containing confidential information only in locked cabinets in secure rooms; provided, however, that if such records are in a form which is not amenable to such storage, the Department shall store such records in a manner which similarly restricts access by persons to whom disclosure of the confidential information in question is restricted.

(d) Any records made, possessed, or controlled by the Department or its contractors, and containing confidential information, shall contain indicators identifying the confidential information.

(e) Every Department employee, representative, and contractor who has custody or possession of confidential information shall take appropriate measures to safeguard such information and to protect against its improper disclosure.

7:27-1.29 Confidentiality agreements

The provisions of this chapter shall supersede the provisions of any agreement imposing any duties of confidentiality or nondisclosure upon the Department or any employee, contractor or agent thereof. Such provisions imposing confidentiality or nondisclosure duties upon the Department or any employee, contractor or agent thereof shall be of no force or effect.

7:27-1.30 Wrongful access or disclosure; penalties

(a) No person shall disclose, obtain or have possession of any confidential information, except as authorized by this chapter.

(b) Except in accordance with this chapter, no Department employee, representative, or contractor shall disclose any confidential information which came into his or her possession, or to which he or she gained access, by virtue of his or her official position of employment or contractual relationship with the Department. No such person shall use any such information for his or her private gain or advantage, except as permitted by a contract between such person and the Department. If a contractor discloses confidential information in violation of this chapter or of contractual provisions restricting disclosure, such disclosure shall constitute grounds for debarment or suspensin as provided in N.J.A.C. 7:1-5, Debarment, Suspension and Disqualification from Department Contracting.

(c) If the Department finds that any person has violated the provisions of this subchapter, it may:

1. Commence civil action in Superior Court for a restraining order and an injunction barring that person from further disclosing confidential information; and/or

2. Pursue any other remedy available at law or equity.

(d) In addition to any other penalty that may be sought by the Department, violation of this subchapter by a Department employee shall constitute grounds for dismissal, suspension, fine or other adverse personnel action.

(e) Use of any of the remedies specified under this section shall not preclude the use of any other remedy.

7:27-8.4 Applications for permits and certificates

(a) Applications for a permit or a certificate, or for a renewal thereof, shall be made to the Department on forms obtained from the Department. Application forms and information pertinent to applications, may be requested from:

Bureau of New Source Review
Environmental Regulation Program
Department of Environmental Protection
and Energy
401 East State Street, Second Floor
CN 027
Trenton, New Jersey 08625-0027

(b) The Department may require the applicant to submit such details regarding the equipment or control apparatus as it considers necessary to determine that the equipment or control apparatus is designed to operate without causing a violation of any provisions of relevant State or Federal laws or regulations and that the equipment or control apparatus incorporates advances in the art of air pollution control developed for the kind and amount of air contaminant emitted by the applicant's equipment. Such information may include description of processes, raw materials used, operating procedures, physical and chemical nature of any air contaminant, volume of gas discharged, and such other information as the Department considers necessary. All information submitted to the Department shall be public information except that which is designated confidential in accordance with N.J.S.A. 26:2C-9.2 and in compliance with N.J.A.C. 7:27-1.6 through 1.30.

(c)-(i) (No change.)

7:27-8.14 through 8.23 (Reserved)

7:27-8.24 Certification of information

(a) Any person who submits an application, registration, *[emission statement,]* or report to the Department shall include, as an integral part of the application, registration*[, emission statement,]* or report, the following certification, signed by the highest ranking individual with direct knowledge and overall responsibility for the information contained in the certified documents:

"I certify under penalty of law that the information provided in this document is true, accurate and complete. I am aware that there are significant civil and criminal penalties, including fines or imprisonment or both, for submitting false, inaccurate or incomplete information."

(b) The following documents shall be additionally certified as set forth in (c) and (d) below:

1. (No change.)

2. Any *[emission statement or]* report which indicates that a violation has or may have occurred of any provision or condition of a permit or certificate or any applicable law, regulation, or rule.

(c) Any person who submits an application, emission statement or report to the Department, for which additional certification is required pursuant to (b) above, shall include, as an integral part of the application or report, the following additional certification:

"I certify under penalty of law that I have personally examined and am familiar with the information submitted in this application and all attached documents and, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate and complete. I am aware that there are significant civil and criminal penalties, including the possibility of fine or imprisonment or both, for submitting false, inaccurate or incomplete information."

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

7:27-16.9 Emission information, record keeping and testing

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

(i) Any person who reports information to the Department pursuant to the requirements set forth at N.J.A.C. 7:27-16.2(n), 16.3(w), 16.5(l), 16.5(m), 16.6(m), or 16.8(g) may assert a confidentiality claim for that information in accordance with the procedures set forth at N.J.A.C. 7:27-1.6 through 1.30.

SUBCHAPTER 21. EMISSION STATEMENTS

7:27-21.1 Definitions

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

"Actual emissions" means the rate at which an air contaminant is actually emitted, either directly or indirectly, to the outdoor atmosphere, in units of mass per calendar year, seasonal period, or other time period specified in this subchapter.

"Aerodynamic diameter" means the theoretical diameter of a nonspherical particle having the same terminal *[setting]* ***settling*** velocity as an equally dense, spherical particle of such diameter.

"Air contaminant" means any substance, other than water or distillates of air, present in atmosphere as solid particles, liquid particles, vapors or gases.

"AP-42" means the most recently published edition and any subsequent edition of the manual entitled "Compilation of Air Pollutant Emission Factors" published by the EPA. This document may be obtained from the National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, Virginia 22161, (703) 487-4650 or the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402, (202) 783-3228.

"Capture efficiency" means the amount of an air contaminant collected by a control apparatus serving the source operation, expressed as a percentage of the total amount of the air contaminant emitted by the source operation.

"Carbon monoxide" or "CO" means an air contaminant which is a colorless, odorless gas at standard conditions, having a molecular composition of one carbon atom and one oxygen atom.

"Certificate" means either an operating certificate or a temporary operating certificate.

"CFR" means the United States Code of Federal Regulations. This document may be obtained from the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402, (202) 783-3228.

"Control apparatus" means any device which prevents or controls the emission of any air contaminant directly or indirectly into the outdoor atmosphere.

"Control efficiency" means the amount of an air contaminant prevented from being discharged into the outdoor atmosphere by a control apparatus, expressed as a percentage of the total amount of the air contaminant collected by the control apparatus.

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

"Delivery vessel" means any mobile storage tank including, but not limited to, a marine vessel, tank truck or railroad tank car.

"Distillates of air" means the following chemical species: helium (He), nitrogen (N_2), oxygen (O_2), neon (Ne), argon (Ar), krypton (Kr), xenon (Xe), and carbon dioxide (CO_2).

"Emissions information" means, with reference to any source operation, equipment, or control apparatus:

1. Information necessary to determine the identity, amount, frequency, concentration, or other characteristics (to the extent related to air quality) of any air contaminant which has been emitted by the source operation, equipment or control apparatus;

2. Information necessary to determine the identity, amount, frequency, concentration, or other characteristics (to the extent related to air quality) of any air contaminant which, under an applicable standard or limitation, the source operation was authorized to emit (including, to the extent necessary for such purposes, a description of the manner or rate of operation of the source operation), or any combination of the foregoing; and

3. A general description of the location and/or nature of the source operation to the extent necessary to identify the source operation and to distinguish it from other source operations (includ-

ing, to the extent necessary for such purposes, a description of the device, installation, or operation constituting the source operation).

The following list includes specific data fields which the Department considers to constitute emissions information. This list is not exhaustive and, therefore, other data might be found, in a proper case, to constitute emissions information:

Facility Identification

Plant name and related point identifiers
Address
City
County
AQCR (Air Quality Control Region)
MSA, PMSA, CMSA (Metropolitan Statistical Areas)
State
Zip Code
Ownership and point of contact information
Locational Identifiers:
Latitude & Longitude or UTM Coordinates
SIC Code (Standard Industrial Classification)
Emission point, device or operation description, information
SCC Code (Source Classification Codes)

Emissions Parameters

Emission type (for example, nature of emissions such as CO, paticulate or a specific toxic compound, and origin of emissions such as process vents, storage tanks or equipment leaks)

Emission rate (for example, the amount released to the atmosphere over time such as pounds per hour or tons per year)

Release height (for example, height above ground level where the air contaminant is emitted to the atmosphere)

Description of terrain and surrounding structures (for example, the size of the area, with adjacent structures and terrain descriptions such as mountainous, urban, or rural)

Stack or vent diameter at point of emissions (for example the inside diameter of vent at the point of emission to the atmosphere)

Release velocity

Release temperature

Frequency of release (for example, how often a release occurs in events per year)

Duration of release (for example, the time associated with a release to the atmosphere)

Concentration (for example, the amount of an emission stream constituent relative to other stream constituents, expressed as parts per million (ppm), volume percent, or weight percent)

Density of the emissions stream or average molecular weight (for example, density expressed as fraction or multiple of the density of air; molecular weight)

Boiler or process design capacity (for example, the hourly gross heating value of fuel input to a boiler at its maximum design rate or maximum pounds per hour product rate)

Emission estimation method (for example, the method by which an emission estimate has been calculated such as material balance, stack test, use of AP-42 emission factors, etc.)

Percent space heat (for example, the percent of fuel used for space heating)

Hourly maximum design rate (for example, the greatest operating rate that would be expected for a source in a one hour period)

Control apparatus information (for example, type of primary and secondary control apparatus, capture efficiency, and control efficiency)

"EPA" means the United States Environmental Protection Agency.

"Equipment" means any device capable of causing the emission of an air contaminant either directly or indirectly to the outdoor atmosphere, and any stack or chimney, conduit, flue, duct, vent, or similar device connected or attached to, or serving the equipment. This term includes, but is not limited to, a device in which the preponderance of the air contaminants emitted is caused by a manufacturing process.

"Facility" means the combination of all structures, buildings, equipment, storage tanks, source operations, and other operations located on one or more contiguous or adjacent properties owned or operated by the same person. *[This term does not include delivery vessels.]*

"Federally enforceable" means all limitations and conditions on operation, production, or emissions which can be enforced by EPA pursuant to authorities which include, but are not limited to, those established in:

1. Any NSPS promulgated at 40 CFR 60;
2. Any NESHAP promulgated at 40 CFR 61;
3. Any provision of an applicable State Implementation Plan; or
4. Any permit issued pursuant to the requirements established at 40 CFR 52.21; 40 CFR 51, Subpart I; 40 CFR 70; 40 CFR 71; or N.J.A.C. 7:27.

"Fugitive emissions" means any emissions of an air contaminant released directly or indirectly into the atmosphere which do not pass through a stack or chimney.

"Gasoline" means any petroleum distillate or petroleum distillate/oxygenate blend having a Reid vapor pressure of four pounds per square inch (207 millimeters of mercury) absolute or greater, sold for use or used in a motor vehicle or motor vehicle engine, and commonly or commercially known or sold as gasoline.

"Gasoline dispensing facility" means a facility consisting of one or more stationary gasoline storage tanks together with dispensing devices used to fill vehicle fuel tanks.

"Lead" or "Pb" means elemental lead or any compound containing lead measured as elemental lead.

"Liquid particles" means particles which have volume but are not of rigid shape.

"Manufacturing process" means any action, operation or treatment embracing chemical, industrial, manufacturing or processing factors, methods or forms including, but not limited to, furnaces, kettles, ovens, converters, *[compressors,]* cupolas, kilns, crucibles, stills, dryers, roasters, *[reactors,]* crushers, grinders, mixers, ***reactors,*** regenerators, separators, filters, reboilers, columns, classifiers, screens, quenchers, cookers, digesters, towers, washers, scrubbers, mills, condensers or absorbers.

"NESHAP" means a National Emission Standard for a Hazardous Air Pollutant as promulgated under 40 CFR 61.

"NSPS" means Standard of Performance for New Stationary Sources as promulgated under 40 CFR 60, commonly referred to as New Source Performance Standards.

"Operating certificate" means a "Certificate to Operate Control Apparatus or Equipment" issued by the Department pursuant to the Air Pollution Control Act, and in particular N.J.S.A. 26:2C-9.2, which is valid for a period of five years from the date of issuance, unless sooner revoked by the Department.

["Organic substance" means any chemical compound of carbon, excluding carbon monixide, carbon dioxide, carbonic acid, metallic carbonates, metallic carbides, and ammonium carbonate.]

"Oxides of nitrogen" or "NO_x" means all oxides of nitrogen, except nitrous oxide, as measured by test methods approved by the Department and EPA, such as the test methods set forth at 40 CFR 60 Appendix A Methods 7 through 7E.

"Pb" see "lead."

"Peak carbon monoxide season" means December 1 through the last day of February, inclusive.

"Peak ozone season" means June 1 through August 31, inclusive.

"Permit" means a "Permit to Construct, Install or Alter Control Apparatus or Equipment" issued by the Department pursuant to the Air Pollution Control Act, and in particular N.J.S.A. 26:2C-9.2.

"Person" means any individual or entity and shall include, without limitation, corporations, companies, associations, societies, firms, partnerships and joint stock companies as well as individuals, and shall also include all political subdivisions of this State or any agencies or instrumentalities thereof.

"PM_{10}" means a class of air contaminants which includes all particulate matter having an aerodynamic diameter less than or equal to a nominal 10 micrometers.

"Potential to emit" means the capability of a source operation or of a facility to emit an air contaminant at maximum design capacity, except as constrained by any federally enforceable condition. Such Federally enforceable conditions may include, but are not limited to, the effect of installed control apparatus, restrictions

on the hours of operation, and restrictions on the type or amount of material combusted, stored, or processed.

"Process intermediate" means any material used in a process which is neither a raw material nor a product.

"Process level" means the operation of a source, specific to the kind or type of fuel, input material, or mode of operation.

"Process rate" means the quantity per unit of time of any raw material or process intermediate consumed, or product generated, through the use of any equipment, source operation, or control apparatus. For a stationary internal combustion unit or any other fuel burning equipment, this term may be expressed as the quantity of fuel burned per unit of time.

"Product" means the output from a source operation, equipment, or control apparatus. Such outputs may include mixtures, composites, compounds and elemental substances.

"Raw material" means any input to equipment, control apparatus, or a source operation, including fuels, but excluding heat and other forms of energy. Such inputs may include mixtures, composites, compounds and elemental substances.

"Reid vapor pressure" means the absolute vapor pressure of a petroleum product in pounds per square inch (kilopascals) at 100 degrees Fahrenheit (°F) (37.8 degrees Celsius (°C)) as measured by "Method 1—Dry RVP Measurement" or "Method 2—Herzog Semi-Automatic Method" promulgated at 40 CFR 80, Appendix E; or any other test method approved in advance in writing by the Department and the EPA.

***"Responsible official" means one of the following:**

1. For a corporation: a president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the corporation, or a duly authorized representative of such person if the representative is responsible for the overall operation of one or more manufacturing, production, or operating facilities applying for or subject to a permit and either:

i. The facilities employ more than 250 persons or have gross annual sales or expenditures exceeding $25 million (in second quarter 1980 dollars); or

ii. The delegation of authority to such representative is approved in advance by the Assistant Director for Air and Environmental Quality Enforcement, Division of Facility Wide Enforcement, Department of Environmental Protection and Energy;

2. For a partnership or sole proprietorship: a general partner or the proprietor, respectively;

3. For a municipality, State, Federal, or other public agency: either a principal executive officer or ranking elected official. For the purposes of this part, a principal executive officer of a Federal agency includes the chief executive officer having responsibility for the overall operations of a principal geographic unity of the agency (for example, a Regional Administrator of EPA); or

4. For affected sources under Title IV of the Clean Air Act:

i. The designated representative in so far as actions, standards, requirements, or prohibitions under Title IV of the Clean Air Act or the regulations promulgated thereunder are concerned; and

ii. The designated representative for any other purposes under 40 CFR part 70.*

"SCC code" means the eight-position Source Classification Code that provides a detailed analysis of a process. See EPA document "AIRS Facility Subsystem Source Classification Codes and Emission Factor Listing for Criteria Air Pollutants" EPA 450/4-90-003, which may be obtained from the National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, Virginia, 22161, (703) 487-4650 or the Superintendent of Documents, Government Printing Office, Washington, D.C., 20402, (202) 783-3228.

"Seasonal throughput" means the percent of the total yearly operating activity which occurs during each of the following periods:

1. December ***1*** through February ***28/29*** (for example, December ***1,*** 1992***,*** through February ***28/29,*** 1993);
2. March ***1*** through May ***31***;
3. June ***1*** through August ***31***; and
4. September ***1*** through November ***30***.

"SIC code" means the Standard Industrial Classification code devised by the United States Office of Management and Budget to classify establishments according to the type of economic activity in which they are engaged.

"Solid particles" means particles of rigid shape and definite volume.

"Source operation" means any process or any identifiable part thereof emitting or having the potential to emit any air contaminant either directly or indirectly into the outdoor atmosphere*****[, including any fugitive emissions]*****.

"Stack equivalent" means an aggregation of more than one stack or chimney approved by the Department for use in calculating or measuring air contaminant emissions from a single source operation or a group of source operations with a common exhaust ventilation system.

"Stack or chimney" means a flue, conduit or opening designed, constructed or used for the purpose of emitting any air contaminant into the outdoor atmosphere.

"Sulfur dioxide," or "SO_2," means an air contaminant which is a colorless gas at standard conditions having a molecular composition of one sulfur atom and two oxygen atoms.

"Temporary operating certificate" means a "Certificate to Operate Control Apparatus or Equipment" issued by the Department pursuant to the Air Pollution Control Act, and in particular N.J.S.A. 26:2C-9.2, which is valid for a period not to exceed 90 days.

"Ton" means a unit of weight equal to 2,000 pounds (0.907 metric tons or 907.20 kilograms).

"Total suspended particulate matter," or "TSP," means any air contaminant dispersed in the outdoor atmosphere which exists as solid particles or liquid particles at standard conditions and is measured in accordance with N.J.A.C. 7:27B-1; 40 CFR 60, Appendix A, Methods 5 through 5H; or another method approved by the Department and EPA.

"UTM coordinates" means Universal Transverse Mercator geographic coordinates, specified by the UTM zone, horizontal coordinate and vertical coordinate.

"Volatile organic compound," or "VOC," means any *[organic substance]* ***compound of carbon (other than carbon monoxide, carbon dioxide, carbonic acid, metallic carbonates, metallic carbides, and ammonium carbonate)*** which participates in atmospheric photochemical reactions. For *[purposes]* ***purpose*** of determining compliance with emissions limits ***or content standards*** *[and emissions reported pursuant to this subchapter]*, VOC shall be measured by test methods ***which have been*** approved ***in writing*** by the Department *[and EPA (for example, N.J.A.C. 7:27B-3). The compounds listed at 40 CFR 51.100(s)(1) are excluded from this definition. The compounds listed at 40 CFR 51.100(s)(1) are:]**. **This term does not include the compounds which EPA has excluded from its definition of VOC in the list set forth at 40 CFR 51.100(s)(1), which is incorporated by reference herein, together with all amendments and supplements. The list at 40 CFR 51.100(s)(1) currently includes the compounds and classes of perfluorocarbons set forth below:**

Compounds*

methane
ethane
methylene chloride (dichloromethane)
1,1,1-trichloroethane (methyl chloroform)
trichlorofluoromethane (CFC-11)
dichlorodifluoromethane (CFC-12)
chlorodifluoromethane (***H***CFC-22)
trifluoromethane (FC-23)
1,1,*[1]**2*-trichloro-*[2]**1*,2,2-trifluoroethane (CFC-113)
1,2-dichloro-1,1,2,2-tetrafluoroethane (CFC-114)
chloropentafluoroethane (CFC-115)
2,2,-dichloro-1,1,1-trifluoroethane (HCFC-123)
2-chloro-1,1,*1,*2-tetrafluoroethane (HCFC-124)
pentafluoroethane (HFC-125)
1,1,2,2-tetrafluoroethane (HFC-134)
1,1,1,2-tetrafluoroethane (HFC-134a)

1,1-dichloro-1-fluoroethane (HCFC-141b)
1-chloro-1,1-difluoroethane (HCFC-142b)
1,1,1-trifluoroethane (HFC-143a)
1,1-difluoroethane (HFC-152a)
[and the following four classes] ***Classes*** of perfluorocarbons:
(1) Cyclic, branched, or linear, completely fluorinated alkanes;
(2) Cyclic, branched, or linear, completely fluorinated ethers with no unsaturations;
(3) Cyclic, branched, or linear, completely fluorinated tertiary amines with no unsaturations; and
(4) Sulfur containing perfluorocarbons with no unsaturations and with sulfur bonds only to carbon and fluorine.

If there is any conflict between the list at 40 CFR 51.100(s)(1) and the list set forth above, the list at 40 CFR 51.100(s)(1) shall control.

7:27-21.2 Applicability

(a) Any owner or operator of a facility is subject to the requirements of this subchapter for any calendar year in which the facility ***emits or*** has the potential to emit, directly or indirectly to the outdoor atmosphere, any air contaminant listed at Table 1 at a rate greater than or equal to the applicable threshold. *[For example, if a facility has the potential to emit an air contaminant listed at Table 1 at a rate greater than or equal to the threshold during 1993 and 1995, but not 1994 or any other year, the facility shall submit emission statements only in 1994 for the emissions of 1993 and in 1996 for the emissions of 1995.]* ****Emission statements are required, starting for the 1992 calendar year, for any air pollutant exceeding the thresholds in Table 1.****

TABLE 1
AIR CONTAMINANT REPORTING THRESHOLDS

Air Contaminant	Threshold in Tons per Year
VOC	10
NO_x	25
CO	100
SO_2	100
TSP	100
PM_{10}	100
Pb	5

****(b) With respect to the provisions of (a) above, emissions associated with any delivery vessel loading operation shall be included in determining a facility's potential to emit. Emissions from any delivery vessel, used as a storage tank, which is subject to the requirements of N.J.A.C. 7:27-16.2 pursuant to N.J.A.C. 7:27-16.2(m), also shall be included in a facility's potential to emit. All other emissions associated with delivery vessels (for example, motor vehicle tailpipe emissions, locomotives, and tugboats) shall be excluded from a facility's potential to emit.****

*[(b)]**(c)* Notwithstanding (a) above, no facility is required, pursuant to this subchapter, to submit an emission statement for SO_2, TSP, PM_{10}, or Pb with respect to emissions occurring in or before 1992.

*[(c)]**(d)* Any facility which is solely a retail gasoline dispensing facility is exempt from the requirements of this subchapter.

7:27-21.3 General provisions

(a) Except as provided in N.J.A.C. 7:27-21.2(b), each owner or operator of a facility shall submit to the Department an emission statement pertaining to the emissions released directly or indirectly into the outdoor atmosphere during any calendar year in which the facility is subject to this subchapter pursuant to N.J.A.C. 7:27-21.2. Such emission statement shall include information only for the air contaminant(s) for which the facility's potential to emit equals or exceeds the applicable threshold set forth at N.J.A.C. 7:27-21.2, Table 1; however, if the facility's potential to emit equals or exceeds the reporting threshold for VOC *[or]**,* NO_x, ***or CO,**** the facility must report information for *[both]* VOC *[and]**,* NO_x ***and CO****. *[If, for example, in a given year, a facility has the potential to emit VOC at a rate greater than the applicable threshold and has the potential to emit the other air contaminants at a rate less than the applicable thresholds, the facility need only report information pertaining to its emissions of VOC and NO_x.]*

(b) The owner and operator of any facility subject to this subchapter shall be responsible for ensuring compliance with all requirements of this subchapter. Failure to comply with any provision of this subchapter shall subject the owner and operator to civil penalties in accordance with N.J.A.C. 7:27A-3 and applicable criminal penalties including, but not limited to, those set forth at N.J.S.A. 26:2C-19(f)1 and 2. All owners and operators are jointly and severally liable for such civil and criminal penalties.

(c) Compliance with the emission statement requirements of this subchapter does not relieve any owner or operator of a facility from the responsibility to comply with any other applicable reporting requirements set forth in any Federal or state law, rule, or regulation, or in the conditions of approval of any permit or certificate in effect.

(d) Submittal of an emission statement to the Department, or the Department's acceptance thereof, does not constitute approval by the Department of unauthorized releases of air contaminants into the outdoor atmosphere or of any exceedance of any applicable emission limit established in any Federal or state law, rule, or regulation, or in the conditions of approval of any permit or certificate in effect.

****(e) Acceptance or receipt of an emission statement by the Department does not constitute the Department's acceptance of the truth, accuracy or completeness of the emission statement. The Department's failure to act on the information contained in the emission statement at the time of its receipt does not bar the Department from any future action based on that information.***

(f) With respect to the provisions of N.J.A.C. 7:27-21.5 below, emissions associated with any delivery vessel loading operation shall be included in a facility's emission statement submittal. Emissions from any delivery vessel, used as a storage tank, which is subject to the requirements of N.J.A.C. 7:27-16.2 pursuant to N.J.A.C. 7:27-16.2(m) also shall be included in a facility's emission statement submittal. All other emissions associated with delivery vessels (for example, motor vehicle tailpipe emissions, locomotives, and tugboats) shall be excluded from the requirements of N.J.A.C. 7:27-21.5(c) through (i).*

7:27-21.4 Procedure for submitting an emission statement

(a) Emission statements shall be submitted to the Department on or before*:*

1. May 31, 1993 for a facility applicable to this subchapter due to the emissions of 1992; and

2. For each following year,* April 15 of each calendar year following any calendar year in which the facility is subject to this subchapter.

(b) Emission statements shall be submitted to the following address:

Chief, Bureau of Air Quality Planning
Department of Environmental Protection
and Energy
CN 418
Trenton, NJ 08625-0418
ATTN: Emission Statements

(c) Emission statements shall be submitted on a form obtainable from the Department at the address listed in (b) above.

(d) Any person submitting an emission statement shall transmit the report to the Department on paper. With the written prior approval of the Department, an emission statement may be submitted on computer diskette or electronically, in a form approved by the Department, in lieu of a submission of an emission statement on paper. Notwithstanding this subsection, certification in accordance with the provisions of N.J.A.C. 7:27-8.24 as required in this subchapter shall accompany any transmission of an emission statement to the Department.

(e) Any person who submits information to the Department may assert a confidentiality claim for that information in accordance with N.J.A.C. 7:27-1.6. Emissions information, as defined at N.J.A.C. 7:27-21.1, is not confidential. The Department will process and evaluate confidentiality claims in accordance with N.J.A.C. 7:27-1.6 through 1.30 inclusive.

7:27-21.5 Required contents of an emission statement

(a) Any person who submits an emission statement to the Department shall include, as an integral part of the report:

1. Certification, in accordance with the requirements of N.J.A.C. 7:27-*[8.24]***21.7***; and

2. The date of the signature of certification, and the telephone number of the certifying individual.

(b) Emission statements shall include the following facility identification information:

1. The full name of the facility;

2. The parent company name, if applicable;

3. The physical location of the facility (that is, the street address);

4. The mailing address of the facility;

5. The SIC code(s) of the facility;

6. The UTM coordinates or latitude and longitude of the facility; *[and]*

7. The calendar year of the emissions*[.]***;***

8. Number of employees;

9. Plant contact; and

10. Plant contact phone number.*

(c) Emission statements shall include the following operating data for each source operation which has the potential to emit VOC *[and]* ***or*** NO_x ***or both***:

1. Seasonal throughput;

2. Average days of operation per week;

3. Average hours of operation per day; and

4. Total hours of operation for the year.

(d) Emission statements shall include the following information at the process level for NO_x (expressed as molecular weight of NO_2) and VOC:

1. Emissions information:

i. The actual emissions of VOC and NO_x in tons per year;

ii. The average actual emissions of VOC and NO_x in pounds per day of operation during the peak ozone season;

iii. The code for the method used to quantify the actual emissions (see *[(1)]***(l)*** and Table 2 below); and

iv. Any emission factor used to determine actual emissions;

2. Control apparatus information:

i. Current primary *[and]***,*** secondary ***and tertiary*** control apparatus identification codes (see Table 3 below);

ii. Actual capture efficiencies achieved by the *[control apparatus]* ***capture device***. If the actual capture efficiency is unavailable, the *[control apparatus]* ***capture device*** design efficiency shall be used; and

iii. Actual control efficiencies achieved by the control apparatus. If the actual control efficiency is unavailable, the control apparatus design efficiency shall be used; and

3. Process rate data:

i. The annual process rate; and

ii. The average process rate per day of operation during the peak ozone season.

(e) Emission statements shall include the following operating data for each source operation which has the potential to emit CO:

1. Seasonal throughput;

2. Average days of operation per week;

3. Average hours of operation per day; and

4. Total hours of operation for the year.

(f) Emission statements shall include the following information at the process level for CO:

1. Emissions information:

i. The actual emissions of CO in tons per year;

ii. The average actual emissions of CO in pounds per day of operation during the peak ozone season;

iii. The average actual emissions of CO in pounds per day of operation during the peak carbon monoxide season;

iv. The code for the method used to quantify the actual emissions (see *[(1)]***(l)*** and Table 2 below); and

v. Any emission factor used to determine actual emissions;

2. Control apparatus information:

i. Current primary *[and]***,*** secondary ***and tertiary*** control apparatus identification codes (see Table 3);

ii. Actual capture efficiencies achieved by the *[control apparatus]* ***capture device***. If the actual capture efficiency is unavailable, the *[control apparatus]* ***capture device*** design efficiency shall be used; and

iii. Actual control efficiencies achieved by the control apparatus. If the actual control efficiency is unavailable, the control apparatus design efficiency shall be used; and

3. Process rate data:

i. The annual process rate;

ii. The average process rate per day of operation during the peak ozone season; and

iii. The average process rate per day of operation during the peak carbon monoxide season.

(g) Emission statements shall include the following operating data for each source operation which has the potential to emit SO_2, TSP, PM_{10} and/or Pb:

1. Seasonal throughput;

2. Average days of operation per week;

3. Average hours of operation per day; and

4. Total hours of operation for the year.

(h) Emission statements shall include the following information at the process level for SO_2, TSP, PM_{10} and/or Pb:

1. Emissions information:

i. The actual emissions in tons per year;

ii. The code for the method used to quantify the actual emissions (see *[(1)]***(l)*** and Table 2 below); and

iii. Any emission factor used to determine actual emissions;

2. Control apparatus information:

i. Current primary *[and]***,*** secondary ***and tertiary*** control apparatus identification codes (see Table 3);

ii. Actual capture efficiencies achieved by the *[control apparatus]* ***capture device***. If the actual capture efficiency is unavailable, the *[control apparatus]* ***capture device*** design efficiency shall be used; and

iii. Actual control efficiencies achieved by the control apparatus. If the actual control efficiency is unavailable, the control apparatus design efficiency shall be used; and

3. Process rate data:

i. The annual process rate; and

ii. The average process rate per day of operation during the peak ozone season.

(i) The following information may replace the more detailed information required at (c) through (h) above only for any source operation which has the potential to emit less than 0.1 ton per year of Pb or less than one ton per year of any other air contaminant required to be reported pursuant to this subchapter:

1. The following information shall be supplied:

i. A description of each source operation; and

ii. Actual emissions of each air contaminant emitted from each source operation shall be estimated at 0.1 ton per year for Pb and one ton per year for any other air contaminant; and

iii. Code 10 from Table 2 below; or

2. The following information shall be supplied:

i. A description of each source operation;

ii. Estimated actual emission in tons per year;

iii. The code for the method used to quantify the actual emissions (see (1) and Table 2 below); and

iv. Any emission factor used to determine actual emissions.

(j) Emission statements shall include cumulative total fugitive emissions for the facility for all fugitive emissions that cannot be reported in the information pursuant to (c) through (i) above. Such fugitive emissions shall be expressed:

1. In tons per year;

2. For CO, VOC and NO_x emissions, in average pounds per day of operation during the peak ozone season; and

3. For CO emissions, in average pounds per day of operation during the peak carbon monoxide season.

(k) Emission statements shall also include any other information required by any Federal regulation or emission statement guidance published by EPA. Any additional information required by this provision will be published in a New Jersey Register notice and will

be clearly indicated on the emission statement forms for the applicable year.

(l) The method used for quantifying actual emissions for a source operation for use in preparing emission information required in (d)1, (f)1, (h)1 or (i)2 above shall be the method from Table 2 which is reasonably available and which ***the departing entity believes*** best estimates the actual emissions from the source operation, unless an operating permit pursuant to Title V of the Federal Clean Air Act has been issued by the Department for the facility. In such case, the method used shall be the method specified in the operating permit.

TABLE 2
CODES FOR METHODS OF QUANTIFYING ACTUAL EMISSIONS

Method	Code
***Emissions based on Continuous Emission Monitoring**	**1***
Emissions based on source test or other measurements	*[1]**2*
Emissions based on material balance using engineering knowledge of the process	*[2]**3*
Emissions based on AP-42	*[3]**4*
Emissions based on best engineering judgment	*[4]**5*
Emissions based on a state or local agency's emission factor	*[5]**6*
New construction not yet operational; emissions are zero	*[6]**7*
Source closed, operation ceased	*[7]**8*
Emissions to be computer calculated by the Department or EPA based on standard emission factor (SCC emission factor file)	*[8]**9†
Emissions to be computer calculated by the Department or EPA based on other approved emission factor	*[9]**10*†
Emissions estimated at one ton per year (0.1 ton per year for Pb)	*[10]**11*‡

†Codes 8 and 9 may only be used for selected source operations with prior notice or approval from the Department

‡Code 10 may only be used for source operations which meet the criteria to report pursuant to (i)1 above

TABLE 3
CONTROL APPARATUS IDENTIFICATION CODES

Control Apparatus	Code
No control apparatus	000
Wet scrubber high efficiency	001
Wet scrubber medium efficiency	002
Wet scrubber low efficiency	003
Gravity collector high efficiency	004
Gravity collector medium efficiency	005
Gravity collector low efficiency	006
Centrifugal collector high efficiency	007
Centrifugal collector medium efficiency	008
Centrifugal collector low efficiency	009
Electrostatic precipitator high efficiency	010
Electrostatic precipitator medium efficiency	011
Electrostatic precipitator low efficiency	012
Gas scrubber—general	013
Mist eliminator high velocity	014
Mist eliminator low velocity	015
Fabric filter high temperature	016
Fabric filter medium temperature	017
Fabric filter low temperature	018
Catalytic afterburner	019
Catalytic afterburner-heat exchange	020
Direct flame afterburner	021
Direct flame afterburner-heat exchange	022
Flaring	023
Modified furnace or burner	024
Staged combustion	025
Flue gas recirculation	026
Reduced combustion-air preheat	027
Steam or water injection	028
Low excess-air firing	029
Fuel-low nitrogen content	030
Air injection	031
Ammonia injection	032
Control of % 0_2 in combustion air	033
Wellman-Lord/sodium sulfate scrubber	034
Magnesium oxide scrubbing	035
Dual alkali scrubbing	036
Citrate process scrubbing	037
Ammonia scrubbing	038
Catalytic oxidation—flue gas desulfuring	039
Alkalized alumina	040
Dry limestone injection	041
Wet limestone injection	042
Sulfuric acid plant—contact process	043
Sulfuric acid plant—double contact process	044
Sulfur plant	045
Process change	046
Vapor recovery system	047
Activated carbon adsorption	048
Liquid filtration system	049
Packed-gas absorption	050
Tray-type gas absorption column	051
Spray Tower	052
Venturi scrubber	053
Process enclosed	054
Impingement plate scrubber	055
Dynamic separator (dry)	056
Dynamic separator (wet)	057
Mat or panel filter	058
Metal fabric filter screen	059
Process gas recovery	060
Dust suppressor—water spray	061
Dust suppressor—chemical stabilization/wet agents	062
Gravel bed filter	063
Annular ring filter	064
Catalytic reduction	065
Molecular sieve	066
Wet lime slurry scrubbing	067
Alkaline fly ash scrubbing	068
Sodium carbonate scrubbing	069
Sodium-alkaline scrubbing	070
Fluid bed dry scrubber	071
Tube and shell condenser	072
Refrigerated condenser	073
Barometric condenser	074
Single cyclone	075
Multiple cyclone without fly ash reinjection	076
*[Multiple cyclone with fly ash reinjection	077]*
Baffle	078
***Multiple cyclone with fly ash injection**	**079***
Chemical oxidation	080
Chemical reduction	081
Ozonation	082
Chemical neutralization	083
Activated clay adsorption	084
Wet cyclonic separator	085
Water curtain	086
Nitrogen blanket	087
Conservation vent	088
Bottom filling	089
Conversion to variable vapor space tank	090
Conversion to floating roof tank	091
Conversion to pressurized tank	092
Submerged filling	093
Underground tank	094
White paint	095
Vapor lock balance recovery system	096

***Installation of secondary seal for external floating roof tank**	**097**
Moving bed dry scrubber	**098***
Miscellaneous control devices	099
***High efficiency particulate air filter**	**101***

7:27-21.6 Recordkeeping requirements

(a) Each owner or operator of a facility subject to this subchapter shall maintain the following records ***on the operating premises*** for a period of five years from the due date of each emission statement:

1. A copy of the emission statement submitted to the Department; and

2. Records indicating how the information submitted in the emission statement was determined, including any calculations, data, measurements, and estimates used.

(b) Upon the request of the Department, the owner or operator of the facility shall make these records available at the facility for inspection by any representative of the Department during normal business hours.

***7:27-21.7 Certification of information**

(a) Any person who submits an emission statement to the Department shall include, as an integral part of the emission statement, the following two-part certification:

1. A certification signed by the individual or individuals (including any consultants) with direct knowledge of and responsibility for the information contained in the emission statement. The certificate shall state:

"I certify under penalty of law that I believe the information provided in this emission statement is true, accurate and complete. For those portions of the above information based on estimates, those estimates are the result of good faith application of sound professional judgment, using techniques, factors, or calculations approved by the Department or EPA, or generally accepted in the trade. I am aware that there are significant civil and criminal penalties, including fines or imprisonment or both, for submitting false, inaccurate or incomplete information."

2. A certification signed by a responsible official, as defined at N.J.A.C. 7:27-21.1, which states:

"I certify under penalty of law that I have personally examined and am familiar with the information submitted in this emission statement and all attached documents and, based on my inquiry of those officials immediately responsible for obtaining the information, I believe that the submitted information is true, accurate and complete. I certify that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe any estimates are the result of good faith application of sound professional judgment, using techniques, factors, or standards approved by the Department or EPA, or generally accepted in the trade. I am aware that there are significant civil and criminal penalties, including fines or imprisonment or both, for submitting false, inaccurate or incomplete information."*

7:27-*[21.7]****21.8*** Severability

If any section, subsection, provision, clause or portion of this subchapter or the application thereof to any person or circumstance is adjudged invalid or unconstitutional by a court of competent jurisdiction, the remainder of this subchapter and the application thereof to other persons or circumstances shall not be affected thereby, and shall remain in full force and effect.

7:27A-3.10 Civil administrative penalties for violations of rules adopted pursuant to the Act

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

(e) The Department shall determine the amount of the civil administrative penalty for offenses described in this section on the basis of the provision violated and the frequency of the violation. Footnotes 3, 4, and 8 set forth in this subsection and (f) below are intended solely to put violators on notice that in addition to any civil administrative penalty assessed, the Department may also revoke the violator's operating certificate or variance. These footnotes are not intended to limit the Department's discretion in determining whether or not to revoke an operating certificate or variance, but merely indicate the situations in which the Department is most likely to seek revocation. The number of the following subsections corresponds to the number of the corresponding subchapter in N.J.A.C. 7:27.

1.-20. (No change.)

21. The violations of N.J.A.C. 7:27-21, Emission Statements, and the civil administrative penalty amounts for each violation are as set forth in the following table:

Citation	Class	First Offense	Second Offense	Third Offense	Fourth and Each Subsequent Offense
N.J.A.C. 7:27-21.4(a)	Failure to Submit	$2,000	$4,000	$10,000	$30,000
N.J.A.C. 7:27-21.5(a)	Failure to Certify	$1,000	$2,000	$5,000	$15,000
N.J.A.C. 7:27-21.5(b)-(k)	Omission of Required Information	$500	$1,000	$2,500	$7,500
N.J.A.C. 7:27-21.6(a)	Failure to Keep Records	$500	$1,000	$2,500	$7,500
N.J.A.C. 7:27-21.6(b)	Readily Available	$100	$200	$500	$ 1,500

22.-25. (No change.)

PUBLIC NOTICES

EDUCATION

(a)

STATE BOARD OF EDUCATION

Notice of Public Testimony Session Wednesday, April 21, 1993

Take notice that the following agenda items are scheduled for Notice of Proposal in the April 15, 1993 New Jersey Register and are, therefore, subject to public comment. Pursuant to the policy of the New Jersey State Board of Education, a public testimony session will be held for the purpose of receiving public comment on Wednesday, April 21, 1993 from 3:00 P.M. to 6:00 P.M. in the State Board Conference Room, Department of Education, 225 West State Street, Trenton, New Jersey.

To reserve time to speak call the State Board Office at (609) 292-0739 by 12:00 noon Friday, April 16, 1993.

Rule Proposals:

N.J.A.C. 6:28, Special Education; and
N.J.A.C. 6:3-9, School Ethics Commission.

Please Note: Publication of the above items are subject to change depending upon the actions taken by the State Board of Education at the March 3, 1993 monthly public meeting.

ENVIRONMENTAL PROTECTION AND ENERGY

(b)

OFFICE OF REGULATORY POLICY

Amendment to the Cape May County Water Quality Management Plan Public Notice

Take notice that on January 19, 1993, 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 Cape May County Water Quality (WQM) Plan was adopted by the Department. A lawsuit filed in the Superior Court, Chancery Division, *Senico, et al. v. Township of Middle, et al.*, (Docket No. CPM-C-35-91), resulted in the New Jersey Department of Environmental Protection and Energy (DEPE) reopening its October 12, 1990 decision adopting the Middle Township Wastewater Management Plan as an amendment to the Cape May County Water Quality Management Plan (WQMP). The DEPE reopened only to that part of its decision that affected property located at Block 415.01, Lot 1; Block 432, Lots 1-5; and Block 433, Lots 11-13 located on the Delaware Bay in the Del Haven area of Middle Township, Cape May County.

Based on a *de novo* review of the proposed amendment and the comments on the amendment discussed herein, the Cape May County WQM Plan is formally amended to exclude the previously described property from the sewer service area of the Lower Township Municipal Utilities Authority sewage treatment plant (STP), to the extent that it falls within wetlands, wetland buffers, dune and beach areas and other applicable Special Areas and is inconsistent with the Coastal policies regarding these areas.

This decision has been taken to insure that the WQM Plan in question accurately addresses anticipated wastewater treatment needs for the area, pursuant to the Statewide Water Quality Management Planning rules, N.J.A.C. 7:15. The decision further implements and complies with applicable State law, N.J.A.C. 7:15-3.4(a), including, but not limited to, the requirements of the Department's Rules on Coastal Zone Management, N.J.A.C. 7:7E, as they apply to Middle Township's sewage collection system (the subject of CAFRA Permit No. 88-1062-5). This decision will be more fully discussed below.

This amendment proposal was noticed in the New Jersey Register on November 16, 1992 at 24 N.J.R. 4286(a). A public hearing was held on December 17, 1992. Comments received are summarized below with the Department's responses.

COMMENT: The Senico/Linnington property in Middle Township, Cape May County identified as Block 415.01, Lot 1; Block 432, Lots 1-5; and Block 433, Lots 11-13 should remain designated as sewerable under the Cape May County WQMP for the following reasons:

When purchased, the property was designated as "sewerable" under the Cape May County WQMP and in June of 1988 the DEPE issued a consistency determination which indicated that the project was consistent with the Cape May County WQMP. The commenter states that the physical characteristics of the land have not changed since then, nor the relevant environmental laws.

The commenter states that the property was purchased in 1982 in reliance upon the fact that it was zoned "resort residential" by Middle Township and that single family detached dwellings were a permitted use in this area under the zoning ordinance. According to the content requirements of Wastewater Management Plans (WMPs) as specified in N.J.A.C. 7:15-5.18(b), wastewater service areas shall, to the maximum extent practicable, be identified in such a manner as to provide adequate wastewater service for land uses allowed in zoning ordinances or future land uses shown in municipal or county master plans that have been adopted and are in effect. The commenter claims that according to this rule, the State is required to provide adequate wastewater service for this project which is in conformance with both the Middle Township Zoning Ordinance and the Master Plan.

N.J.A.C. 7:15-5.18(b)6 indicates that "If, for particular locations, preliminary or final subdivision or site plan approvals under article 6 of the Municipal Land Use Law, N.J.S.A. 40:55D-1 et seq., have allowed land development that would generate more wastewater than would the development allowed in the zoning ordinance or shown in the master plan, then for those locations the wastewater management plan shall be based on such approvals rather than on the zoning ordinance or the master plan."

On February 14, 1989, the Middle Township Planning Board granted preliminary subdivision approval for 13 lots on the basis that the plan fully conforms to the local zoning ordinance regulations. The approval, provided by the commenter, is conditioned upon the availability of sanitary sewer facilities "in the area and for the project." The commenter writes that "this rule clearly directs DEPE to provide for sewerability whenever a local planning board has granted preliminary subdivision approval for a project, even if that project would generate more wastewater than development allowed under the existing master plan or zoning ordinance."

The commenter notes that under N.J.A.C. 7:15-5.17, various environmental features must be mapped on a 208 plan. The commenter represents that the Senico/Linnington project proposes absolutely no construction within either freshwater wetlands as defined by N.J.S.A. 13:9B-1 et seq. or within coastal wetlands pursuant to N.J.S.A. 13:9A-1 et seq. In addition, the Senico/Linnington project does not need a waterfront development or a CAFRA permit, therefore, "the DEPE Coastal Management Rules, N.J.A.C. 7:7E, which govern the issuance of waterfront and CAFRA permits, are not applicable to this project."

The CAFRA and waterfront development permits for the Del Haven sewer collector system included a condition that the Township of Middle and the Municipal Utilities Authority (MUA) adopt similar resolutions to prohibit tie-ins to the approved sewer line from future development within the wetlands, wetlands buffers, dunes, beaches and other applicable special areas.

The commenter states that DEPE "has no authority to directly prohibit tie-ins from beach or dune areas, and therefore has illegally compelled the Township and the [MUA] to do so." The commenter further states that "absent the need for a CAFRA or waterfront development permit, DEPE's Dune Policy (N.J.A.C. 7:7E-3.16) is inapplicable to this project." In addition, the commenter notes that "the project was reviewed by the Middle Township Planning Board in accordance with the Middle Township Dune Review Ordinance, and was approved as conforming to Township standards."

RESPONSE: As the commenter notes, this property was originally included in a "proposed and existing sewered area" on the Cape May County WQM Plan adopted September 4, 1980. In September, 1989, the Township of Middle was issued a Waterfront Development and CAFRA permit to construct a new sewage collection system. The permit

was subject to several conditions including one that requires that prior to construction, the Township of Middle and the Cape May County MUA must adopt resolutions to "prohibit tie-ins to the approved sewer line from future development within the wetlands, wetlands buffers, dunes, beaches, and any other applicable Special Areas." The condition further states that the "Middle Township Water Quality Plan amendment to the Cape May County Water Quality Management Plan will include delineations of the wetlands, wetlands buffers, dune and beach areas, and will exclude these areas from the Del Haven sewer service area." This condition resulted from a secondary impact analysis under N.J.A.C. 7:7E-6.3. Pursuant to this rule, an applicant must demonstrate that the development induced by the project, or "secondary impacts," will, to the maximum extent practicable, "satisfy the Coastal Resource and Development Policies." *Ibid.*

Consistent with the above condition, Cape May County submitted to the State an amendment to the Middle Township WMP for adoption as an amendment to the Cape May County WQM Plan. The amendment was approved by the State after public notice consistent with Department regulations, on October 12, 1990.

However, as a result of a lawsuit filed in Superior Court, Chancery Division, *Senico, et al., v. Township of Middle, et al.* (Docket No. CPM-C-35-91), the Department reopened its October, 1990 decision to permit plaintiffs Senico and Linnington to comment on the amendment, but only with respect to that part of the Department's decision that affected plaintiffs' property located at Block 415.01, Lot 1; Block 432, Lots 1-5; and Block 433, Lots 11-13 in the Township of Middle. After notice, a public hearing was held on December 17, 1992. Pursuant to the court's order in the above case, the Department has now considered the additional comments summarized above, and has made a *de novo* determination that the Middle Township WMP is adopted as an amendment to the Cape May County WQM Plan with respect to the subject property. Specific responses to the comments received follow:

The fact that the property was originally located in a "proposed and existing sewered area" and that the Senico/Linnington property was found to be consistent with Cape May County's WQM Plan in 1988 cannot prevent the Department from adopting an amendment to the WQM Plan, if otherwise appropriate. Under the Statewide Water Quality Management Planning Regulations, N.J.A.C. 7:15, the Department may not authorize any project or activity through the grant of a permit before a formal consistency determination review has been completed. N.J.A.C. 7:15-3.1. The consistency determination is a written statement by the Department that a project or activity is consistent with an adopted WQMP. N.J.A.C. 7:15-1.5.

The Department's regulations, however, specifically provide that a WQM Plan may be amended after a consistency determination has been issued and discuss the consequences to a project that has, by the amendment, become "inconsistent." Recognizing that a consistency determination may be needed for more than one permit, the Department's regulations state that "[i]f a project or activity requires two or more Department permits, and if the Department makes a finding [of "consistent"] for one of those permits, that finding shall be valid for the remaining Department permits." N.J.A.C. 7:15-3.2(c)(6)(i). However, the regulations give unequivocal notice that where "[t]he project or activity has become inconsistent, because of an amendment made to the WQM plan or this chapter after the initial finding," the consistency determination will not be valid for any subsequently applied for permit applications. *Ibid.*

Here the commenters Senico and Linnington received a consistency determination. However, before they could apply for their sewer extension permit, the project became inconsistent because the WQMP was changed. The regulations plainly establish that the prior issuance of a consistency determination will not prevent a WQM Plan from being amended in a manner that causes a project to become "inconsistent." The regulations do permit the applicant, however, to address this change by applying for an additional amendment to the WQMP pursuant to N.J.A.C. 7:15-3.4.

The Department agrees that the proposed amendment of a water quality management plan must meet, among other things, the requirements contained in N.J.A.C. 7:15-5.18. It is the Department's determination, however, that those requirements are met in this case. N.J.A.C. 7:15-5.18 requires each WMP to include a description of a wastewater service area and treatment works necessary to meet "anticipated needs" through "cost-effective, environmentally sound" management. N.J.A.C. 7:15-5.18(a). In order to address anticipated needs, wastewater service areas and treatment works must "to the maximum extent practicable," be identified in such a manner as to provide adequate wastewater service for land uses allowed in adopted zoning ordinances and future land uses as shown in municipal master plans in effect. N.J.A.C. 7:15-5.18(b)1 and 2. The regulations also allow for consideration of local site plan or subdivision approvals where they would allow development generating more wastewater than that permitted by zoning. N.J.A.C. 7:15-5.18(b)6.

In the present case, the project on the subject property was found by the local planning board to have complied with zoning requirements. Indeed, a subdivision approval was granted on February 14, 1989, subject to the availability of sanitary sewer facilities "in the area and for the project". When Middle Township accepted the CAFRA permit, it did so conditioned upon its issuing an ordinance that prohibits the permitted facility to tie-in to new development in dunes, wetlands, transition areas and other environmentally sensitive areas. It should be noted that the CAFRA permit condition and the Township ordinance implementing it were challenged in the same court action that resulted in the re-opening of the Department's decision to adopt Middle Township's amended WMP as an amendment to the Cape May County WQM Plan. The court dismissed all counts except that addressing the notice requirements for amending the Cape May County WQM Plan as they related to the plaintiffs in that action. Given this, it is clear that the subject project does not comply with local planning ordinances or the resolution of the MUA regarding tie-ins to the new treatment facility. It is, therefore, not necessary to anticipate the need for wastewater treatment for development on this property. It should be further noted that the subdivision approval was always contingent upon the availability of sewerage not only "in the area" but specifically "for the project."

Moreover, even if the project was consistent with local ordinances, the Department's regulations recognize that local planning decisions will not necessarily reflect "anticipated wastewater management needs." This is because other overriding interests, such as State law, will limit development, notwithstanding consistency with local law. Thus, N.J.A.C. 7:15-5.18 sets forth specific exceptions where wastewater management plans may be inconsistent with local zoning and master plans. These include instances where it is "not practicable," N.J.A.C. 7:15-5.18(b), where the wastewater management plan "relate[es] to the New Jersey Coastal Zone," and thus is subject to the requirements of N.J.A.C. 7:15-3.6, N.J.A.C. 7:15-5.18(b)7, and for other "compelling reasons," N.J.A.C. 7:15-5.18(b)8. N.J.A.C. 7:15-3.6 states that "the Department's rules on Coastal Resources and Development, N.J.A.C. 7:7E, ... shall provide the basic policy direction for WQM planning in the New Jersey Coastal Zone ..." This is reiterated in the rules on Coastal Zone Management which state that "[t]his chapter shall provide the basic policy direction for the following planning actions undertaken by DEP in the Coastal Zone," including "areawide water quality management ("208")." N.J.A.C. 7:7E-1.2(h).

In the matter presently before the Department, a condition to the CAFRA permit for the wastewater treatment facility, required by the secondary impact analysis contained in the Department's Rules on Coastal Zone Management, specifically, N.J.A.C. 7:7E-6.3, and upheld by the court, prohibits the facility to tie-in to development in sensitive environmental areas. Therefore, pursuant to N.J.A.C. 7:15-5.18(b), (b)7 and (b)8, the Department finds that there is no "anticipated need" for development in these areas. The "proposed and existing sewered area" for the Del Haven area may thus be redrawn to remove these sensitive environmental areas.

To the extent the subject property contains wetlands, wetlands buffers dunes, beaches and other applicable special areas, it will be taken out of the sewer service area of the Lower Township MUA STP. It should be noted, however that, if the property could be shown to fall outside these areas, it shall remain in the service area. Moreover, as stated above, the CAFRA permit condition is based on the policies in the Coastal Management Rules which otherwise prevent development which causes secondary impacts to sensitive areas. It is thus implicit in the condition that if a project could be shown not to represent the kind of secondary impact that the regulations and the condition was intended to prevent, the project would not fall within the condition's prohibition. For example, development that is found by the Department's Land Use Regulation Element not to be inconsistent with the Coastal policies regarding transition areas or dunes would not be prohibited.

The Department's determination to remove the above areas from the sewer service area is also consistent with the amendment procedures contained in the regulations. The procedures permit amendments to WQM plans where "necessary or desirable." N.J.A.C. 7:15-3.4(a). More specifically, a plan may be amended to "implement or comply with

applicable State or Federal Law," to "respond to new circumstances," or to "improve the ... environmental impact of WQM plans." *Ibid.* The terms of the CAFRA permit, in particular the condition prohibiting tie-ins to development in sensitive environmental areas, has been challenged and upheld in court and, contrary to the commenter's assertions, was required by State law if the new treatment facility was to be built. It is therefore necessary to remove these areas from the "proposed and existing sewered area" in order to "implement" and "comply" with "applicable State ... Law," to respond to the "new circumstances" brought on by the change in legal requirements and to improve the "environmental impact" of Cape May County's WQM plan by bringing it into compliance with the requirements of the State's Rules on Coastal Zone Management.

Finally, the Department has determined, upon reopening its prior decision, that the supplemental plans to the Middle Township Wastewater Management Plan mapping, approved by the Department as part of its original decision to adopt the proposed amendment (plan by Elson T. Killam Associates, Inc., dated September 6, 1988, last revised November 3, 1989), does not clearly reflect the terms of the CAFRA permit condition and this decision. In particular, the Department has determined that, among other things, the plan does not clearly exclude all dune and beach areas on the Senico/Linnington property from the sewer service area as required by both the previously approved and the present plan amendment. A revised plan, consistent with this decision, must be submitted to the Department by the County within 30 days of this decision.

(a)

OFFICE OF REGULATORY POLICY

Amendment to the Monmouth County Water Quality Management Plan
Public Notice

Take notice that on February 2, 1993, pursuant to the provisions of the New Jersey Water Quality Planning Act, N.J.S.A. 58:11A-1 et seq., and the Statewide Water Quality Management Planning rules (N.J.A.C. 7:15-3.4), an amendment to the Monmouth County Water Quality Management Plan was adopted by the Department. This amendment to the Monmouth County Water Quality Management (WQM) Plan proposed by the Township of Colts Neck, adopts a Wastewater Management Plan (WMP) for the Township. The WMP addresses wastewater management planning for the Township. The Township will retain WMP responsibility for the municipality.

The WMP delineates the site of Saddlebrook at Colts Neck as part of the sewer service area of the Manasquan River Regional Sewerage Authority (MRRSA). Wastewater from this site will be collected by MRRSA and treated at the Ocean County Utilities Authority's Northern Water Pollution Control Facility. The WMP delineates the areas served by existing NJPDES-permitted on-site treatment facilities and delineates proposed areas to be served by on-site treatment facilities discharging to groundwater. The remainder of the Township is designated as being served by individual subsurface sewage disposal systems.

(b)

OFFICE OF REGULATORY POLICY

Amendment to the Lower Raritan/Middlesex County Water Quality Management Plan
Public Notice

Take notice that the New Jersey Department of Environmental Protection and Energy (NJDEPE) is seeking public comment on a proposed amendment to the Lower Raritan/Middlesex County Water Quality Management (WQM) Plan. This amendment will redefine the sewer service area boundary between Stony Brook Regional Sewerage Authority and Middlesex County Utilities Authority and will increase current and future population and flow projections. This will amend the South Brunswick Wastewater Management Plan.

This notice is being given to inform the public that a plan amendment has been proposed for the Lower Raritan/Middlesex County WQM Plan. All information related to the WQM Plan and the proposed amendment is located at the Middlesex County Planning Board, 40 Livingston Avenue, New Brunswick, New Jersey 08901, and the NJDEPE, Office of Regulatory Policy, CN-423, 401 East State Street, 3rd Floor, Trenton, New Jersey 08625. It is available for inspection between 8:30 A.M. and 4:00 P.M., Monday through Friday. An appointment to inspect the documents may be arranged by calling the Middlesex County Planning Board at (908) 745-3016 or the Office of Regulatory Policy at (609) 633-7021.

Middlesex County will hold **a public hearing** on the proposed WQM Plan amendment. The public hearing will be on Thursday, April 15, 1993 at 8:00 P.M., in the Freeholders' Meeting Room, 11th Floor, of the Middlesex County Administration Building located on John F. Kennedy Square, New Brunswick, New Jersey. **Interested persons** may submit written comments on the amendment to Mr. William J. Kruse of the Middlesex County Planning Board at the County Planning Board address cited above. A copy of the comments should be sent to Mr. Barry Chalofsky at the NJDEPE address cited above. All comments must be submitted within 15 days following the public hearing. All comments submitted by interested persons in response to this notice, within the time limit, shall be considered by the County Board of Chosen Freeholders with respect to this amendment request. In addition, if the amendment is adopted by Middlesex County, the NJDEPE must review the amendment prior to final adoption. The comments received in reply to this notice and to the public hearing will also be considered by the NJDEPE during its review. Middlesex County and the NJDEPE thereafter may approve and adopt this amendment without further notice.

(c)

OFFICE OF REGULATORY POLICY

Amendment to the Upper Raritan Water Quality Management Plan
Public Notice

Take notice that on February 1, 1993, pursuant to the provisions of the New Jersey Water Quality Planning Act, N.J.S.A. 58:11A-1 et seq., and the Statewide Water Quality Management Planning rules (N.J.A.C. 7:15-3.4), an amendment to the Upper Raritan Water Quality Management Plan was adopted by the Department. This amendment, requested by the Borough of Peapack and Gladstone, adopts a Wastewater Management Plan (WMP) for the Borough of Peapack and Gladstone. The WMP allows abandonment of the Peapack Sewage Treatment Plant (STP) with flows being conveyed to the Environmental Disposal Corporation (EDC) STP in Bedminster Township. The EDC STP sewer service area and a Groundwater Discharge Area for facilities with design flows of less than 2,000 gallons per day are identified.

This amendment proposal was noticed in the New Jersey Register on November 16, 1992. Comments on this amendment were received during the public comment period and are summarized below with the DEPE's responses.

COMMENT: The Township of Bedminster commented that proximity of the Bedminster/Far Hills Pumping Station and Force Main facilities should indicate the merging of the Peapack and Gladstone and Bedminster/Peapack Transmission facilities into a regional transmission system as the most cost-efficient and environmentally correct means of wastewater management for the region. Bedminster feels the Department should require a regional wastewater transmission system.

RESPONSE: The Borough of Peapack and Gladstone does not disagree that a combined transmission system could be more advantageous if suitable contractual arrangements can be reached. However, at this time conditions proposed by Bedminster are unsatisfactory to Peapack and Gladstone. The Department relegates specific contractual arrangements regarding the technical construction details to the effected parties. The Department hopes that all the parties involved can arrive at a solution that is advantageous to all parties, however, approval of the planning concept need not be withheld pending these negotiations.

COMMENT: Bedminster Township commented regarding several technical and capacity design considerations of the Peapack and Gladstone transmission facilities.

RESPONSE: Technical and capacity design considerations will be addressed during the final design of the facilities in accordance with NJDEPE guidelines. Some of the design capacities cited merely reflect the maximum allowed under the contract between Peapack and Gladstone and EDC.

(a)

OFFICE OF REGULATORY POLICY

Amendment to the Sussex County Water Quality Management Plan

Public Notice

Take notice that the New Jersey Department of Environmental Protection and Energy (NJDEPE) is seeking public comment on a proposed amendment to the Sussex County Water Quality Management (WQM) Plan. The amendment proposal, which consists of an amended Sussex Borough Wastewater Management Plan (WMP), has been proposed by Sussex Borough and the Sussex County Municipal Utilities Authority (SCMUA). The amended Sussex Borough WMP proposes decommissioning the existing Sussex Borough sewage treatment plant with conveyance of Sussex Borough wastewater flows to the SCMUA Upper Wallkill Valley Water Pollution Control Plant (UWVWPCP) in Hardyston Township, Sussex County. This amendment to the Sussex Borough WMP will also amend the Hardyston Township WMP to specify that the SCMUA UWVWPCP will be expanded from 1.5 million gallons per day (mgd) to 3.0 mgd to address the flow from Sussex Borough.

This notice is being given to inform the public that a plan amendment has been proposed for the Sussex County WQM Plan. All information related to the WQM Plan and the proposed amendment is located at the Sussex County Department of Planning and Development, Division of Environmental Resource Planning, County Administration Building, P.O. Box 709, Newton, New Jersey 07860; and the NJDEPE, Office of Regulatory Policy, CN-423, Fourth Floor, 401 East State Street, Trenton, N.J. 08625. It is available for inspection between 8:30 A.M. and 4:00 P.M., Monday through Friday. An appointment to inspect the documents may be arranged by calling either the Office of Regulatory Policy at (609) 633-1179 or the Sussex County Department of Planning and Development at (201) 579-0500.

The Sussex County Board of Chosen Freeholders will hold a **public meeting** on the proposed Sussex County WQM Plan amendment at which time all interested persons may appear and shall be given an opportunity to be heard. The public meeting will be held on Wednesday, April 14, 1993 at 2:10 P.M. in the Freeholder meeting room, County Administration Building, Plotts Road, Newton, New Jersey. **Interested persons** may submit written comments on the amendment to Ms. Lyn Halliday, Sussex County Department of Planning and Development, at the address cited above, with a copy sent to Mr. Barry Chalofsky, Office of Regulatory Policy, at the NJDEPE address cited above. 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 the Sussex County Board of Chosen Freeholders with respect to the amendment request. In addition, if the amendment is adopted by Sussex County, the NJDEPE must review the amendment prior to final adoption. The comments received in reply to this notice will also be considered by the NJDEPE during its review. Sussex County and the NJDEPE thereafter may approve and adopt this amendment without further notice.

LAW AND PUBLIC SAFETY

(b)

DIVISION OF CONSUMER AFFAIRS AUDIOLOGY AND SPEECH-LANGUAGE PATHOLOGY ADVISORY COMMITTEE

Notice of Receipt of and Action on Petition for Rulemaking

Scope of Practice of Audiology and Speech-Language Pathology

N.J.A.C. 13:44C-7

Petitioner: New Jersey Speech-Language-Hearing Association.

Take notice that on January 11, 1993, the Audiology and Speech-Language Pathology Advisory Committee ("Committee") received a submission form counsel for the New Jersey Speech-Language-Hearing Association ("NJSHA") requesting specific modifications to the scope of practice of audiology and speech-language pathology, as set forth in more detail below. However, since the Committee acts in an advisory capacity to the Director of the Division of Consumer of Affairs ("Director") and has no independent rulemaking authority, petitions for rulemaking concerning the practice of audiology and speech-language pathology must be directed to the Director. The Committee submitted the petition to the Director, who has determined to treat NJSHA's submission to the Committee as a formal petition for rulemaking to the Director.

I. Scope of practice of audiologists

Petitioner requests amendments to N.J.A.C. 13:44C-7 to include the statutory scope of practice of audiology (N.J.S.A. 45:3B-2(d)) as well as the following language:

"To accomplish these goals, the scope of practice of audiology includes the assessment, habilitation and rehabilitation of the peripheral and central auditory system, its functions and integrity, including the use of any necessary technology or instrumentation, including but not limited to, the dispensing of hearing aids and assistive listening devices, as well as the fabrication of ear molds. The scope of practice also includes the testing and assessment of the vestibular system, including but not limited to, electronystogmography, posturography, rotational testing, electrophysiological testing, including evoked response, oto-acoustic emissions and electrocochelography."

Petitioner states further that in the event less specific information is preferred, NJSHA proposes that the definition contain, at least, a parenthetical descriptive phrase acknowledging that audiology practice necessarily includes hearing aid dispensing and vestibular testing and assessment. Petitioner's arguments for inclusion of hearing aid dispensing within the scope of practice of audiology are as follows:

1. Stringent licensing requirements ensure that licensed audiologists are highly knowledgeable and experienced and, as such, are qualified to dispense hearing aids.

2. There is no educational requirement for becoming a hearing aid dispenser. The audiology requirements are far more extensive than those related to hearing aid dispensers, including the need for a master's degree.

3. Because of existing employment and/or financial constraints, certain individuals may be unable to accommodate the six-month training requirement set forth in the hearing aid dispenser regulations, N.J.A.C. 13:35-8.3. Clarifying the scope of practice of audiologists to include hearing aid dispensing would permit qualified audiologists who are unable to meet the six-month training requirement to dispense hearing aids.

4. The American Speech Language Hearing Association (ASHA) has recognized that the practice of audiology includes all aspects of the hearing aid dispenser's occupation. Effective January 1, 1993, new ASHA certification standards will ensure that there will be no additional testing requirement in order for a licensed audiologist to become a hearing aid dispenser.

5. It is anticipated that the number of people needing hearing aid dispensing services will continue to increase. Permitting audiologists to dispense hearing aids would enable the consumer to have the choice of the type of professional he or she consults for the purchase of a hearing aid.

6. Twelve states currently permit audiologists to dispense hearing aids by virtue of their own license. NJSHA is concerned that audiologists will choose to practice in these other states and that New Jersey risks a potential shortage of audiologists.

7. Since in Delaware an aide to an audiologist can perform ear mold impression casting, it follows that a licensed audiologist in New Jersey is qualified to perform the same functions.

II. Scope of Practice of a Speech-Language Pathologist

Petitioner requests amendments to N.J.A.C. 13:44C-7 to include the statutory scope of practice of speech-language pathology (N.J.S.A. 45:3B-2(e)) as well as the following language:

"To accomplish these goals, the scope of practice of speech-language pathology includes, but shall not be limited to, habilitation and rehabilitation with necessary instrumentation and technology of oral and pharyngeal motor dysfunction, cognitive rehabilitation related to communication, and the provision of services and products for alternative and augmentive communication."

Petitioner's arguments for inclusion of this additional language within the scope of practice of speech-language pathology are as follows:

1. ASHA and Medicare recognize that speech-language pathologists provide habilitation and rehabilitation for oral and pharyngeal motor

dysfunction. Since the statute and regulations do not specifically include oral and pharyngeal motor dysfunction within the scope of practice, speech-language pathologists are concerned about insurance coverage for such services.

2. Speech-language pathologists provide alternative and augmentive communication devices which include electronic and nonelectronic equipment and materials. In order to ensure appropriate and authorized utilization of these skills, they should be specifically included with the scope of practice.

3. Speech-language pathologists provide cognitive rehabilitation for communication related skills for individuals suffering brain injuries, and the regulations should include such services.

Take further notice that the Director has determined that additional time is needed to study and evaluate petitioner's position and to obtain advice regarding the issues raised in the petition. The Director anticipates that she will conclude her deliberations and respond to the petition by the end of July, 1993.

A copy of this notice has been mailed to the petitioner, as required by N.J.A.C. 1:30-3.6.

COMMERCE AND ECONOMIC DEVELOPMENT

(a)

NEW JERSEY COMMISSION ON SCIENCE AND TECHNOLOGY

Notice of Availability of Small Business Assistance Vouchers

Take notice that the New Jersey Commission on Science and Technology on October 20, 1992, approved an allocation of $50,000 in appropriated Fiscal Year 1993 funds for Small Business Assistance Vouchers, in the amount of $1,000 apiece, which will be made available to eligible New Jersey small businesses in the manner described herein. These vouchers will be redeemable for specified technology-related services at specified university-based Advanced Technology Centers and Technology Extension Centers that are currently in a grantee/grantor relationship with the Commission. Vouchers will be awarded quarterly in two general categories.

1. Initial Vouchers. Applicant firms which meet eligibility requirements below will be eligible for a one-time voucher, subject only to availability of program funds, with no requirement of company matching.

2. Follow-On Vouchers: Firms which have received Initial Vouchers may apply for Follow-On Vouchers in subsequent quarters, subject to a competitive and substantive review by the Commission.

Name of the program: Small Business Assistance Vouchers.

Purpose of the program: To empower small- and medium-sized firms to acquire the technical and business assistance that they need to grow, from eligible service providers.

Amount of money in the program: A total of $50,000 will be awarded from funds available in Fiscal Year 1993. Vouchers will have a face amount of $1,000 apiece.

Application procedures: Application packages, including the current list of recognized service providers and rates, may be requested from:

Joseph X. Montemarano
New Jersey Commission Science and Technology
20 West State Street, 3rd Floor
CN 832
Trenton, New Jersey 08625-0832
609-984-1671

Initial Voucher applicants will be required to submit a one-page application. Companies applying for follow-on vouchers must additionally submit a workplan which identifies the service provider, services to be provided, and total cost of services to be subsidized by the Voucher.

Award procedures: The Commission will issue Voucher certificates in the face amount of $1,000 to those firms whose applications are selected in the quarterly lotteries (for Initial Vouchers) or Committee reviews (for Follow-On Vouchers).

Initial Vouchers will be redeemable at any of the programs identified in the Commission's list of participating programs, for any of the listed services. The Commission will reimburse the participating program for services provided, up to the face value of the Voucher.

Follow-On Vouchers will be redeemable only at the service providers, and for the specific services, identified in the application for Follow-On Voucher. In addition to the face amount of $1,000, the Follow-On Voucher certificate will identify the amount of company investment required. Prior to reimbursement, the participating program must demonstrate to the Commission that the firm presenting the Follow-On Voucher has purchased additional program services of a value which equal or exceed the company investment identified on the Voucher.

Eligible Entities: Eligibility is limited to for-profit, technology-based R&D or manufacturing firms (that is, those whose primary four-digit SIC code either begins with a 2 or 3 or is 7372, 7391, 8071, or 8072), which have New Jersey as their principal place of business, a minimum of two employees, and no more than $20 million in annual revenues.

Deadlines: Applicants are required to submit completed application materials to the Commission on Science and Technology not later than 5 P.M. on the following dates: June 1, September 1, December 1, and March 1 (or the next business day following).

Notification: For Initial Vouchers, the Commission will conduct lotteries on a quarterly basis on applications received by the quarter's deadline. Each application will be assigned a number. Numbers will be drawn at random until all available funds for Initial Vouchers are allocated. Lotteries will be held on June 6, September 6, December 6, and March 6 (or the next business day). Applications which are not funded will expire, and applicants will be notified in writing. If the applicant wishes to be considered in a subsequent quarter, a new application must be filed.

For Follow-On Vouchers, the Commission's Technology Business Development Committee will review applications on a quarterly basis, and will make decisions concerning awards. Applications which are rejected by the Commission may not be resubmitted.

TRANSPORTATION

(b)

DIVISION OF TRANSPORTATION RESEARCH AND DATA TECHNOLOGY
BUREAU OF RESEARCH AND DEMONSTRATION

Notice for Expression of Interest for Professional Services to Evaluate Highway Sign Face Materials

Take notice that the New Jersey Department of Transportation is seeking qualified universities, engineering or testing firms to submit letters of interest if interested in conducting a research study of highway sign face materials and procedures for inspection of such materials.

The specific agency notice follows:

REQUEST FOR LETTERS OF INTEREST

FOR PUBLICATION IN THE NEW JERSEY REGISTER AND COMMERCE BUSINESS DAILY

CLOSING DATE: 4:00 PM, FRIDAY, APRIL 16, 1993

NEW JERSEY DEPARTMENT OF TRANSPORTATION

PUBLIC NOTICE FOR LETTERS OF INTEREST
FOR PROFESSIONAL SERVICES TO
EVALUATE HIGHWAY SIGN FACE MATERIALS

As part of FHWA agreement HPR-0010(16), the New Jersey Department of Transportation (NJDOT) is seeking qualified universities, engineering or testing firms interested in submitting letters of interest to conduct a research study to:

- determine the highway sign face materials with the lowest ownership cost for each sign type and application,
- determine if correlation exists between laboratory accelerated testing and field lifetime tests and what the correlation factors are,
- establish highway sign face material specifications for the selected materials, for supplying procedures for the application of the selected highway sign face materials, and
- recommend procedures for incoming inspection of highway sign face materials for correct color and minimum reflectance determination using procedures developed in the project.

The research study will consist of the following: (1) literature search, (2) highway sign face material selection, identification and preparation, (3) field test site selection, (4) instrumentation selection, (5) accelerated laboratory tests, (6) field test, (7) data analysis, and (8) reports.

The Department encourages applications from qualified minority contractors and disadvantaged business enterprises (DBE). DBE status of the firm will be one of the factors in the evaluation process. The New Jersey Department of Transportation has a DBE target of 20 percent for federally funded projects.

A contractor will not be eligible to bid on this work if there is a preexisting relationship with a vendor of highway sign face materials which could cause even the appearance of a conflict of interest or unfair competitive advantage. A conflict of interest will be deemed to exist if the contractor has previously been involved in the manufacture, development or marketing of highway sign face materials which might be evaluated in this research. Previous and present research and development efforts on technical criteria used in the acquisition of such highway sign face materials will be identified for evaluation of potential conflicts.

The selection of the contractor will be done in two phases. The first phase will be a review of letters of interest to evaluate the contractors' capabilities and experience in performing the work required for this project. Such letters shall also indicate the DBE status of the contractor and any subcontractors to be utilized and the nature of any preexisting relationship with a vendor of highway sign face materials. Secondly, based on the review of the letters of interest, Requests for Proposals will be sent to up to five contractors for their use in preparing proposals. The final selection will be based on a review of the proposals submitted. Understanding of the work, proposed staffing and other resources, relevant experience of the personnel and firms, conflict of interest, completeness of the letter of interest and DBE status will be elements in the evaluation.

This effort is to be completed within 72 months of the beginning of work, which is scheduled to begin in mid-1993.

There is $500,000 available for this contract.

The work on this effort must be supervised by a certified testing professional or other professional with demonstrated knowledge and experience in similar material testing, accelerated laboratory testing and field testing in light and reflectance measurements. Such individual must be experienced in all aspects of the instrumentation that will be used in the project including spectrographic.

Organizations and joint ventures wishing to be considered for this study should submit 5 copies of 1) a letter of interest, not exceeding ten (10) single side, letter sized pages, providing a level of detail adequate for the review mentioned above, and summarizing the firm's understanding of the project, qualifications of the firm, prior relevant experience, team organization and key personnel; 2) a list of references claimed as relevant experience by each firm and each key individual including: name, title, agency, address and telephone number of client agency program manager; 3) an organizational chart showing proposed key personnel names, professional licenses and/or registrations, position titles and reporting relationship of each firm; 4) copies of relevant publications by key personnel and 5) completed NJDOT Form SA87 to:

Mailing Address:
Richard L. Hollinger
New Jersey Department of Transportation
Research and Demonstration
CN 612
Trenton, NJ 08625-0612

Office Location:
1600 North Olden Avenue, Trenton, NJ

The deadline for receipt of letters of interest is 4:00 P.M. on Friday, April 16, 1993.

Solicitation number: 74701

Any questions on this effort should be directed to:
Thomas A. Fuca
New Jersey Department of Transportation
Research and Demonstration
CN 612
Trenton, NJ 08625-0612
Telephone: (609) 292-1924

For a blank copy of NJDOT Form SA87, contact the NJDOT Bureau of Professional Services at (609) 530-2452. Be certain to inform them that you are responding to this advertisement for letters of interest, so your request can be expedited.

EMERGENCY ADOPTIONS

INSURANCE

(a)

DIVISION OF PROPERTY AND CASUALTY

Personal Private Passenger Automobile Insurance Provision of Coverage to All Applicants that Qualify as Eligible Persons

Adopted Emergency Amendments and Concurrent Reproposed Amendments: N.J.A.C. 11:3-33.2, 11:17A-1.2 and 1.7

Adopted Emergency Amendments and Concurrent Proposed Amendments: N.J.A.C. 11:3-2.8 and 34.4

Adopted Emergency New Rules and Concurrent Proposed New Rules: N.J.A.C. 11:3-44

Emergency New Rules and Amendments Adopted and Concurrent Proposed and Reproposed New Rules and Amendments Authorized: March 1, 1993 by Samuel F. Fortunato, Commissioner, Department of Insurance.

Gubernatorial Approval (N.J.S.A. 52:14B-4(c)): March 1, 1993.

Emergency Adopted New Rules and Amendments Filed: March 1, 1993 as R.1993 d.135.

Authority: N.J.S.A.17:1C-6(e), 17:29A-7 and 17:33B-15.

Concurrent Proposal Number: PRN 1993-173.

Emergency New Rules and Amendments Effective Date: March 1, 1993.

Emergency New Rules and Amendments Operative Date: March 8, 1993.

Emergency New Rules and Amendments Expiration Date: April 30, 1993.

Submit comments by April 14, 1993 to:

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

These new rules, amendments and reproposed amendments were adopted on an emergency basis and became effective upon acceptance for filing by the Office of Administrative Law (see N.J.S.A. 52:14B-4(c) as implemented by N.J.A.C. 1:30-4.4). Concurrently these new rules, amendments and reproposed amendments are proposed for adoption in compliance with the normal rulemaking requirements of the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. The concurrently proposed new rules and amendments will become effective upon acceptance for filing by the Office of Administrative Law of a notice of adoption (see N.J.A.C. 1:30-4.4(d)), if filed on or before the the emergency expiration date. The agency emergency adoption and concurrent reproposal follow:

Summary

The Fair Automobile Insurance Reform Act of 1990 ("FAIR Act") at N.J.S.A. 17:33B-15 requires that all insurers licensed to transact private passenger automobile insurance provide automobile insurance coverage for all applicants that qualify as eligible persons as defined at N.J.S.A. 17:33B-13 and N.J.A.C. 11:3-34.4. The FAIR Act also prohibits insurers, through their agents, from attempting "... to channel an eligible person away from an insurer or insurance coverage with the purpose or effect of avoiding ... an insurer's obligation to accept an eligible person ...." N.J.S.A. 17:33B-18a(2).

Pursuant to N.J.S.A. 17:33B-11(5), the New Jersey Market Transition Facility ("MTF") has ceased issuing or renewing policies of automobile insurance as of October 1, 1992. As a result, each month through September, 1993, between 60,000 and 70,000 MTF insureds will secure alternative coverage in the voluntary market. It has come to the attention of the Department of Insurance ("Department") that the response of some insurers to this influx of applicants has been to alter their procedures used to process applications in an attempt to avoid their obligation to insure eligible persons. As a result of such actions by insurers, many eligible persons have encountered difficulty in securing mandatory automobile insurance coverage, as evidenced by an increasing number of consumer complaints received by the Department.

The changes in insurers' procedures have taken several forms. Some insurers have revoked their producers' immediate binding authority. The MTF and the New Jersey Automobile Full Insurance Underwriting Association (the "Association") provided their producers with the authority to immediately bind coverage. Moreover, the majority of voluntary market insurers have historically provided their producers with immediate binding authority. Thus, both producers and insureds have depended upon the immediate binding authority of producers in order to secure mandatory autombile insurance. As a result of this change, a significantly disproportionate number of applicants are seeking coverage from a limited number of insurers which continue to transact business through producers with immediate binding authority. Such action is disruptive to the market, particularly now, when the market is already in a period of transition as large numbers of insureds are being depopulated from the residual market and must seek coverage elsewhere.

Some insurers have implemented other changes including the practice of altering the manner in which their applications are processed and changing the information requirements necessary for filing an application. These changes are viewed by the Department as attempts to channel away eligible person applicants contrary to statutory mandates. Additionally, some insurers have refused to provide or renew coverage for persons they have historically insured, such as students covered in a household policy that are temporarily residing out-of-State and persons in the military service temporarily stationed out-of-State; or have delayed providing coverage to persons relocating to New Jersey, even though the person was previously covered by the insurer or an affiliate.

In an effort to stem these improper actions by insurers and to stabilize the market in this State, the Commissioner has determined that it is necessary to adopt the following new rules and amendments on an emergency basis.

Amendments to N.J.A.C. 11:17A-1.2 and 11:3-33.2 were effected to implement the provisions of the FAIR Act relating to insurers and insurance producers with respect to the declination and solicitation of personal private passenger automobile insurance. Specifically, these amendments implement N.J.S.A. 17:33B-13 through 18 by expanding the definiton of "declination" to include situations where an insurer fails to respond to a request or application for personal private passenger automobile insurance within a reasonable period of time. Such delay, in effect, serves as a denial of coverage.

In 1992, the Department conducted a survey to review the practices of insurers in order to establish a reasonable time period by which an insurer should be required to act upon a written application for insurance. The Department's survey established that for those insurers that do not immediately bind coverage, seven to 20 calendar days from receipt of a completed written application for coverage by an insurer is the average range of time used in the industry to either bind or decline coverage. As a result, the Department issued Order No. 92-171 and proposed amendments to N.J.A.C. 11:3-33 (see 24 N.J.R. 3128(b)) to require insurers that historically did not provide immediate binding authority to their agents to either provide or decline coverage within 15 calendar days of receipt of a completed application. In reaction to this Order and proposal, some insurers revoked their producers' immediate binding authority and instructed their producers to wait up to 15 days before binding coverage. As a result, many motorists have been left without readily available automobile insurance.

Because of current market problems resulting from the actions of some insurers, the Department has determined that it is necessary for insurers that do not provide producers with immediate binding authority, to provide or decline coverage in the shortest reasonable time. These amendments, therefore, provide that an insurer that does not utilize producers with immediate binding authority, must either bind or decline coverage within five business days of receipt of a "completed written application." These amendments are thus intended to ensure that eligible applicants will obtain coverage and to eliminate or greatly reduce the number of uninsured motorists in this State.

The rules at N.J.A.C. 11:3-33.2 and 11:17A-1.2 have been amended to incorporate a definition of "completed written application." The definition provides that a written application is considered to be complete, for purposes of these rules, if a determination of eligibility can be made therefrom and if the minimum information necessary for purposes of rating and underwriting has been submitted. The information which can be requested by an insurer and which, once provided, will render the application complete is set forth at N.J.A.C. 11:3-44.3(a). A completed coverage selection form must also accompany the application. The Department recognizes that different insurers may seek different types of information from private passenger automobile insurance applicants. While insurers may elicit other information during the application process which they have traditionally sought, insurers are prohibited from declining coverage where the applicant is an eligible person and has provided the information set forth in these rules. The Department anticipates that applicants will supply any information required of them at the time of application.

The Department shall take any and all action authorized by these rules where any action is undertaken either with the intent or with the effect of avoiding an insurer's obligation to provide coverage to all eligible persons.

The Department presently anticipates that insurers will comply with the spirit, as well as the letter, of these rules to make automobile insurance available to all eligible persons. The Department cautions members of the industry, however, that in the event insurers fail to comply with these rules, further action will be taken to ensure compliance with the mandates of the FAIR Act to address the current market conditions.

The following provides a synopsis of the new rules and amendments:

N.J.A.C. 11:17A-1.7 has been amended to clarify the responsibilities of producers both with and without immediate binding authority. N.J.A.C. 11:17A-1.7(a)3i requires producers with immediate binding authority to bind coverage for eligible person applicants within five business days of receipt of the application. Such a producer, as an agent of the insurer, has the same responsibilities to the applicant as the insurer. Therefore, the producer must take action on an application for insurance within the same time frames established for insurers that deal directly with the public and as is set forth in N.J.A.C. 11:3-44.3(b).

Where a producer does not have immediate binding authority, N.J.A.C. 11:17A-1.7(a)3ii requires the producer to promptly transmit a completed written application to the insurer. This rule recognizes that different insurers impose different responsibilities and requirements on their producers and have different systems for affecting coverage. The Department anticipates that both insurers and producers without immediate binding authority will comply with the spirit of these rules which require prompt responses to applications for insurance. The Department shall monitor insurer-producer actions on applications and, if necessary, shall take further action against any party which fails to take prompt action or which actively delays the application process.

N.J.A.C. 11:17A-1.7(a)3iii requires producers to retain documentation to verify the date upon which they mail or transmit completed written applications to insurers. This amendment is incorporated to assist enforcement of the rule which requires that an application for insurance be bound or declined within five business days of receipt of a completed written application by the insurer or its producer with immediate binding authority. This rule also recognizes that the use of regular mail may take up to two or three days.

The definition of "eligible person" set forth at N.J.A.C. 11:3-34.4 has been amended to clarify that persons domiciled in New Jersey who are temporarily residing out-of-State as full time students, or who are military personnel stationed out-of-State and whose vehicles are, therefore, not principally garaged in this State, are nevertheless eligible persons pursuant to N.J.S.A. 17:33B-13. This change remedies the problem created by some insurers who have refused coverage to such persons based on the present language of N.J.A.C. 11:3-34.4(a) and 11:3-2.8. Concurrently, N.J.A.C. 11:3-2.8 has been amended to delete language which would make out-of-State students and military persons stationed out-of-State qualified applicants to the New Jersey Personal Automobile Insurance Plan ("PAIP").

Proposed new N.J.A.C. 11:3-44 establishes rules regarding binding requirements of insurers. N.J.A.C. 11:3-44.3 requires insurers to provide coverage upon receipt of completed written applications from eligible person applicants. The rule also requires insurers to prominently identify in an application or renewal form any documents which must be submitted in connection therewith.

The purpose of N.J.A.C. 11:3-44 is to ensure that all eligible persons are able to promptly procure automobile insurance. To accomplish this purpose the rules provide that insurers must provide coverage upon receipt of a completed written application that includes information sufficient to determine that the applicant is an eligible person and to rate and underwrite the policy and to minimize claim or rate fraud. The Department interprets the FAIR Act to prohibit actions by insurers in the application process which may result in discouraging an applicant from submitting an application or renewal.

The Department notes that actions by some insurers to revoke immediate binding authority have impacted upon those policies using MTF rates in accordance with Order No. A91-339, Order No. A92-112, and Bulletin No. 92-9 and approvals to specific insurers permitting the use of MTF rates as part of their rating system. N.J.S.A. 17:33B-12 permits a private passenger automobile insurer writing an insured in the voluntary market to charge, for a limited period of time, a premium at a rate level applicable to an eligible person previously insured by the MTF. Any private passenger automobile insurer wishing to charge MTF rates to an insured written in the voluntary market is required to use the entire MTF rating system approved by the Commissioner for use by the MTF including all rules contained in the MTF Manual of Rates and Rules (MTF Manual), and otherwise to comply with all requirements set forth in Order No. A91-339, Order No. A92-112, and Bulletin No. 92-9.

As noted in Bulletin No. 92-9, the Department recognized that certain provisions of the MTF Manual may be inapplicable to a voluntary market insurer's use of MTF rates, may be inconsistent with procedures ordinarily followed by the insurer with respect to its voluntary market business, or may otherwise be inappropriate for technical or substantive reasons. Accordingly, the intent of Bulletin No. 92-9 was to permit insurers to deviate from the MTF Manual and employ the procedures utilized for their voluntary business, so long as such procedures afforded insureds comparable benefits to those provided by the MTF. It is not unreasonable to assume that comparable benefits to those provided by the MTF will be provided since rates equivalent to those charged by the MTF are charged the insured.

Rule 5 of the MTF Manual provides that producers having valid contracts with the MTF shall have the authority to bind coverage with the MTF immediately. When the Department individually approved the use of MTF rates by an insurer pursuant to Order No. A91-339, Order No. A91-112 and Bulletin No. 92-9, the then existing practice of most insurers to provide their producers with immediate binding authority was part of the factual premise upon which the approval to use MTF rates was based. In order to permit the insureds to become integrated into the insurer's business, the Department approved some insurers' procedures, including their own procedures for binding, rather than MTF Manual Rule 5. However, to the extent insurers that previously granted immediate binding authority to their producers have since revoked such authority, those insurers have not filed amendments to their MTF rating system to reflect such change for review and approval by the Commissioner pursuant to Order No. A92-112. Therefore, N.J.A.C. 11:3-44.4 requires insurers which utilize MTF rates to provide immediate binding authority to those producers who receive applications for such business. Insurers which have transacted personal private passenger automobile insurance directly with the public are exempted from this rule.

N.J.A.C. 11:3-44.5 recognizes the actions of some insurers to delay binding coverage for individuals who have moved to New Jersey, and who have previously been insured by the insurer or an affiliate, which delay causes the individual to experience a lapse in coverage. This rule requires an insurer, or one of its affiliates, to bind coverage immediately without lapse where the eligible person applicant was insured by that same company in another state and applied for insurance within 60 days of establishing residency in New Jersey. This rule recognizes that the insurer has immediate access to information necessary to determine whether the applicant is an eligible person and to rate and underwrite a policy. The coverage under such circumstances would merely be continued by the insurer without lapse. Any differences which may occur would simply relate to differences in coverages or rates applicable to the different States. These types of differences do not justify a delay in the binding of coverage.

N.J.A.C. 11:3-44.6 provides that these new rules and amendments shall supersede any existing, conflicting underwriting rules previously filed and approved by the Department pursuant to N.J.A.C. 11:3-35.

Finally, N.J.A.C. 11:3-44.7 provides for the imposition of penalties for the violation of any portion of N.J.A.C. 11:3-44.

Because the new rules and amendments are being implemented in an attempt to stabilize the market from the effects of the depopulation of the MTF, some of the new rules will only be operative until October 15, 1993, as indicated in the rules.

Social Impact

Because these new rules and amendments are being implemented to stabilize the market from the effects of the depopulation of the MTF, many of the new provisions made a part of this emergency adoption will only be operative until October 15, 1993.

The proposed amendments to the definition of "declination" at N.J.A.C. 11:17A-1.2 and 11:3-33.2 establish a time frame in which an insurer that does not transact business through agents with immediate binding authority is required to respond to a written application for personal private passenger automobile insurance. It establishes an industry-wide standard for such insurers and has the dual purpose of (1) providing consumers with a prompt reply to requests for coverage which will allow them to obtain coverage or to seek alternate insurance, where necessary, without creating a lapse in their present coverage; and (2) requiring all insurers to respond to an application for insurance within a reasonable, uniform period of time before their inaction is deemed to be a declination of coverage.

The rules further provide that New Jersey domiciled students attending school out-of-State and military personnel temporarily residing out-of-State shall be considered eligible persons. The rules also require that new eligible person residents in this State receive automobile insurance without experiencing a lapse in coverage where such applicants apply to the insurer which provided coverage in the prior state, or one of that insurer's affiliates. The goal of ensuring that all eligible persons are insured is further accomplished by providing that those insurers which utilize MTF rates provide their producers with binding authority.

The proposed new rules at N.J.A.C. 11:3-44 will have a positive social impact on consumers by requiring all insurers to provide mandatory automobile insurance coverage when they are in receipt of an insurance application that includes information necessary for them to do so. While insurers are able to obtain all information necessary to underwrite and rate a policy, consumers will not be subject to delays in obtaining coverage by the application process when seeking automobile insurance coverage. These proposed rules will increase the availability of automobile insurance to eligible persons.

Economic Impact

The proposed rule amendments and new rules may impose some economic burdens on those insurers and producers which are required to adjust their systems to meet any new requirements.

As the result of the amendment to N.J.A.C. 11:17A-1.7(a)3i, some producers may realize the added expense of new recordkeeping requirements. However, these additional costs are necessary for purposes of enforcing these rules.

Insurers may incur additional, one-time expenses if they are required to revise application and renewal forms. Other expenses may also be incurred by those insurers who are not presently providing coverage to all eligible persons. These additional costs are necessary to ensure the availability of mandatory automobile insurance to all applicants which qualify as eligible persons pursuant to N.J.A.C. 11:3-34.4.

The Department will also realize the increased costs associated with the enforcement of these rules.

As rates or payments are not affected by the proposed new rules and amendments, no economic impact on insureds is anticipated.

Regulatory Flexibility Analysis

The proposed amendments to N.J.A.C. 11:17A-1.2 and 11:3-33.2 will affect persons authorized to transact the business of personal private passenger automobile insurance in New Jersey and insurance producers who service such policies. While few, if any, insurers are "small businesses" as defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., most insurance producers are "small businesses."

The proposed amendments have been reviewed with regard to the Regulatory Flexibility Act and the Department has determined that the amendments impose minimal additional reporting and recordkeeping requirements. The rules also require that a determination to either bind coverage or issue a written declination of coverage occur within a maximum of five business days. This new compliance requirement only affects insurers that do not transact business through agents with immediate binding authority. The Department does not believe that any such insurers are "small businesses."

The proposed rules at N.J.A.C. 11:3-44 will affect insurers authorized to transact personal private passenger automobile insurance in New Jersey. However, there are very few insurers in New Jersey that are considered "small businesses" as defined in the Regulatory Flexibility Act at N.J.S.A. 52:14B-17.

The proposed rules may affect small businesses by requiring insurers to adjust their systems to provide coverage promptly to eligible persons as provided in these rules. Any additional costs or time, which an insurer may be required to expend to implement these rules, will only involve initial adjustments which may be required in the insurer's practices.

The rules also impose recordkeeping requirements on producers in that they are required to retain proof of transmitting an insurance application form to an insurer. Producers have the ability to satisfy the requirements in a number of different ways. This flexibility will reduce any burdens on "small business" producers. Nevertheless, while many producers already retain such records for business purposes, the costs which may be incurred as the result of any changes required by these rules are outweighed by the anticipated benefits to be derived by consumers.

The remaining proposed new rules and amendments do not impose any additional recordkeeping or other compliance requirements on small businesses.

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

SUBCHAPTER 2. NEW JERSEY PERSONAL AUTOMOBILE INSURANCE PLAN

...

11:3-2.8 Eligibility

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

(c) "Qualified applicant" shall also include[:

1. A] **a** member of the United States military forces, if otherwise eligible for insurance coverage insured by the PAIP, with respect to an automobile if, at the time application is made, the applicant is [either] a nonresident who is stationed in this State, whose automobile is registered in another State and garaged in this State. [; or a resident who is stationed in another state, whose automobile is registered in this State and garaged in another state; and

2. A resident student attending a school in another state who holds a valid New Jersey driver's license, whose automobile is registered in this State and garaged in another state.]

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

SUBCHAPTER 33. APPEALS FROM DENIAL OF AUTOMOBILE INSURANCE

...

11:3-33.2 Definitions

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

...

"Completed written application" means a signed application that contains the minimum information necessary as set forth at N.J.A.C. 11:3-44.3(a) to determine whether the applicant is an eligible person, to rate and underwrite the policy, is accompanied by a completed coverage selection form as provided at N.J.A.C. 11:3-15.6 and, if requested, a copy of the applicant's driver's license, a copy of the motor vehicle registration of the principal vehicle to be insured, one additional proof of New Jersey residency and an acknowledgment of requirement for insurance inspection form where physical damage is requested.

"Declination," "denied" or "denial" means:

1.-3. (No change.)

4. The refusal by an insurer or agent to provide, upon the request of an applicant, an application form or other means of making an application or request for automobile insurance coverage[.];

5. The refusal by an insurer to renew a policy of automobile insurance based on eligible person status, unless either a member of the insured's household is not an eligible person and that person accounts for 10 percent or more of the use of the subject vehicle

pursuant to N.J.A.C. 11:3-8.4(a)2 or that the eligible person is nonrenewed pursuant to the provisions of N.J.A.C. 11:3-8.5; [or]

6. The cancellation of an automobile insurance policy by the insurer pursuant to N.J.S.A. 17:29C-7 for any reason other than nonpayment of premium[.]; or

7. Failure of an insurer to either bind coverage or issue a written denial of coverage to an applicant within five business days of the date a completed written application is received that includes the information in N.J.A.C. 11:3-44.3(a). This provision shall not be operative after October 15, 1993.

SUBCHAPTER 34. ELIGIBLE PERSONS QUALIFICATIONS AND AUTOMOBILE INSURANCE ELIGIBILITY POINTS SCHEDULE

...

11:3-34.4 Eligible person qualifications

(a) (No change)

(b) An "eligible person" includes a person domiciled in this State who is temporarily residing out-of-State and whose car may be principally garaged in another state while the person either is a full time student or is in the military service and is stationed out-of-State.

SUBCHAPTER 44. SPECIAL RULES FOR EFFECTING COVERAGE FOR PRIVATE PASSENGER AUTOMOBILE INSURANCE

11:3-44.1 Purpose and scope

(a) This subchapter implements the provisions of N.J.S.A. 17:33B-15 and 18 which prohibit insurers, both individually and through their agents, from attempting to channel away eligible persons, with the effect of avoiding an insurer's obligation to provide private passenger automobile insurance coverage to eligible persons.

(b) This subchapter applies to all persons that are licensed and authorized to transact the business of personal private passenger automobile insurance in this State and all producers.

11:3-44.2 Definitions

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

"Affiliate" means an insurer that directly, or indirectly through one or more intermediaries, controls or is controlled by, or is under common ownership and management with, another insurer.

"Business days" means all days other than weekends and official New Jersey State and Federal holidays.

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

"Completed written application" means a signed application that contains the minimum information necessary as set forth at N.J.A.C. 11:3-44.3(a) to determine whether the applicant is an eligible person, to rate and underwrite the policy, is accompanied by a completed coverage selection form as provided at N.J.A.C. 11:3-15.6 and, if requested, a copy of the applicant's driver's license, a copy of the motor vehicle registration of the principal vehicle to be insured, one additional proof of New Jersey residency and an acknowledgment of requirement for insurance inspection form where physical damage is requested.

"Days" means calendar days.

"Eligible person" means a person as defined at N.J.S.A. 17:33B-13 and N.J.A.C. 11:3-34.4.

"Insurer" means a person authorized to transact the business of personal private passenger automobile insurance in this State including insurers organized pursuant to N.J.S.A. 17:50-1 et seq.

"Market Transition Facility" or "MTF" means the New Jersey Market Transition Facility established pursuant to N.J.S.A. 17:33B-11.

"Personal private passenger automobile insurance" means a policy of automobile insurance principally used to provide primary insurance on private passenger automobiles which are owned individually, or jointly by individuals who are residents of the same household, and used for personal, family, or household needs.

"Transmit" means to mail or deliver by any means including, but not limited to, third class mail, certified mail, overnight delivery or express delivery, hand delivery and any transmission by wire, including, but not limited to, facsimile transmission or computer modem.

11:3-44.3 Duty to provide coverage upon receipt of a completed written application

(a) The minimum information necessary to determine whether an applicant is an eligible person and to rate and underwrite the policy is as follows:

1. The desired effective date of policy;

2. Personal information, including the name, address, home telephone number, date of birth, sex and marital status of the applicant and principal driver of each automobile to be insured under the policy;

3. The number of vehicles to be insured and a description of each such vehicle including:

i. The model year;

ii. The cost of the vehicle, if new;

iii. The trade name;

iv. The model;

v. The body type;

vi. The vehicle identification number;

vii. An approximate odometer reading if the insurer rates by mileage;

viii. The estimated annual mileage if the insurer rates by mileage;

ix. The intended use of vehicle (for pleasure, for or to work, to school or to public transportation);

4. Where the vehicle is garaged, if different from residence;

5. The month and year licensed for all drivers licensed less than three years;

6. Information regarding each resident licensed driver who is to be a named insurer under the policy, or who is the principal driver of a vehicle insured under the policy, or who is not otherwise a named insured under a separate policy of automobile insurance including:

i. The percentage use of each licensed driver;

ii. The motor vehicle record for the previous three years including:

(1) Convictions for traffic violations that result in the assessment of insurance eligibility points pursuant to N.J.A.C. 11:3-34.5;

(2) Motor vehicle accidents; and

(3) Drivers' license and registration suspensions and revocations;

iii. An insurer shall not require the applicant to submit a motor vehicle abstract;

iv. Automobile insurance claims history if needed to determine placement into a preferred company in a group of insurers;

v. Insurance fraud and other violations or crimes enumerated at N.J.S.A. 17:33B-13 or set forth at N.J.A.C. 11:3-34.4(a)1, 2 or 4; and

vi. Criminal convictions for offenses in the course of which a motor vehicle was used pursuant to N.J.S.A. 2C:43-2b(7);

7. The drivers' license number of the applicant;

8. Information relating to types of coverage, limits of liability and driver discounts; and

9. No information shall be requested based on whether the insured is impaired by physical or mental disabilities except those disabilities that impair the ability to operate an automobile safely.

(b) An insurer, by itself or through its producers with binding authority, shall provide coverage to an eligible person applicant who submits a completed written application that includes the information in (a) above.

1. Insurers shall have five business days from the date of receipt of a completed written application to either provide or decline insurance. An insurer shall obtain and retain documentation of the date of receipt of such application.

2. Any document which an insurer requires to be submitted in connection with an application or renewal shall be prominently requested in the application or renewal form.

3. If physical damage coverages are requested by eligible person applicants, insurers shall bind liability coverages in accordance with

these rules and may bind physical damage coverages subject to compliance with N.J.A.C. 11:3-36.

(c) If upon receipt of an application from a producer without immediate binding authority or directly from an applicant, an insurer finds that the application is incomplete and the insurer is unable to determine whether the applicant is an eligible person, the insurer shall, within five business days of the date the application was received by it, issue a notice which:

1. Clearly and specifically identifies the deficiencies;

2. Advises the applicant that if the deficiencies are cured within 15 days and the applicant is determined to be an eligible person, coverage shall be provided either immediately or as of the originally requested effective date; and

3. Advises the applicant that if the deficiencies are not cured within 15 days, the application shall be deemed to have been declined.

(d) This rule shall not be operative after October 15, 1993.

11:3-44.4 Immediate binding authority for insurers with MTF rates

(a) Insurers which are approved by the Commissioner to use MTF rates in accordance with N.J.S.A. 17:33B-11c shall provide their producers with authority to immediately bind coverage on behalf of the insurer for all applicants to be charged MTF rates. Insurers shall amend their approved rating system, if necessary, either to incorporate MTF Manual Rule 5 which shall be deemed approved by the Commissioner; or to extend immediate binding authority to their producers in accordance with their own immediate binding procedures. This requirement shall not apply to insurers which transact personal private passenger automobile insurance directly with the public.

(b) This rule shall not be operative after October 15, 1993.

11:3-44.5 New applicants previously insured in another state by the insurer or an affiliate

(a) An insurer shall immediately provide coverage, without lapse, to any eligible person applicant that:

1. Has moved to New Jersey from another state;

2. Submits a completed written application within 60 days of establishing residency in New Jersey; and

3. Applies to either the same insurer under which the applicant is currently insured or an affiliate of that insurer.

11:3-44.6 Underwriting rules

These new rules shall supersede any existing, conflicting underwriting rules previously filed and approved by the Department pursuant to N.J.A.C. 11:3-35.

11:3-44.7 Penalties

Any insurer that violates any provision of this subchapter shall be subject to the penalties provided by law, including but not limited to the suspension, revocation or termination of a certificate of authority and a civil penalty in an amount of up to $2,000 for the first violation and up to $5,000 for the second and each subsequent violation in accordance with N.J.S.A. 17:33B-15 and 17:33B-21.

SUBCHAPTER 1. ACTIVITIES FOR WHICH A PERSON MUST BE LICENSED AS AN INSURANCE PRODUCER OR REGISTERED AS A LIMITED INSURANCE REPRESENTATIVE

...

11:17A-1.2 Definitions

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

...

"Completed written application" means a signed application that contains the minimum information necessary as set forth at N.J.A.C. 11:3-44.3(a) to determine whether the applicant is an eligible person, to rate and underwrite the policy, is accompanied by a completed coverage selection form as provided at N.J.A.C. 11:3-15.6 and, if requested, a copy of the applicant's driver's license, a copy of the motor vehicle registration for the principal vehicle to be insured, one additional proof of New Jersey residency and an acknowledgment of requirement for insurance inspection form where physical damage is requested.

"Declination," "denied" or "denial" means:

1.-4. (No change)

5. The refusal by an insurer to renew a policy of automobile insurance based on the eligible person status, unless either a member of the insured's household is not an eligible person and that person accounts for 10 percent or more of the use of the subject vehicle pursuant to N.J.A.C. 11:3-8.4(a)2 or that the eligible person is nonrenewed pursuant to the provisions of N.J.A.C. 11:3-8.5; [or]

6. The cancellation of an automobile insurance policy by the insurer pursuant to N.J.S.A. 17:29C-7 for any reason other than nonpayment of premium[.]; **or**

7. Failure of an insurer to either bind coverage or issue a written denial of coverage to an applicant within five business days of the date a completed written application is received that includes the information in N.J.A.C. 11:3-44.3(a). This provision shall not be operative after October 15, 1993.

...

"Transmission" means any form of mailing including, but not limited to, third class mail, certified mail, any overnight delivery or express delivery, hand delivery and any wire transmission including, but not limited to, facsimile transmission or computer modem.

11:17A-1.7 Personal private passenger automobile insuance solicitation

(a) An insurance agent, or an insurance broker who has a brokerage relationship with an insurer, when soliciting personal private passenger automobile insurance, shall:

1.-2. (No change.)

3. Upon request, submit an application of an eligible person for automobile insurance to the insurer selected by the applicant[;].

i. Where a producer who, pursuant to the authority granted by an insurer, has the authority to immediately bind an application for private passenger automobile insurance, determines that the applicant is an eligible person, the producer shall bind the coverage and shall transmit the application to the insurer within five business days of receipt of the completed written application. Nothing in this section shall be construed to compel an insurer to provide a producer with the authority to bind coverage immediately except as provided at N.J.A.C. 11:3-44.4. This provision shall not be operative after October 15, 1993.

ii. Where a producer who, pursuant to his or her agreement with an insurer, does not have authority to bind coverage immediately, receives a completed written application, the producer shall promptly transmit the application to the insurer. Nothing in this section shall be construed to permit an insurer to rescind any binding authority previously granted to its producers.

iii. Producers that transmit applications to insurers for underwriting review shall retain proof of such transmissions in order to memorialize the date upon which transmission occurred. Such proof may be in the form of:

(1) An official receipt of mailing which includes the applicant's name thereon;

(2) A copy of a facsimile transmission which contains the applicant's name and the date of transmission; or

(3) Any other manner from which proof and date of mailing can be verified;

4.-6. (No change.)

(b) (No change.)

HEALTH

(a)

DIVISION OF HEALTH FACILITIES EVALUATION

Hospital Licensing Standards

Hospital Payments to Maternal and Child Health Consortia

Adopted Emergency Amendment and Concurrent Proposed Amendment: N.J.A.C. 8:43G-5.10

Emergency Amendment Adopted and Concurrent Proposed Amendment Authorized By: Bruce Siegel, M.D., M.P.H., Commissioner, Department of Health (with approval of the Health Care Administration Board).

Gubernatorial Approval (see N.J.S.A. 52:14B-4(c)): March 1, 1993.

Emergency Amendment Filed: March 2, 1993 as R.1993 d.138.

Authority: N.J.S.A. 26:2H-1 et seq., specifically 26:2H-5.

Concurrent Proposal Number: PRN 1993-179.

Emergency Amendment Effective Date: March 2, 1993.

Emergency Amendment Expiration Date: May 1, 1993.

Submit written comments by April 14, 1993 to:

Maria Morgan
Acting Program Manager
Maternal and Child Health, Regional Services
CN 364
Trenton, New Jersey 08625-0364

This amendment was adopted on an emergency basis and became effective upon acceptance for filing by the Office of Administrative Law (see N.J.S.A. 52:14B-4(c) as implemented by N.J.A.C. 1:30-4.4). Concurrently, the provisions of this emergency amendment are being proposed for readoption in compliance with the normal rulemaking requirements of the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. The readopted amendment becomes effective upon acceptance for filing by the Office of Administrative Law (see N.J.A.C. 1:30-4.4(d)), if filed on or before the emergency amendments expiration date.

The agency emergency adoption and concurrent proposal follow:

Summary and Statement of Imminent Peril

The Department of Health emergency adopts and concurrently proposes to amend the hospital licensing standards for obstetrics and hospital and administrative services for the purpose of preventing a break in funding to the existing system of regionalized perinatal services.

The Department is establishing a system of regional perinatal services in New Jersey built upon a network of maternal and child health regions, including the designation of all hospitals with a licensed obstetric and/or pediatric service, and formation of regional Maternal and Child Health Consortia (MCHC). In August 1992, amendments to the obstetric hospital licensing standards were adopted. The amendments established licensing regulations consistent with the designation criteria and addressed such areas as staff qualifications, newborn patient services, and service restrictions based upon the hospital's designation status.

Pursuant to the authority vested in the Commissioner pursuant to N.J.S.A. 26:2H-5, 26:2H-12 and P.L. 1992, c.160, section 3, the Department is proposing to adopt on an emergency basis an amendment at N.J.A.C. 8:43G-5.10(c) requiring that hospitals fund the maternal and child health consortia to which they currently belong. Funding for the consortia, which has been provided by the Robert Wood Johnson Foundation since July, 1987, will expire on or before March 1, 1993. The Department believes it is important that hospitals assure that MCHCs have continuous and sufficient resources to accomplish their regional coordinating and planning responsibilities.

Social Impact

Maternal and child health is of vital concern to the State of New Jersey, particularly the health status of infants and small children. Although infant mortality has dropped from 12.5 deaths per 1,000 live births in 1981 to 9.3 in 1989, much remains to be done. In 1989, at 19.4 deaths per 1,000 live births, the Black infant death rate was more than double that of White infants. As a result, New Jersey has yet to reach the 1990 target set in *Objectives for the Nation*. In *Healthy New Jersey 2000* targets for total infant mortality and Black infant mortality are set at 7.0 and 11.0 deaths per 1,000 live births respectively.

There is widespread recognition that further substantial gains cannot be accomplished through further emphasis on costly technological improvements. In order to achieve additional progress towards reducing the infant mortality rate, the focus must shift to prevention of low birth weight. This can best be achieved through a network of services and interventions which provide outreach, identification of high risk populations, and specialized levels of care and services for the management of high risk pregnancies and deliveries. The proposed amendment is intended to promote the goals of the existing regional maternal and child health consortia of reducing the infant mortality rate and promoting improved maternal and child health care in New Jersey.

Economic Impact

The average cost of hospital care in New Jersey for a high risk, very low birth weight infant exceeded $124,000 in 1989. Total expenditures exceeded $105,000,000 that year. Only with the prevention of low birth weight through adequate and timely prenatal care can savings in this area of health care expenditures be realized. The savings that are anticipated from the prevention of low birth weight infants and maternal and neonatal morbidity are expected to offset the anticipated costs of developing and staffing the designated appropriate levels of perinatal care and the development and staffing of Maternal and Child Health Consortia. The proposal affects the 69 maternity hospitals in New Jersey. Their estimated total contribution for 1993 is $4.8 million, which has been added to their 1993 revised cap for perinatal costs, in accordance with P.L. 1992, c.160. The contributions are based on the number of deliveries in an individual hospital. The maximum an individual hospital can be expected to pay is $225,345 and the minimum, $21,270. The effect on the public will be the continuation of services which have been funded by the Robert Wood Johnson Foundation since July of 1987.

Regulatory Flexibility Statement

The proposed amendment to the hospital licensing standards would not affect small businesses, as the term is defined in the Regulatory Flexibility Act, 52:14B-16 et seq. The hospitals in New Jersey which are regulated by N.J.A.C. 8:43G all employ more than 100 people. Businesses other than hospitals would not be affected. Therefore, a regulatory flexibility analysis is not required.

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

8:43G-5.10 [Department education programs; Advisory (Reserved)] **Funding for regionalized services**

(a)-(b) (Reserved.)

(c) Prior to the designation of the Maternal and Child Health Consortium pursuant to the certificate of need process and after the expiration of the Robert Wood Johnson Foundation funding for consortia on or before March 1, 1993, all hospitals which received a perinatal adjustment in a 1993 revenue cap approved by the Hospital Rate Setting Commission shall make monthly payments based on that adjustment to the Maternal and Child Health Consortium to which they belong.

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 February 1, 1993 issue.

If you need to retain a copy of all currently proposed rules, you must save the last 12 months of Registers. A proposal may be adopted up to one year after its initial publication in the Register. Failure to adopt a proposed rule on a timely basis requires the proposing agency to resubmit the proposal and to comply with the notice and opportunity-to-be-heard requirements of the Administrative Procedure Act (N.J.S.A. 52:14B-1 et seq.), as implemented by the Rules for Agency Rulemaking (N.J.A.C. 1:30) of the Office of Administrative Law. If an agency allows a proposed rule to lapse, "Expired" will be inserted to the right of the Proposal Notice N.J.R. Citation in the next Register following expiration. Subsequently, the entire proposal entry will be deleted from the Index. See: N.J.A.C. 1:30-4.2(c).

Terms and abbreviations used in this Index:

N.J.A.C. Citation. The New Jersey Administrative Code numerical designation for each proposed or adopted rule entry.

Proposal Notice (N.J.R. Citation). The New Jersey Register page number and item identification for the publication notice and text of a proposed amendment or new rule.

Document Number. The Registry number for each adopted amendment or new rule on file at the Office of Administrative Law, designating the year of promulgation of the rule and its chronological ranking in the Registry. As an example, R.1993 d.1 means the first rule filed for 1993.

Adoption Notice (N.J.R. Citation). The New Jersey Register page number and item identification for the publication notice and text of an adopted amendment or new rule.

Transmittal. A series number and supplement date certifying the currency of rules found in each Title of the New Jersey Administrative Code: Rule adoptions published in the Register after the Transmittal date indicated do not yet appear in the loose-leaf volumes of the Code.

N.J.R. Citation Locator. An issue-by-issue listing of first and last pages of the previous 12 months of Registers. Use the locator to find the issue of publication of a rule proposal or adoption.

MOST RECENT UPDATE TO THE ADMINISTRATIVE CODE: SUPPLEMENT JANUARY 19, 1993

NEXT UPDATE: SUPPLEMENT FEBRUARY 16, 1993

Note: If no changes have occurred in a Title during the previous month, no update will be issued for that Title.

N.J.R. CITATION LOCATOR

If the N.J.R. citation is between:	Then the rule proposal or adoption appears in this issue of the Register	If the N.J.R. citation is between:	Then the rule proposal or adoption appears in this issue of the Register
24 N.J.R. 673 and 888	March 2, 1992	24 N.J.R. 3203 and 3454	September 21, 1992
24 N.J.R. 889 and 1138	March 16, 1992	24 N.J.R. 3455 and 3578	October 5, 1992
24 N.J.R. 1139 and 1416	April 6, 1992	24 N.J.R. 3579 and 3784	October 19, 1992
24 N.J.R. 1417 and 1658	April 20, 1992	24 N.J.R. 3785 and 4144	November 2, 1992
24 N.J.R. 1659 and 1840	May 4, 1992	24 N.J.R. 4145 and 4306	November 16, 1992
24 N.J.R. 1841 and 1932	May 18, 1992	24 N.J.R. 4307 and 4454	December 7, 1992
24 N.J.R. 1933 and 2102	June 1, 1992	24 N.J.R. 4455 and 4606	December 21, 1992
24 N.J.R. 2103 and 2314	June 15, 1992	25 N.J.R. 1 and 218	January 4, 1993
24 N.J.R. 2315 and 2486	July 6, 1992	25 N.J.R. 219 and 388	January 19, 1993
24 N.J.R. 2487 and 2650	July 20, 1992	25 N.J.R. 389 and 616	February 1, 1993
24 N.J.R. 2651 and 2752	August 3, 1992	25 N.J.R. 619 and 736	February 16, 1993
24 N.J.R. 2753 and 2970	August 17, 1992	25 N.J.R. 737 and 1030	March 1, 1993
24 N.J.R. 2971 and 3202	September 8, 1992	25 N.J.R. 1031 and 1308	March 15, 1993

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
ADMINISTRATIVE LAW—TITLE 1				
1:13A-1.2, 18.1, 18.2	Lemon Law hearings: exceptions to initial decision	24 N.J.R. 1843(a)		
	Most recent update to Title 1: TRANSMITTAL 1992-5 (supplement November 16, 1992)			
AGRICULTURE—TITLE 2				
2:6	Animal health: biological products for diagnostic or therapeutic purposes	24 N.J.R. 2974(a)		
2:6	Animal health: extension of comment period regarding biological products for diagnostic or therapeutic purposes	24 N.J.R. 3981(a)		
2:32-2.4	Sire Stakes Program: stallion standing full season	24 N.J.R. 3981(b)	R.1993 d.70	25 N.J.R. 463(a)
2:34-2.1, 2.2	Equine Advisory Board rules	25 N.J.R. 740(a)		
2:76-2.1, 2.2, 2.3, 2.4	Recommendation of agricultural management practices	25 N.J.R. 622(a)		
2:76-3.12, 4.11	Farmland preservation programs: deed restrictions on enrolled lands	25 N.J.R. 222(a)		
2:76-6.15	Agriculture Retention and Development Program: lands permanently deed restricted	25 N.J.R. 223(a)		
	Most recent update to Title 2: TRANSMITTAL 1993-1 (supplement January 19, 1993)			
BANKING—TITLE 3				
3:18	Secondary Mortgage Loan Act rules	24 N.J.R. 3982(a)	R.1993 d.55	25 N.J.R. 463(b)
3:41-2.1, 11	Cemetery Board: location of interment spaces and path access	25 N.J.R. 623(a)		
3:42	Pinelands Development Credit Bank	25 N.J.R. 223(b)		
	Most recent update to Title 3: TRANSMITTAL 1993-1 (supplement January 19, 1993)			
CIVIL SERVICE—TITLE 4				
	Most recent update to Title 4: TRANSMITTAL 1992-1 (supplement September 21, 1992)			
PERSONNEL—TITLE 4A				
4A:2-4.1	Notice of termination at end of working test period: administrative correction	———	———	25 N.J.R. 686(a)
4A:4-6.4, 6.6	Selection and placement appeals	24 N.J.R. 4467(a)		
	Most recent update to Title 4A: TRANSMITTAL 1993-1 (supplement January 19, 1993)			
COMMUNITY AFFAIRS—TITLE 5				
5:14-1.6, 2.2, 3.1, 4.1, 4.5, 4.6, 4.7	Neighborhood Preservation Balanced Housing Program: per unit developer fees and costs; other revisions	24 N.J.R. 1144(a)		
5:18-1.5, 2.4, 2.5, 2.7, 3.1–3.5, 3.7, 3.13, 3.17, 3.20, 3.30, App. 3A, 4.7, 4.9, 4.11, 4.12, 4.19	Uniform Fire Code	25 N.J.R. 393(a)		
5:18-2.9, 2.12, 2.14, 2.16, 2.17	Uniform Fire Code: enforcement and penalties for violations	25 N.J.R. 397(a)		
5:18A-4.6	Fire Code enforcement: review of proposed action against certified fire official	25 N.J.R. 399(a)		
5:19	Continuing care retirement communities	24 N.J.R. 1146(a)	R.1993 d.79	25 N.J.R. 686(b)

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
5:23	Uniform Construction Code	24 N.J.R. 1420(b)	R.1993 d.106	25 N.J.R. 920(a)
5:23-2.5	UCC: increase in building size	24 N.J.R. 1421(a)	R.1993 d.61	25 N.J.R. 463(c)
5:23-2.17, 8	Asbestos Hazard Abatement Subcode	24 N.J.R. 1422(a)		
5:23-3.4, 4.4, 4.18, 4.20, 5.3, 5.5, 5.19A, 5.21, 5.22, 5.23, 5.25	Uniform Construction Code: mechanical inspector license and mechanical inspections	25 N.J.R. 624(a)		
5:23-5.4, 5.5	Uniform Construction Code: licensure of elevator subcode officials and inspectors	24 N.J.R. 4309(a)	R.1993 d.105	25 N.J.R. 920(b)
5:23-9.7	Uniform Construction Code: manufacturing, production and process equipment exemption	24 N.J.R. 3458(a)		
5:27-3.5	Rooming and boarding houses: conformity with Fair Housing Act amendments	24 N.J.R. 4310(a)	R.1993 d.104	25 N.J.R. 920(c)
5:80-32	Housing and Mortgage Finance Agency: project cost certification	24 N.J.R. 2208(a)		

Most recent update to Title 5: TRANSMITTAL 1993-1 (supplement January 19, 1993)

MILITARY AND VETERANS' AFFAIRS—TITLE 5A

Most recent update to Title 5A: TRANSMITTAL 1992-2 (supplement September 21, 1992)

EDUCATION—TITLE 6

6:5-2.3, 2.4, App.	Organization of Department	Exempt	R.1993 d.107	25 N.J.R. 921(a)
6:8-9.4, 9.8	Educational improvement plans in special needs districts: fiscal, strategy and program requirements	24 N.J.R. 4467(b)	R.1993 d.112	25 N.J.R. 922(a)
6:9	Educational programs for pupils in State facilities	25 N.J.R. 400(a)		
6:28-8.1, 8.3, 8.4	Educational programs for pupils in State facilities	25 N.J.R. 400(a)		
6:29-3.4	Medical examination requirement for interscholastic athletic participation	24 N.J.R. 4150(a)	R.1993 d.80	25 N.J.R. 686(c)

Most recent update to Title 6: TRANSMITTAL 1993-1 (supplement January 19, 1993)

ENVIRONMENTAL PROTECTION AND ENERGY—TITLE 7

7:0	Well construction and sealing: request for public comment regarding comprehensive rules	24 N.J.R. 3286(a)		
7:1C-1.5, 1.6, 1.7	Ninety-day construction permit fees	24 N.J.R. 2768(a)	R.1993 d.111	25 N.J.R. 924(a)
7:1G-1.2, 6.1–6.11, 6.13-6.16	Worker and Community Right to Know Act: trade secrets and definitions	25 N.J.R. 858(a)		
7:1I	Processing of damage claims under Sanitary Landfill Facility Contingency Fund Act	25 N.J.R. 741(a)		
7:1K	Pollution Prevention Program	24 N.J.R. 3609(a)	R.1993 d.108	25 N.J.R. 930(a)
7:4B	Historic Preservation Revolving Loan Program	25 N.J.R. 748(a)		
7:6-1.45	Seven Presidents Park, Long Branch: boating restrictions within jetty areas	25 N.J.R. 57(a)		
7:7-1.7	Coastal Permit Program fees	24 N.J.R. 2768(a)	R.1993 d.111	25 N.J.R. 924(a)
7:7A-1.4, 2.7, 8.10	Freshwater wetlands protection: project permit exemptions; hearings on contested letters of interpretation	24 N.J.R. 912(b)		
7:7A-16.1	Freshwater wetlands permit fees	24 N.J.R. 2768(a)	R.1993 d.111	25 N.J.R. 924(a)
7:7E-7.4	Coastal zone management: Outer Continental Shelf oil and gas exploration and development	25 N.J.R. 5(a)		
7:7E-7.5	Alternative traffic reduction programs in Atlantic City	24 N.J.R. 1986(a)		
7:8	Stormwater management	24 N.J.R. 4469(a)	R.1993 d.113	25 N.J.R. 990(a)
7:8	Stormwater runoff and nonpoint source pollution control: public meeting and request for comment	24 N.J.R. 4470(a)		
7:9-4	Surface water quality standards: request for public comment on draft Practical Quantitation Levels	24 N.J.R. 4008(a)		
7:9-4 (7:9B)	Surface water quality standards; draft Practical Quantitation Levels; total phosphorus limitations and criteria: extension of comment periods and notice of roundtable discussion	25 N.J.R. 404(a)		
7:9-4 (7:9B-1), 6.3	Surface water quality standards	24 N.J.R. 3983(a)		
7:9-4.5, 4.14, 4.15	Surface water quality standards	25 N.J.R. 405(a)		
7:9-4.14 (7:9B-1.14)	NJPDES program and surface water quality standards: request for public comment regarding total phosphorous limitations and criteria	24 N.J.R. 4008(b)		
7:9-4.14, 4.15 (7:9B-1.14, 1.15)	Surface water quality standards: administrative corrections to proposal	24 N.J.R. 4471(a)		
7:9-6	Ground water quality standards	24 N.J.R. 181(a)	R.1993 d.73	25 N.J.R. 464(a)
7:9A-1.1, 1.2, 1.6, 1.7, 2.1, 3.3, 3.4, 3.5, 3.7, 3.9, 3.10, 3.12, 3.14, 3.15, 5.8, 6.1, 8.2, 9.2, 9.3, 9.5, 9.6, 9.7, 10.2, 12.2–12.6, App. A, B	Individual subsurface sewage disposal systems	24 N.J.R. 1987(a)		

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
7:11-2.2, 2.3, 2.9	Delaware and Raritan Canal-Spruce Run/Round Valley Reservoir System: rates for sale of water	24 N.J.R. 4472(a)		
7:11-4.3, 4.4, 4.9	Manasquan Reservoir Water Supply System: rates for sale of water	24 N.J.R. 4474(a)		
7:13-7.1	Flood plain redelineation of Green Brook in Scotch Plains and Watchung	24 N.J.R. 4475(a)		
7:14A	NJPDES Program: opportunity for interested party review of permitting system	25 N.J.R. 411(a)		
7:14A-1, 2, 3, 5–14, App. F	NJPDES program and Clean Water Enforcement Act requirements	24 N.J.R. 344(b)	R.1993 d.59	25 N.J.R. 547(a)
7:14A-1.9, 2.4, 3.9, 3.13, App. A, B; 13.5, App. H	Statewide Stormwater Permitting Program: administrative corrections	_____	_____	25 N.J.R. 687(a)
7:14A-1.9, 3.14	Surface water quality standards	24 N.J.R. 3983(a)		
7:14A-4.7	Handling of substances displaying the Toxicity Characteristic	25 N.J.R. 753(a)		
7:15-1.5, 3.4, 3.6, 4.1, 5.22	Statewide water quality management planning	24 N.J.R. 344(b)	R.1993 d.59	25 N.J.R. 547(a)
7:22-3.4, 3.7, 3.8, 3.9, 3.11, 3.17, 3.20, 3.26, 3.27, 3.32, 3.34, 3.37, 4.4, 4.7, 4.8, 4.9, 4.11, 4.13, 4.17, 4.20, 4.26, 4.29, 4.32, 4.34, 4.37, 4.46, 5.4, 5.11, 5.12, 6.17, 6.27, 10.2, 10.3, 10.8, 10.9, 10.11, 10.12	Financial assistance programs for wastewater treatment facilities	24 N.J.R. 4310(b)		
7:25-6.13	1993-94 Fish Code: harvest of largemouth and smallmouth bass	25 N.J.R. 224(a)		
7:25-11	Introduction of imported or non-native shellfish or finfish into State's marine waters	24 N.J.R. 3660(a)		
7:25-16.1	Freshwater fishing line for Rahway River in Union County	24 N.J.R. 2977(a)	R.1993 d.116	25 N.J.R. 1231(a)
7:25-18.1, 18.5	Atlantic sturgeon management	24 N.J.R. 205(a)	R.1993 d.77	25 N.J.R. 689(a)
7:25-18.16	Taking of horseshoe crabs	24 N.J.R. 2978(a)		
7:25A-1.2, 1.4, 1.9, 4.3	Oyster management	25 N.J.R. 754(a)		
7:26-2.11, 2.13, 2B.9, 2B.10, 6.2, 6.8	Solid waste flow through transfer stations and materials recovery facilities	24 N.J.R. 3286(c)		
7:26-4.3	Thermal destruction facilities: compliance monitoring fees and postponed operative date	24 N.J.R. 1999(a)	R.1993 d.98	25 N.J.R. 990(b)
7:26-4.3	Thermal destruction facilities: extension of comment period regarding compliance monitoring fees	24 N.J.R. 2687(a)		
7:26-4A.6	Hazardous waste program fees: annual adjustment	24 N.J.R. 2001(a)		
7:26-6.5, 6.6	Interdistrict and intradistrict solid waste flow	24 N.J.R. 3291(a)	R.1993 d.109	25 N.J.R. 991(a)
7:26-8.8, 8.12, 8.19	Handling of substances displaying the Toxicity Characteristic	25 N.J.R. 753(a)		
7:26-8.13, 8.16, 8.19	Hazardous waste listings: F024 and F025	25 N.J.R. 755(a)		
7:26-8.20	Used motor oil recycling	24 N.J.R. 2383(a)		
7:26-12.3	Hazardous waste management: interim status facilities	24 N.J.R. 4253(a)		
7:26A-6	Used motor oil recycling	24 N.J.R. 2383(a)		
7:26B-1.3, 1.5, 1.6, 1.8, 1.9	Environmental Cleanup Responsibility Act rules	25 N.J.R. 100(a)		
7:26B-7, 9.3	Remediation of contaminated sites: Department oversight	24 N.J.R. 1281(b)		
7:26C	Remediation of contaminated sites: Department oversight	24 N.J.R. 1281(b)		
7:26E	Technical requirements for contaminated site remediation	24 N.J.R. 1695(a)		
7:27-1.4, 1.6–1.30, 8.4, 8.14–8.24, 16.9, 21	Air contaminant emission statements from stationary sources	24 N.J.R. 2979(a)	R.1993 d.128	25 N.J.R. 1254(a)
7:27-1.4, 1.36, 1.37, 1.38, 8.1, 8.3, 8.4, 8.24, 18	Control and prohibition of air pollution from new or altered sources: emission offsets	24 N.J.R. 3459(a)	R.1993 d.129	25 N.J.R. 1231(b)
7:27-8.1, 8.3, 8.27	Air pollution control: requirements and exemptions under facility-wide permits	24 N.J.R. 4323(a)		
7:27-19	Control and prohibition of air pollution from oxides of nitrogen	25 N.J.R. 631(a)		
7:27-26	Low Emissions Vehicle Program	24 N.J.R. 1315(a)		
7:27-26	Low Emissions Vehicle Program: correction to proposal	24 N.J.R. 1458(c)		
7:27A-3.5, 3.10	Control and prohibition of air pollution from oxides of nitrogen: civil administrative penalties	25 N.J.R. 631(a)		

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
7:27A-3.10	Civil administrative penalties for violations of emission statement requirements	24 N.J.R. 2979(a)	R.1993 d.128	25 N.J.R. 1254(a)
7:28-15, 16.2, 16.8	Medical diagnostic x-ray installations; dental radiographic installations	25 N.J.R. 7(a)		
7:36-9	Green Acres Program: nonprofit land acquisition	24 N.J.R. 2405(a)		
7:50-4.1, 4.70	Pinelands Comprehensive Management Plan: expiration of development approvals and waivers	25 N.J.R. 225(a)		
7:61	Commissioners of Pilotage: licensure of Sandy Hook pilots	24 N.J.R. 3477(a)		
7:61-3	Board of Commissioners of Pilotage: Drug Free Workplace Program	25 N.J.R. 625(a)		
	Most recent update to Title 7: TRANSMITTAL 1993-1 (supplement January 19, 1993)			
HEALTH—TITLE 8				
8:2	Creation of birth record	24 N.J.R. 4325(a)		
8:2	Creation of birth record: reopening of comment period	25 N.J.R. 660(a)		
8:21-3.13	Repeal (see 8:21-3A)	24 N.J.R. 3100(a)		
8:21-3A	Registration of manufacturers and wholesale distributors of non-prescription drugs, and manufacturers and wholesale distributors of devices	24 N.J.R. 3100(a)		
8:24	Packing of refrigerated foods in reduced oxygen packages by retail establishments: preproposal	25 N.J.R. 660(b)		
8:24	Retail food establishments and food and beverage vending machines	25 N.J.R. 662(a)		
8:25	Youth Camp Safety Act standards	25 N.J.R. 756(a)		
8:31B-4.40	Uncompensated care collection procedures	24 N.J.R. 1124(c)		
8:33-3.11	Certificate of Need process for demonstration and research projects	24 N.J.R. 3104(a)		
8:33A-1.2, 1.16	Hospital Policy Manual: applicant preference; equity requirement	24 N.J.R. 4476(a)		
8:33C-10.1	Regionalized perinatal services: administrative correction to adoption notice	———	———	25 N.J.R. 580(a)
8:33G	Computerized tomography services: certification of need	24 N.J.R. 4221(a)	R.1993 d.87	25 N.J.R. 700(a)
8:33I-1	Megavoltage radiation oncology services: certification of need	24 N.J.R. 4222(a)	R.1993 d.88	25 N.J.R. 701(a)
8:33M-1.6	Bed need methodology for adult comprehensive rehabilitation services	24 N.J.R. 4225(a)	R.1993 d.89	25 N.J.R. 703(a)
8:39-13.4, 27.1, 27.8, 29.4, 33.2, 45, 46	Long-term care facilities: use of restraints and psychoactive drugs; pharmacy supplies; Alzheimer's and dementia care services	24 N.J.R. 4228(a)		
8:41	Mobile intensive care programs	24 N.J.R. 3255(b)		
8:43	Licensure of residential health care facilities	25 N.J.R. 25(a)		
8:43	Licensure of residential health care facilities: public hearing	25 N.J.R. 757(a)		
8:43A	Ambulatory care facilities: public meeting and request for comments regarding Manual of Standards for Licensure	24 N.J.R. 3603(a)		
8:43A	Licensure of ambulatory care facilities	25 N.J.R. 757(b)		
8:43G-5.10	Acute care hospital participation in New Jersey Poison Control Information and Education System	25 N.J.R. 792(a)		
8:43G-5.10	Hospital payments to maternal and child health consortia	Emergency (expires 5-1-93)	R.1993 d.138	25 N.J.R. 1295(a)
8:44-2.2, 3	Limited purpose laboratories	25 N.J.R. 668(a)		
8:59-1, 2, 5, 6, 9, 11, 12	Worker and Community Right to Know Act rules	25 N.J.R. 864(a)		
8:59-3.1, 3.2, 3.3, 3.5-3.9, 3.11, 3.13-3.17	Worker and Community Right to Know Act: trade secrets and definitions	25 N.J.R. 858(a)		
8:59-App. A, B	Worker and Community Right to Know Act: preproposal concerning Hazardous Substance List and Special Health Hazard Substance List	25 N.J.R. 792(a)		
8:71	Interchangeable drug products (see 24 N.J.R. 1896(a), 2560(b), 3174(a))	24 N.J.R. 735(a)		
8:71	Interchangeable drug products (24 N.J.R. 2559(a))	24 N.J.R. 1673(a)		
8:71	Interchangeable drug products (see 24 N.J.R. 2557(b), 3173(a), 4260(b))	24 N.J.R. 1674(a)	R.1993 d.65	25 N.J.R. 582(a)
8:71	Interchangeable drug products (see 24 N.J.R. 3174(c), 3728(a), 4262(a))	24 N.J.R. 2414(b)	R.1993 d.67	25 N.J.R. 583(a)
8:71	Interchangeable drug products (24 N.J.R. 4261(a))	24 N.J.R. 2997(a)	R.1993 d.66	25 N.J.R. 582(b)
8:71	Interchangeable drug products	24 N.J.R. 4009(a)	R.1993 d.64	25 N.J.R. 580(b)
8:71	Interchangeable drug products	25 N.J.R. 55(a)	R.1993 d.124	25 N.J.R. 1221(a)
8:71	Interchangeable drug products	25 N.J.R. 875(a)		
8:100	State Health Planning Board: public hearings on draft chapters of State Health Plan	24 N.J.R. 3788(a)		

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
8:100	State Health Plan: draft chapters	24 N.J.R. 3789(a)		
8:100	State Health Plan: draft chapters on AIDS, and preventive and primary care	24 N.J.R. 4151(a)		

Most recent update to Title 8: TRANSMITTAL 1993-1 (supplement January 19, 1993)

HIGHER EDUCATION—TITLE 9

9:1-5.11	Regional accreditation of degree-granting proprietary institutions	24 N.J.R. 3207(a)		
9:4-1.12	County college construction projects	25 N.J.R. 668(b)		
9:4-3.12	Noncredit courses at county colleges	25 N.J.R. 227(a)		
9:6A	State college personnel system	24 N.J.R. 3052(a)	R.1993 d.118	25 N.J.R. 1221(b)

Most recent update to Title 9: TRANSMITTAL 1993-1 (supplement January 19, 1993)

HUMAN SERVICES—TITLE 10

10:8	Administration of State-provided Personal Needs Allowance	24 N.J.R. 681(a)		
10:14	Statewide Respite Care Program Manual	25 N.J.R. 876(a)		
10:36	Patient supervision at State psychiatric hospitals	24 N.J.R. 4232(a)	R.1993 d.58	25 N.J.R. 583(b)
10:37-5.46–5.50, 12	Community mental health services: children's partial care programs	25 N.J.R. 669(a)		
10:38A	Pre-Placement Program for patients at State psychiatric facilities	24 N.J.R. 4326(a)		
10:41-2.3, 2.8, 2.9	Division of Developmental Disabilities: access to client records and record confidentiality	25 N.J.R. 432(a)		
10:51	Pharmaceutical Services Manual	24 N.J.R. 3053(a)		
10:52-1.9, 1.13	Reimbursement methodology for distinct units in acute care hospitals and for private psychiatric hospitals	24 N.J.R. 4477(a)		
10:52-1.23	Inpatient hospital services: adjustments to Medicaid payer factors	24 N.J.R. 4478(a)		
10:53-1.1	Reimbursement methodology for special hospitals	24 N.J.R. 4477(a)		
10:63-3.3, 3.8	Long-term care services: eliminatioin of salary regions	25 N.J.R 433(a)		
10:69	Hearing Aid Assistance to the Aged and Disabled Eligibility Manual	25 N.J.R. 228(a)		
10:69-5.8; 69A-5.4, 5.6, 6.12, 7.2; 69B-4.13	HAAAD, PAAD, and Lifeline programs: fair hearing requests, prescription reimbursement, benefits recovery	24 N.J.R. 4329(a)		
10:69A	Pharmaceutical Assistance to the Aged and Disabled Eligibility Manual	24 N.J.R. 4479(a)		
10:69A-2.1, 4.1–4.4, 5.3, 5.5	PAAD prescription copayment	24 N.J.R. 4328(a)		
10:72-1.1	New Jersey Care—Special Medicaid Program scope: administrative correction	_____	_____	25 N.J.R. 704(a)
10:81-11.4, 11.16A, 11.20	Public Assistance Manual: closing criteria for IV-D cases; application fee for non-AFDC applicants	25 N.J.R. 881(a)		
10:81-11.5, 11.7, 11.9, 11.20, 11.21	Public Assistance Manual: child support and paternity services	24 N.J.R. 2328(a)		
10:83-1.11	Supplemental Security Income (SSI) payment levels	25 N.J.R. 434(a)		
10:84	Administration of public assistance programs: agency action on public hearing	24 N.J.R. 4480(a)		
10:84-1	Administration of public assistance programs	24 N.J.R. 4480(b)		
10:87-2.4, 2.6, 2.31, 2.39, 3.8, 3.14, 4.1, 4.8, 5.1, 5.9, 5,10, 6.9, 6.20, 10.3, 10.6, 10.18, 11.26, 11.29, 12.1	Food Stamp Program revisions	24 N.J.R. 3207(b)	R.1993 d.62	25 N.J.R. 584(a)
10:89-2.3, 3.1, 3.4, 3.6, 4.1	Home Energy Assistance	24 N.J.R. 4593(a)	R.1993 d.97	25 N.J.R. 997(a)
10:123-3.4	Personal needs allowance for eligible residents of residential health care facilities and boarding houses	24 N.J.R. 3088(a)		
10:123-3.4	Personal needs allowance for eligible residents of residential health care facilities and boarding houses: annual adjustment	25 N.J.R. 229(a)		
10:124-5.1	Children's shelter facilities and homes: local government physical facility requirements	24 N.J.R. 4482(a)		

Most recent update to Title 10: TRANSMITTAL 1993-1 (supplement January 19, 1993)

CORRECTIONS—TITLE 10A

10A:71-3.47	Inmate parole hearings: victim testimony process	24 N.J.R. 4483(a)		
10A:71-6.4, 7.3	State Parole Board: conditions of parole	25 N.J.R. 435(a)		

Most recent update to Title 10A: TRANSMITTAL 1992-7 (supplement December 21, 1992)

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
INSURANCE—TITLE 11				
11:1-32.4	Automobile insurance: limited assignment distribution servicing carriers	24 N.J.R. 519(a)	R.1992 d.371	24 N.J.R. 3414(a)
11:1-32.4	Workers' compensation self-insurance	24 N.J.R. 1944(a)		
11:1-32.4	Workers' compensation self-insurance: extension of comment period	24 N.J.R. 2708(b)		
11:1-33	Public Advocate reimbursement disputes	24 N.J.R. 2706(a)		
11:1-34	Surplus lines: exportable list procedures	24 N.J.R. 4331(a)		
11:2-17.11	Payment of third-party claims: written notice to claimant	24 N.J.R. 522(a)	Expired	
11:2-26	Insurer's annual audited financial report	24 N.J.R. 1940(a)	R.1993 d.68	25 N.J.R. 588(a)
11:2-26	Insurer's annual audited financial report: extension of comment period	24 N.J.R. 2708(a)		
11:2-33	Workers' compensation self-insurance	24 N.J.R. 1944(a)		
11:2-33	Workers' compensation self-insurance: extension of comment period	24 N.J.R. 2708(b)		
11:3-2.8, 33.2, 34.4, 44	Automobile insurance: provision of coverage to all applicants who qualify as eligible persons	Emergency (expires 4-30-93)	R.1993 d.135	25 N.J.R. 1290(a)
11:3-16.7	Automobile insurance: rating programs for physical damage coverages	24 N.J.R. 3604(a)		
11:3-16.12	Automobile insurance: filings reflecting paid, apportioned MTF expenses and losses	24 N.J.R. 4486(a)		
11:3-16.12	Automobile insurance: public hearing and extension of comment period regarding filings reflecting paid, apportioned MTF expenses and losses	25 N.J.R. 56(a)		
11:3-19.3, 34.3	Automobile insurance eligibility rating plans: incorporation of merit rating surcharge	24 N.J.R. 2332(a)		
11:3-28.8	Reimbursement of excess medical expense benefits paid by insurers	24 N.J.R. 3215(a)		
11:3-29.2, 29.4, 29.6	Automobile insurance PIP coverage: medical fee schedules	25 N.J.R. 229(b)		
11:3-29.6	Automobile PIP coverage: physical therapy services	24 N.J.R. 2998(a)		
11:3-33.2	Appeals from denial of automobile insurance: failure to act timely on written application for coverage	24 N.J.R. 2128(b)		
11:3-35.5	Automobile insurance rating: eligibility points of principal driver	24 N.J.R. 2331(a)		
11:4-14.1, 15.1, 16.2, 19.2, 28.3, 36	BASIC health care coverage	24 N.J.R. 1205(a)		
11:5-1.9	Real Estate Commission: transmittal of funds to lenders	24 N.J.R. 4268(a)		
11:5-1.23	Real Estate Commission: transmittal by licensees of written offers on property	24 N.J.R. 3486(a)		
11:5-1.36	Real Estate Guaranty Fund assessment	25 N.J.R. 56(b)		
11:5-1.38	Real Estate Commission: pre-proposal regarding buyer-brokers	24 N.J.R. 3488(b)		
11:15-3	Joint insurance funds for local government units providing group health and term life benefits	25 N.J.R. 436(a)		
11:17	Producer licensing	25 N.J.R. 883(a)		
11:17-1.2, 2.3–2.15, 5.1–5.6	Insurance producer licensing	24 N.J.R. 3216(a)		
11:17A-1.2, 1.3, 1.4, 1.5, 4.6	Insurance producers and limited insurance representatives: licensure and registration	25 N.J.R. 446(a)		
11:17A-1.2, 1.7	Appeals from denial of automobile insurance: failure to act timely on written application for coverage; premium quotation	24 N.J.R. 2128(b)		
11:17A-1.2, 1.7	Automobile insurance: provision of coverage to all applicants who qualify as eligible persons	Emergency (expires 4-30-93)	R.1993 d.135	25 N.J.R. 1290(a)
11:19-2	Financial Examination Monitoring System: data submission by domestic insurers	24 N.J.R. 2999(a)	R.1993 d.69	25 N.J.R. 591(a)
11:19-3	Financial Examination Monitoring System: data submission by surplus lines producers and insurers	24 N.J.R. 3003(a)		
	Most recent update to Title 11: TRANSMITTAL 1993-1 (supplement January 19, 1993)			
LABOR—TITLE 12				
12:16-4.8	Board and room, meals and lodging in lieu of wages: 1993 rates	_____	_____	24 N.J.R. 3182(a)
12:18	Temporary Disability Benefits Program	25 N.J.R. 262(a)		
12:23	Workforce Development Partnership Program: application and review process for customized training services	25 N.J.R. 449(a)		
12:23-3	Workforce Development Partnership Program: application and review process for individual training grants	25 N.J.R. 884(a)		
12:23-4	Workforce Development Partnership Program: application and review process for approved training	25 N.J.R. 886(a)		

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
12:23-5	Workforce Development Partnership Program: application and review process for additional unemployment benefits during training	25 N.J.R. 887(a)		
12:58-1.2	Child labor: student learner in cooperative vocational education program	25 N.J.R. 889(a)		
12:60	Prevailing wages for public works	25 N.J.R. 453(a)		
12:60-3.2, 4.2	Prevailing wages on public works contracts: telecommunications worker	24 N.J.R. 2689(a)		
12:60-3.2, 4.2	Prevailing wages on public works contracts: extension of comment period	24 N.J.R. 3015(b)		
12:60-3.2, 4.2	Prevailing wages for public works: extension of comment period	24 N.J.R. 3607(a)		
12:100-4.1, 4.2	Public employee safety and health: Process Safety Management of Highly Hazardous Chemicals; employer defined	25 N.J.R. 890(a)		
12:100-4.2	Public employee safety and health: occupational exposure to bloodborne pathogens	24 N.J.R. 3607(b)		
12:100-4.2	Public employee safety and health: exposure to hazardous chemicals in laboratories	25 N.J.R. 453(b)		
12:100-4.2	Public employee safety and health: exposure to formaldehyde	25 N.J.R. 455(a)		
12:110	Public employee occupational safety and health: procedural standards	24 N.J.R. 4234(a)	R.1993 d.71	25 N.J.R. 595(a)
12:190	Regulation of explosives	24 N.J.R. 4235(a)	R.1993 d.72	25 N.J.R. 595(b)

Most recent update to Title 12: TRANSMITTAL 1993-1 (supplement January 19, 1993)

COMMERCE AND ECONOMIC DEVELOPMENT—TITLE 12A

12A:31-1.4	New Jersey Development Authority: interest rate on direct loans	25 N.J.R. 891(a)		

Most recent update to Title 12A: TRANSMITTAL 1993-1 (supplement January 19, 1993)

LAW AND PUBLIC SAFETY—TITLE 13

7:6-1.45	Boat Regulation Commission: restrictions within Seven Presidents Park jetty areas	25 N.J.R. 57(a)		
13:3	Amusement games control	25 N.J.R. 891(b)		
13:19-1.1, 1.7	Driver Control Service: administrative hearings applicability	25 N.J.R. 893(a)		
13:28	Board of Cosmetology and Hairstyling rules	25 N.J.R. 893(b)		
13:20-37	Motor vehicles with modified chassis height	24 N.J.R. 3662(a)		
13:20-37	Motor vehicles with modified chassis height: extension of comment period	24 N.J.R. 4333(b)		
13:21-19.9	Motor Vehicle Franchise Committee: administrative hearing costs	24 N.J.R. 3015(c)	R.1993 d.103	25 N.J.R. 998(a)
13:24-4.1, 4.2	Amber light permit for rural route letter carrier vehicles	24 N.J.R. 4236(a)	R.1993 d.115	25 N.J.R. 1222(a)
13:30-8.5	Board of Dentistry: complaint review procedures	24 N.J.R. 2800(a)		
13:30-8.6	Board of Dentistry: professional advertising	24 N.J.R. 2801(a)		
13:31-1.11, 1.17	Electrical contractor's business permit: telecommunications wiring exemption	24 N.J.R. 339(a)	R.1993 d.93	25 N.J.R. 705(a)
13:33-1.35, 1.36	Ophthalmic dispensers and technicians: referrals; space rental agreements	24 N.JR. 4010(a)		
13:33-1.41, 1.43	Licensed ophthalmic dispensers: continuing education	25 N.J.R. 57(b)		
13:35-6.13	Bio-analytical laboratory directorships: license fees	24 N.J.R. 4011(a)	R.1993 d.91	25 N.J.R. 708(a)
13:35-6.13	Physician assistant licensing fees	24 N.J.R. 4334(a)	R.1993 d.92	25 N.J.R. 709(a)
13:35-6.13, 9	Acupuncture Examining Board: practice of acupuncture	24 N.J.R. 4013(a)		
13:35-6.18	Board of Medical Examiners: control of anabolic steroids	24 N.J.R. 4012(a)		
13:35-10	Practice of athletic trainers	25 N.J.R. 265(a)		
13:36-5.12, 5.20	Mortuary Science: licensee advertising; referral fee prohibition	24 N.J.R. 3016(a)	R.1993 d.76	25 N.J.R. 709(b)
13:37	Certification of homemaker-home health aides: open public forum	24 N.J.R. 1861(a)		
13:37	Board of Nursing rules	25 N.J.R. 455(b)		
13:37-13.1, 13.2	Nurse anesthetist: conditions for practice	24 N.J.R. 4020(a)		
13:38-1.2, 1.3, 2.5	Practice of optometry: permissible advertising	24 N.J.R. 4237(a)		
13:39-7.14	Board of Pharmacy: patient profile record system and patient counseling by pharmacist	25 N.J.R. 266(a)		
13:40-5.1	Land surveys: setting of corner markers	24 N.J.R. 51(a)	R.1993 d.60	25 N.J.R. 596(a)
13:40-5.1	Land surveys: extension of comment period regarding setting of corner markers	24 N.J.R. 554(a)		
13:40A-1, 2, 2A, 3.6, 6.1, 6.2, 6.3	Board of Real Estate Appraisers: certified residential classification; general appraiser; temporary visiting license; fees and designations	24 N.J.R. 3489(a)	R.1993 d.125	25 N.J.R. 1222(b)
13:40A-6.1, 7	Board of Real Estate Appraisers: apprentice program	25 N.J.R. 267(a)		
13:41-2.1	Board of Professional Planners: professional misconduct	24 N.J.R. 3221(a)		

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
13:45A-24	Toy and bicycle safety	24 N.J.R. 3019(b)		
13:45A-24	Toy and bicycle safety: extension of comment period	24 N.J.R. 3666(a)		
13:46-23.5, 23A	State Athletic Control Board: standards of ethical conduct	24 N.J.R. 4489(a)		
13:47K-5.2	Weights and measures: magnitude of allowable variations for packaged commodities	24 N.J.R. 1233(a)		
13:70-12.4	Thoroughbred racing: claimed horse	24 N.J.R. 4022(a)		
13:71-23.3A	Harness racing: pre-race blood gas analyzing machine testing program	25 N.J.R. 269(a)		
13:75-1.7	Violent Crimes Compensation Board: minimum compensable losses	24 N.J.R. 4491(a)	R.1993 d.133	25 N.J.R. 1224(a)
13:75-1.7	Violent Crimes Compensation Board: reimbursement for funeral expenses	25 N.J.R. 674(a)		
13:75-1.12	Violent Crimes Compensation Board: attorney's fees requiring affidavit of service	25 N.J.R. 674(b)		
13:75-1.19	Violent Crimes Compensation Board: moneys received from other sources by claimants	24 N.J.R. 4239(a)	R.1993 d.74	25 N.J.R. 710(a)
13:75-1.31	Violent Crimes Compensation Board: injury from crime of burglary	24 N.J.R. 4491(b)	R.1993 d.134	25 N.J.R. 1224(b)
13:76	Arson investigators: training and certification	25 N.J.R. 896(a)		
13:77	Division of Criminal Justice: distribution of forfeited property	24 N.J.R. 4492(a)	R.1993 d.90	25 N.J.R. 710(b)
13:81-1.2, 2.1	Statewide 9-1-1 emergency telecommunications system	24 N.J.R. 4493(a)		

Most recent update to Title 13: TRANSMITTAL 1993-1 (supplement January 19, 1993)

PUBLIC UTILITIES (BOARD OF REGULATORY COMMISSIONERS)—TITLE 14

14:3-5.1	Relocation or closing of utility office	24 N.J.R. 2132(a)		
14:3-6.5	Public records	24 N.J.R. 1966(a)		
14:3-7.15	Discontinuance of services to customers: notification of municipalities and others	24 N.J.R. 3023(a)		
14:3-10.15	Solid waste collection: customer lists	24 N.J.R. 3286(c)		
14:3-11	Solid waste collection regulatory reform	24 N.J.R. 1459(a)	R.1993 d.83	25 N.J.R. 692(a)
14:6-5	Natural gas service: inspection and operation of master meter systems	24 N.J.R. 4494(a)		
14:9B	Private domestic wastewater treatment facilities	24 N.J.R. 1863(a)		
14:10-5	Competitive telecommunications services	24 N.J.R. 1868(a)		
14:10-7	Telephone access to adult-oriented information	24 N.J.R. 1238(a)		
14:11	Board of Regulatory Commissioners: administrative orders	24 N.J.R. 1684(b)	R.1993 d.95	25 N.J.R. 999(a)
14:11-7.10	Solid waste disposal facilities: initial tariff for special in lieu payment	24 N.J.R. 3286(c)		
14:11-8	Natural gas pipelines	25 N.J.R. 897(a)		
14:12-1.2, 3.6, 4.1–4.3, 5.3	Demand side management	24 N.J.R. 2804(a)	R.1993 d.96	25 N.J.R. 1000(a)
14:18-2.11	Cable television: pre-proposal regarding disposition of on-premises wiring	24 N.J.R. 4496(a)		
14:18-2.11	Cable television: change in hearing date and comment period for pre-proposal regarding disposition of on-premises wiring	25 N.J.R. 270(a)		
14:18-9.2, 10.1-10.5	Cable television: testing of service and technical standards for system operation	24 N.J.R. 4497(a)		

Most recent update to Title 14: TRANSMITTAL 1993-1 (supplement January 19, 1993)

ENERGY—TITLE 14A

Most recent update to Title 14A: TRANSMITTAL 1992-3 (supplement October 19, 1992)

STATE—TITLE 15

15:2	Commercial recording filing and expedited service	25 N.J.R. 901(a)		

Most recent update to Title 15: TRANSMITTAL 1993-1 (supplement January 19, 1993)

PUBLIC ADVOCATE—TITLE 15A

Most recent update to Title 15A: TRANSMITTAL 1990-3 (supplement August 20, 1990)

TRANSPORTATION—TITLE 16

16:1-2.2	Records management: appraisal review analyses	25 N.J.R. 59(a)	R.1993 d.117	25 N.J.R. 1225(a)
16:13	Rural Secondary Road Systems Aid: repeal	25 N.J.R. 59(b)		
16:20	Federal Aid Urban Systems: repeal	25 N.J.R. 60(a)		
16:28-1.36	Speed limit zone along Route 24 in Morris, Essex, and Union counties	25 N.J.R. 270(b)	R.1993 d.121	25 N.J.R. 1225(b)
16:28-1.44, 1.83	Speed limit zones along Route 27 in North Brunswick and Franklin townships, and Route 71 in Monmouth County	25 N.J.R. 274(b)	R.1993 d.123	25 N.J.R. 1225(c)
16:28-1.72	School zones along U.S. 206 in Lawrence Township	24 N.J.R. 4499(a)	R.1993 d.100	25 N.J.R. 1004(a)

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
16:28A-1.7	Restricted parking and stopping along U.S. 9 in Cape May, Atlantic, Burlington, Ocean, Monmouth, and Middlesex counties	25 N.J.R. 271(a)	R.1993 d.119	25 N.J.R. 1227(a)
16:28A-1.13	Restricted parking and stopping along U.S. 22 in Clinton Township	25 N.J.R. 273(a)	R.1993 d.120	25 N.J.R. 1227(b)
16:28A-1.18, 1.65	Parking restrictions along Route 27 in Linden and Route 15 in Dover	25 N.J.R. 675(a)		
16:28A-1.19, 1.45, 1.57	Restricted parking and stopping zones along Route 28 in Roselle Park, Route 94 in Hardyston, and U.S. 206 in Lawrence Township	24 N.J.R. 4499(b)	R.1993 d.99	25 N.J.R. 1004(b)
16:28A-1.36	Handicapped parking along Route 57 in Washington Borough, Warren County	25 N.J.R. 274(a)	R.1993 d.122	25 N.J.R. 1228(a)
16:28A-1.112	Restricted stopping and standing along Route 138 in Wall Township	24 N.J.R. 4334(b)	R.1993 d.63	25 N.J.R. 598(a)
16:29-1.71	No passing zones along Route 41 in Camden County	25 N.J.R. 60(b)	R.1993 d.101	25 N.J.R. 1005(a)
16:47-1.1, 3.16, 4.3, 4.4, 4.6, 4.11, 4.13, 4.15, 4.18, 4.20, 4.30, 4.32, 4.40, 5.2, 5.3, 5.4, 6.5	State Highway Access Management Code: administrative changes	———	———	25 N.J.R. 1005(b)
16:47-3.8, 3.16, 4.3, 4.6, 4.7, 4.13-4.16, 4.19, 4.27, 4.30, 4.33, 4.41, 5.2, App. B, C, D, E, N, N-1, N-2	State Highway Access Management Code: access standards; permits	25 N.J.R. 903(a)		
16:53-3.2	Autobus dimensions	25 N.J.R. 459(a)		
16:53-7.25, 7.26, 7.27	Autobus trolleys: safety standards	24 N.J.R. 4500(a)		
16:54	Licensing of aeronautical and aerospace facilities	24 N.J.R. 2542(a)		
16:54	Licensing of aeronautical and aerospace facilities: extension of comment period	24 N.J.R. 3026(a)		
16:54	Licensing of aeronautical and aerospace facilities: extension of comment period	24 N.J.R. 4025(a)		

Most recent update to Title 16: TRANSMITTAL 1993-1 (supplement January 19, 1993)

TREASURY-GENERAL—TITLE 17

17:1-1.10	PERS and TPAF pension systems: minimum adjustments	24 N.J.R. 4501(a)	R.1993 d.114	25 N.J.R. 1228(b)
17:1-4.12	Purchase of service credit in State retirement systems	24 N.J.R. 4239(b)	R.1993 d.81	25 N.J.R. 710(c)
17:1-10, 11	State Prescription Drug Program; Dental Expenses Program (recodify to 17:9-8, 9)	25 N.J.R. 675(b)		
17:2-1.4	Public Employees' Retirement System: election of member-trustee	24 N.J.R. 3690(a)	R.1993 d.78	25 N.J.R. 711(a)
17:2-4.3	Public Employees' Retirement System: school year members	25 N.J.R. 908(a)		
17:9-1.5	State Health Benefits Program: local employer reentry	25 N.J.R. 460(a)		
17:9-2.3	State Health Benefits Program: annual enrollment periods	24 N.J.R. 4025(b)		
17:9-2.4	State Health Benefits Program: retirement or COBRA enrollment	24 N.J.R. 4025(c)		
17:9-4.1, 4.5	State Health Benefits Program: "appointive officer" eligibility	24 N.J.R. 3493(a)		
17:9-4.2	State Health Benefits Program: part-time deputy attorneys general	24 N.J.R. 2345(a)		
17:16-33.1	State Investment Council: repurchase agreement of securities broker	25 N.J.R. 909(a)		
17:16-42.2	State Investment Council: dividend requirement for eligible stock issuers	25 N.J.R. 909(b)		
17:32	State Planning Rules	25 N.J.R. 461(a)		

Most recent update to Title 17: TRANSMITTAL 1993-1 (supplement January 19, 1993)

TREASURY-TAXATION—TITLE 18

18:1-1.3	Background investigations of applicants for Division positions	24 N.J.R. 4240(a)	R.1993 d.82	25 N.J.R. 711(b)
18:5-2.3, 3.2–3.13, 3.20–3.25, 4.3–4.7, 5.8	Cigarette Tax rate and stamps	24 N.J.R. 2415(a)		
18:12-6, 6A	Tax exemptions and abatements for rehabilitated properties	24 N.J.R. 4335(a)	R.1993 d.130	25 N.J.R. 1228(c)
18:12-10.1, 10.2, 10.3	Local property tax: classification of real and personal property	25 N.J.R. 61(a)		
18:26-3.7	Interest rate on late payments of estate taxes	24 N.J.R. 4240(b)	R.1993 d.131	25 N.J.R. 1229(a)
18:35-1.14, 1.25	Gross Income Tax: partnerships; net profits from business	25 N.J.R. 677(a)		

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
18:35-1.17	Gross income tax credit for excess contributions to Workforce Development Partnership Fund	25 N.J.R. 62(a)		
18:35-1.27	Gross Income Tax: interest on overpayments	24 N.J.R. 2419(a)		
18:35-2.11	Gross income tax refunds and homestead rebates: priorities in claims to setoff	24 N.J.R. 1967(b)	R.1993 d.94	25 N.J.R. 711(c)
18:38	Litter Control Tax	24 N.J.R. 4502(a)	R.1993 d.102	25 N.J.R. 1008(a)
18:38	Litter Control Tax: correction to proposal Summary	25 N.J.R. 462(a)		
	Most recent update to Title 18: TRANSMITTAL 1992-7 (supplement December 21, 1992)			
TITLE 19—OTHER AGENCIES				
19:3, 3B, 4, 4A	Hackensack Meadowlands District rules	24 N.J.R. 4503(a)		
19:9-1.9	Turnpike Authority: double bottom trailer permits	25 N.J.R. 684(a)		
19:9-2.7	Turnpike Authority construction contracts: withdrawal of bid for unilateral mistake	25 N.J.R. 62(b)		
19:25-1.7	Election Law Enforcement Commission: administrative correction to definition of "expenditure"	———	———	25 N.J.R. 1229(b)
19:25-15.3–15.6, 15.10, 15.11, 15.12, 15.14, 15.16, 15.17, 15.21, 15.22, 15.24, 15.27-15.32, 15.35, 15.43, 15.45, 15.48, 15.49, 15.50, 15.54, 15.64, 15.65	ELEC: public financing of general election candidates for Governor	25 N.J.R. 910(a)		
19:25-16.18, 16.24, 16.39	ELEC: public financing of primary election for Governor: administrative corrections	———	———	25 N.J.R. 711(d)
19:30-6.4	Economic Development Authority: fee for modifying or restructuring loan payment terms	25 N.J.R. 916(a)		
	Most recent update to Title 19: TRANSMITTAL 1993-1 (supplement January 19, 1993)			
TITLE 19 SUBTITLE K—CASINO CONTROL COMMISSION/CASINO REINVESTMENT DEVELOPMENT AUTHORITY				
19:40-2.5	Delegation of Commission authority	24 N.J.R. 2348(a)		
19:41	Applications	25 N.J.R. 916(b)		
19:41-1.3, 1.4	Issuance of temporary license credentials	24 N.J.R. 4335(b)	R.1993 d.84	25 N.J.R. 712(a)
19:41-1.3, 14.3	Renewal of employee licenses	25 N.J.R. 276(a)		
19:41-9.8, 9.9, 9.9A, 9.10, 9.11, 9.14, 9.15, 9.16, 9.17	Commission fees	24 N.J.R. 4337(a)	R.1993 d.85	25 N.J.R. 713(a)
19:45	Accounting and internal controls	25 N.J.R. 277(a)		
19:45-1.1, 1.2, 1.11, 1.12, 1.14, 1.15, 1.16, 1.20, 1.24, 1.24A, 1.24B, 1.25, 1.25A–1.25I, 1.26, 1.27, 1.27A, 1.28, 1.29, 1.33, 1.34	Authorized financial statements: acceptance and processing	24 N.J.R. 3232(a)		
19:45-1.1, 1.2, 1.16, 1.18, 1.20, 1.33, 1.46	Exchange of coupons for chips at gaming tables	24 N.J.R. 4243(a)	R.1993 d.75	25 N.J.R. 717(a)
19:45-1.1, 1.40	Jackpot payouts not paid directly from slot machine	24 N.J.R. 3251(a)		
19:45-1.4	Casino records of ownership	25 N.J.R. 63(a)	R.1993 d.126	25 N.J.R. 1229(c)
19:45-1.8	Records retention schedules	24 N.J.R. 3694(b)	R.1993 d.110	25 N.J.R. 1008(b)
19:45-1.9, 1.9B, 1.9C, 1.46	Complimentary services and items	24 N.J.R. 4505(a)		
19:45-1.10, 1.11, 1.46A	Location and surveillance of automated coupon redemption machines	25 N.J.R. 278(a)		
19:45-1.16, 1.33, 1.42, 1.44	Replacement slot cash storage boxes	25 N.J.R. 279(a)		
19:45-1.40	Jackpot payout slips	25 N.J.R. 917(a)		
19:45-1.41	Filling of slot machine hopper: administrative correction	———	———	25 N.J.R. 1230(a)
19:46	Gaming equipment	25 N.J.R. 918(a)		
19:46-1.7	Quadrant wager in roulette	24 N.J.R. 1871(a)		
19:46-1.16, 1.18	Primary storage areas for cards and dice; daily collection of used cards and dice	24 N.J.R. 4339(a)	R.1993 d.86	25 N.J.R. 719(a)
19:46-1.18, 1.19	Pai gow poker: dealing from the hand	24 N.J.R. 4247(a)		
19:47	Rules of the games	25 N.J.R. 919(a)		
19:47-1.2, 1.4	"Craps-Eleven" wager	25 N.J.R. 63(b)	R.1993 d.127	25 N.J.R. 1230(b)
19:47-5.2	Quadrant wager in roulette	24 N.J.R. 1871(a)		
19:47-8.3	Rules of the games: administrative correction regarding casino notice of changes	———	———	25 N.J.R. 1230(c)
19:47-11.2, 11.5-11.8A, 11.10, 11.11	Pai gow poker: dealing from the hand	24 N.J.R. 4247(a)		

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
19:51-1	Persons doing business with casino licensees	24 N.J.R. 3225(a)		
19:53	Equal employment opportunity	25 N.J.R. 684(b)		
19:54	Tax obligations of casino licensees	25 N.J.R. 280(a)		

Most recent update to Title 19K: TRANSMITTAL 1993-1 (supplement January 19, 1993)

RULEMAKING IN THIS ISSUE—Continued

LAW AND PUBLIC SAFETY
Audiology and Speech-Language Pathology Advisory Committee: rulemaking petition regarding scope of practice ..... 1287(b)
COMMERCE AND ECONOMIC DEVELOPMENT
Commission on Science and Technology: availability of Small Business Assistance Vouchers ..... 1288(a)
TRANSPORTATION
Professional services to evaluate highway sign face materials: notice for letters of interest ..... 1288(b)

INDEX OF RULE PROPOSALS AND ADOPTIONS 1296

Filing Deadlines

April 19 issue:
Proposals ..... March 19
Adoptions ..... March 26
May 3 issue:
Proposals ..... April 2
Adoptions ..... April 12
May 17 issue:
Proposals ..... April 19
Adoptions ..... April 26

NOTES

NOTES

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