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MOST RECENT UPDATE TO NEW JERSEY ADMINISTRATIVE CODE: JULY 18, 1994
See the Register Index for Subsequent Rulemaking Activity.

NEXT UPDATE: SUPPLEMENT AUGUST 15, 1994

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Interested persons may submit comments, information or arguments concerning any of the rule proposals in this issue until **November 2, 1994.** 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.

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December 19 issue:	
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NEW JERSEY REGISTER

The official publication containing notices of proposed rules and rules adopted by State agencies pursuant to the New Jersey Constitution, Art. V, Sec. IV, Para. 6 and the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. Issued monthly since September 1969, and twice-monthly since November 1981.

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RULE PROPOSALS

AGRICULTURE

(a)

DIVISION OF MARKETS

Equine Advisory Board Rules

Proposed Readoption with Amendments: N.J.A.C. 2:34

Authorized By: New Jersey State Board of Agriculture, Arthur R. Brown Jr., Secretary, Department of Agriculture.
Authority: N.J.S.A. 5:5-88.
Proposal Number: PRN 1994-534.

Submit written comments by November 2, 1994 to:
Jack Gallagher, Acting Director
Division of Markets
State Department of Agriculture
CN 330
Trenton, New Jersey 08625
Telephone: (609) 292-5536

The agency proposal follows:

Summary

Pursuant to Executive Order No. 66(1978), N.J.A.C. 2:34 expires on January 2, 1995. The Department of Agriculture has reviewed the rules and, with the following exceptions, has determined them to be necessary, reasonable and proper for the purpose for which they were originally promulgated, as required by the Executive Order.

The Equine Advisory Board rules are a compilation of the procedures used to regulate the non-racing breeder award program and the New Jersey Bred All Breed Horse Show. The rules provide definitions of eligibility, classes, fees, and procedures for the determination of awards from equine promotion monies collected pursuant to N.J.S.A. 5:5-88. The reason for the proposed readoption with amendments is to insure the rules are complete and well understood by those participating in the regulated programs.

The current rule at N.J.A.C. 2:34-2.1 has created some confusion regarding futurities and it had been the intention of the Equine Advisory Board that all horses show under three judges.

Therefore the proposed amendment to N.J.A.C. 2:34-2.1(a) requires the futurities to show under three judges as must all others except non-parimutuel racing ponies in order to receive award monies.

N.J.A.C. 2:34-2.2(a)6 is amended to allow horses under the age of three to show under saddle when the class is approved by the breed's National Association. At N.J.A.C. 2:34-2.2(a)13, a sentence is being added to specify that all classes in the All Breed Horse show must conform to the specifications of the National Association list of classes. These changes bring the State rules into conformance with the national standards.

Social Impact

The provision of funds and subsequent awarding of prize monies to owners and breeders of non-racing breeds is designed to have a positive social impact on the development of the horse industry in New Jersey. There may be greater opportunity for horses, under the age of three, to participate in the New Jersey Bred all Breed Horse Show as a result of the amendment to N.J.A.C. 2:34-2.2. The amendment to N.J.A.C. 2:34-2.1 may result in the need to hire more judges. The changes in these rules make the responsibilities of the owners and breeders of these horses very clear and should enhance the interest and type of competition generated as part of the New Jersey Bred program. The Department of Agriculture sees a positive result from the readoption and amendment of these rules as they specifically clarify the procedures that have evolved over the past 26 years.

Economic Impact

The great majority of competitors for the year-end non-racing breeder awards are private horse owners. It is the intent of the New Jersey Equine Advisory Board to provide positive economic incentive to those owners and breeders through the awarding of prize money in variously sponsored competitions. Those owners of horses less than three years who may enjoy increased opportunity to show may also therefore enjoy the benefits of greater winnings.

If additional judges must be hired due to the change regarding futurities, the show or breed organization may incur some cost.

With the continued development of the non-racing breeder award program and the New Jersey Bred All Breed Horse Show, a broader economic impact is realized by horsemen participating in these programs.

Regulatory Flexibility Analysis

The vast majority of competitors affected by these amendments are individual owners and breeders, however in some instances these may be considered a small business. These rules pertain basically to the way certain awards are determined and granted by the Department of Agriculture.

The amendments include requiring futurities to show under three judges as all others are required to do with the exception of non-parimutuel racing. The amendments also allow two year olds to be ridden if this practice is approved by the National Association of the particular breed. The final amendment requires classes in the All Breed Show to be a class approved by the National Association.

These amendments will cause only minor administrative costs to be incurred and no professional services to be required by the owners or breeders. The Department of Agriculture has determined, in accordance with the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., that the rules do not impose unduly burdensome recording, recordkeeping or compliance requirements on either the individual horse owner or those considered small businesses, and therefore, no varying standards based on business size are offered.

Full text of the rules proposed for readoption can be found in the New Jersey Administrative Code at N.J.A.C. 2:34.

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

2:34-2.1 Qualifications for year-end and non-racing breeder awards

(a) With the exception of [futurities, and] non-parimutuel racing, in order to qualify for year-end non-racing breeder awards, a horse must enter at least three different New Jersey horse shows under three different judges. **Futurities must be held with a minimum of three judges.** Furthermore, there must be at least two horses entered, shown and judged in each class.

1.-2. (No change.)

(b)-(i) (No change.)

2:34-2.2 Conduct of the New Jersey Bred All Breed Horse Show

(a) The New Jersey Bred All Breed Horse Show, or any other show conducted by the New Jersey Department of Agriculture, shall be governed as follows:

1.-5. (No change.)

6. Foals dropped later than two months prior to show date will not be accepted as entries. No horse under three years of age may compete in under saddle classes, [except that two year olds will be allowed to compete in under saddle classes, specifically designated for only two year olds.] **except when approved by their National Association rules and regulations.**

7.-12. (No change.)

13. Each breed will be judged according to the rules and regulations of its national breed association. **All classes must conform to the specifications of the National Association list of classes.** Those breeds which do not have a national affiliation will be judged by their New Jersey State organization rules.

14.-22. (No change.)

(b) (No change.)

BANKING

(a)

DIVISION OF REGULATORY AFFAIRS

Secondary Mortgage Loan Act Rules

Proposed Amendments: N.J.A.C. 3:18-1.1, 1.3, 3.2, 7.4, and 8.1

Proposed New Rules: N.J.A.C. 3:18-12

Proposed Repeal: N.J.A.C. 3:18-8.2

Authorized By: Elizabeth Randall, Commissioner, Department of Banking.

Authority: N.J.S.A. 17:11A-34 et seq., specifically 17:11A-54a.

Proposal Number: PRN 1994-530.

Submit written comments by November 2, 1994 to:

Elaine W. Ballai
Regulatory Officer
Department of Banking
CN 040
Trenton, NJ 08625

The agency proposal follows:

Summary

The Department proposes to amend the Secondary Mortgage Loan Act, N.J.S.A. 17:11A-34 et seq., rules to provide that licensees may engage in other business activities, listed in proposed N.J.A.C. 3:18-12.1 and 12.2, and to add and clarify other provisions of N.J.A.C. 3:18 in conformity with recent amendments to the Secondary Mortgage Loan Act, N.J.S.A. 17:11A-34 et seq. N.J.A.C. 3:18-1.1 contains a definition of business activities, in general terms, and a definition of approved business activities which are set forth in N.J.A.C. 3:18-12.1 and 12.2. At N.J.A.C. 3:18-1.3, two exceptions are proposed to the licensing requirements of N.J.A.C. 3:18 which are authorized by N.J.S.A. 17:11A-36d and e. Proposed N.J.A.C. 3:18-3.2(a)3 clarifies check collection charges to specify that a returned check fee in the amount of $20.00 may be charged, as permitted by N.J.S.A. 17:11A-44.9. N.J.A.C. 3:18-7.4 is amended to include, in any advertising materials, that all of the types of insurance which are permitted to be sold are optional. N.J.A.C. 3:18-8.1(b) has been amended to delete the requirement that other business operations of the licensee be separate, apart and distinct, since this is an unrealistic prohibition for those licensees who may conduct several types of permitted businesses on the same premises. The prohibitions currently found at N.J.A.C. 3:18-8.2 are recodified as new N.J.A.C. 3:18-12.4(d). Proposed Subchapter 12 provides a list of approved business activities in which a licensee may engage without obtaining prior approval from the Commissioner, and an approval process for licensees who seek to engage in other business activities not listed in N.J.A.C. 3:18-12. N.J.A.C. 3:18-12 also contains a provision which prohibits a licensee from requiring a borrower to purchase insurance or to engage in any other business activity conducted by the licensee as a condition for the extension of credit, a provision which prohibits a licensee from securing credit transactions with secondary mortgages where the primary purpose of the loan is to finance the costs of another business activity conducted by the licensee, and a provision which prohibits a licensee from being made the beneficiary of an insurance policy purchased by the borrower from the licensee. N.J.A.C. 3:18-12.5 requires that disclosures as required by N.J.A.C. 3:18-9 shall apply to this subchapter. N.J.A.C. 3:18-12.6 mandates the separation of books and records of other business activities conducted by licensees, from books and records of the licensees' secondary mortgage loan business, and provides that all books and records be made readily available for inspection by the Department. N.J.A.C. 3:18-12.7 permits the Commissioner to suspend or revoke a licensee's authority to conduct any of the activities specified in N.J.A.C. 3:18-12.1 and 12.2 if it is determined that the licensee has violated any of the conditions set forth or has otherwise demonstrated unworthiness.

Social Impact

The proposed amendments and new rules will bring these rules into conformity with recent changes to the Secondary Mortgage Loan Act; in particular, the addition of a specified list of approved business activities will enable licensees to engage in a variety of other approved activities without having to obtain prior approval from the Commissioner. This will facilitate their ability to begin to conduct the approved activities and will enable them to engage in businesses which will be beneficial to the general public which seeks such services.

Economic Impact

Licensees presently engaged in the secondary mortgage loan business will be able to pursue additional business activities permitted by these rules without having to obtain prior approval, as was required previously, thus avoiding the expense and time required in filing an application for each business which the licensee wishes to conduct. Although licensees may expect additional revenues as a result of the increase in types of permitted business activity, there will be an offsetting cost involved, of application fees, examination fees and licensing fees for those activities for which licenses are needed.

Regulatory Flexibility Statement

Virtually all licensees are small businesses as defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. Since all of the additional business activities permitted by these proposed rules will require recordkeeping and/or reporting, licensees may need to increase their sales and clerical staffs to accommodate the increase in business. There will also be a need for acquisition of new licenses, registration fees where appropriate, application fees and examination fees. The addition of a list of approved business activities in these rules will ease the burden for these businesses in that no new approval will be required before a licensee can apply for a license to begin one of the approved activities. No differentiation is made in these proposed rules based on business size because all licensees qualify pursuant to N.J.S.A. 17:11A-45p to engage in other business activities approved by the Commissioner and the rules actually are less rather than more burdensome than the current rules. Although the application fee and the per diem examination charge are the same for all licensees, small businesses typically require fewer days of examination, so they pay a proportionately lower examination charge.

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

3:18-1.1 Definitions

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

. . . .

"Business activities" means solicitation, negotiation and/or sale or purchase of goods or services, by licensees, their agents or employees, of, with and to secondary mortgage loan borrowers or applicants.

1. "Approved business activities" means those activities set forth in N.J.A.C. 3:18-12.1 and 12.2 and substantially similar activities as may be approved by the Commissioner pursuant to N.J.S.A. 17:11A-45p, and N.J.A.C. 3:18-12.3.

. . . .

3:18-1.3 Exceptions to license requirement

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

(d) Any employer who provides secondary mortgage loans to his employees as a benefit of employment which are at an interest rate which is not in excess of the usury rate in existence at the time the loan is made, as established in accordance with the law of this State, and on which the borrower has not agreed to pay, directly or indirectly, any charge, cost, expense or any fee whatsoever, other than said interest, is not required to be licensed.

(e) A municipality, its officer, employee or any agency or instrumentality thereof, which, in accordance with a housing element that has received substantive certification from the Council on Affordable Housing pursuant to the "Fair Housing Act", N.J.S.A. 52:27D-301 et al., or in fulfillment of a regional contribution agreement with a municipality that has received such certification, employs or proposes to employ municipally generated funds, funds obtained through any State or Federal subsidy, or funds acquired by the municipality under a regional contribution agreement, to finance the provision of affordable housing by extending loans or advances the repayment of which is secured by a lien, subordinate

to any prior lien, upon the property that is to be rehabilitated, is not required to be licensed.

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

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.-2. (No change.)

3. [Check collection charges in the amount charged to the licensee;] **A returned check fee in an amount not to exceed $20.00 which the licensee may charge to the borrower if a check of the borrower is returned to the licensee uncollected due to insufficient funds in the borrower's account;**

4.-5. (No change.)

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

3:18-7.4 [Credit life, accident and health, and involuntary unemployment insurance] **Insurance**

Any licensee who advertises the availability of [credit life or accident insurance, or involuntary unemployment insurance,] **any of the types of insurance permitted by these rules**, shall specifically state that such insurance is optional.

3:18-8.1 Branch offices

(a) (No change.)

(b) A licensee may conduct its secondary mortgage loan business in the same office in which it conducts other licensed activities, unless otherwise prohibited. However, [a licensee may not share office space with another person, including an affiliated corporation, unless the office and operations of the license are separate, apart and distinct from the offices and operations of the other person or persons. In addition,] a licensee may not establish a branch office within an establishment which is primarily devoted to social or recreational activities, or which impairs the ability of the public to gain access to the licensee.

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

[3:18-8.2 Banking institution or savings and loan association location prohibited

A licensee is prohibited from engaging in the secondary mortgage loan business at a location which is utilized by a banking institution or savings and loan association as a main branch or any other office, except that no licensee shall be prohibited from engaging in the secondary mortgage loan business at a location utilized by a banking institution, or savings and loan association, where the office and operations of the licensee are separate, apart and distinct from the offices and operations of the banking institution or the savings and loan association, and when employees of the banking institution or savings and loan association are not employed by or soliciting for the licensee.]

SUBCHAPTER 12. APPROVED BUSINESS ACTIVITIES; INSURANCE

3:18-12.1 Approved business activities

(a) A licensee may engage in certain other types of business and conduct such business in the same office, room or place of business where the licensee conducts the business of making secondary mortgage loans under the Secondary Mortage Loan Act, as follows:

1. Automobile security plans which provide protection against automobile emergencies and which provide for full or partial reimbursement of certain costs incurred as the result of such emergencies, such as towing, lost key service, emergency transportation, stolen automobile expenses, bail bonds, emergency treatment expense, legal defense, and similar or related items, which may include extended warranties, travel discounts and service items, among other things;

2. Home security plans, which provide protection against home emergency situations and provide full or partial reimbursement of certain costs incurred because of home emergencies, such as medical costs, health insurance deductibles, pharmacy service, extended warranties, lost or stolen key protection, credit card liability coverage, and which may include life-saving training, home security training and protection services and products, among other things;

3. First mortgage lending in accordance with all applicable State and federal law and regulation;

4. Sales finance agreements pursuant to N.J.S.A. 17:16C-1 et seq.;

5. Consumer loans pursuant to N.J.S.A. 17:10-1 et seq.;

6. Income tax preparation services;

7. Commerical or business loans, including installment sales financing contracts for commercial purposes; and

8. Credit card agreements, which may include additional services or goods which are or may be offered in connection with credit cards or credit card agreements.

3:18-12.2 Approved insurance sales

(a) Upon obtaining any necessary license or authorization, a licensee may offer for sale the following types of insurance products:

1. Single premium accidental death, dismemberment or loss-of-sight insurance policies;

2. Life or disability insurance which is not loan related;

3. Single-premium life insurance policies;

4. Involuntary unemployment insurance which is not loan related;

5. Homeowners' or renters' insurance which is not loan related; and

6. Property or casualty insurance which is not loan related.

(b) Insurance products offered under this section are subject to licensing and regulation as may be required by the New Jersey Department of Insurance or other applicable law.

3:18-12.3 Other business activities; approval process

(a) Commencing 60 days from the effective date of this subchapter, no secondary loan licensee may conduct any business activity other than the business of making secondary mortgage loans, except those businesses specifically permitted by N.J.A.C. 3:18-12.1 and 12.2, without approval from the Commissioner obtained as specified in this section.

(b) Prior to commencing the conduct of any business activities other than those permitted by N.J.A.C. 3:18-12.2, a secondary mortgage loan licensee shall notify the Commissioner of its intention to do so. Such notice shall contain a detailed description of the proposed activity and a statement of the perceived public need for such activity.

(c) Within 30 days from the date of the Commissioner's Notice of Acceptance to the secondary mortgage loan licensee, if the Commissioner does not disapprove of that activity, the activity shall be deemed approved.

(d) The Commissioner shall approve a business activity provided:

1. It is not made a condition for the extension of credit to the borrower or customer;

2. It is conducted in conformity with all applicable law and regulations; and

3. It provides a service deemed to be in the public interest by the Commissioner.

(e) Secondary mortgage loan licensees who have obtained, prior to the effective date of this subchapter, approval from the Commissioner to conduct businesses other than those specified in N.J.A.C. 3:18-12.1 and 12.2 must, within 60 days from the effective date of this subchapter, obtain approval as specified in this section.

3:18-12.4 Prohibitions

(a) A licensee shall not require a borrower to purchase insurance or to engage in any other business activity conducted by the licensee as a condition for the extension of credit to a borrower or to any other person.

(b) A licensee shall not secure credit transactions with secondary mortgages where the primary purpose of the loan is to finance the costs of another business activity conducted by the licensee, or where a substantial majority of the proceeds of the loan is used to pay the cost of a business activity conducted by the licensee.

(c) A licensee shall not be made a beneficiary of an insurance policy purchased by the borrower from the licensee.

(d) A licensee is prohibited from engaging in the secondary mortgage loan business at a location which is utilized by a banking institution or savings and loan association as a main branch or any

other office, except that no licensee shall be prohibited from engaging in the secondary mortgage loan business at a location utilized by a banking institution, or savings and loan association, where the office and operations of the licensee are separate and apart and distinct from the offices and operations of the banking institution or the savings and loan association, and when employees of the banking institution or the savings and loan association are not employed by or soliciting for the licensee.

3:18-12.5 Books and records; separation

The books, accounts and records which pertain to each business activity conducted by the licensee shall be maintained separate and apart from the books, accounts and records of the licensee's secondary mortgage loan business. All such records shall be readily available for inspection by the Department.

3:18-12.7 Suspensions or revocation of authority

The Commissioner may, by written directive and after the licensee has had an opportunity for a hearing pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B and F and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1, suspend or revoke a licensee's authority to engage in any of the business activities specified in N.J.A.C. 3:18-12.1 and 12.2 if it is determined that the licensee has violated any of the conditions heretofore set forth or has otherwise demonstrated unworthiness to be so authorized.

ENVIRONMENTAL PROTECTION

(a)

ENVIRONMENTAL REGULATION

Payment Schedule for Permit Application Fees

Proposed New Rules: N.J.A.C. 7:1L

Proposed Amendments: N.J.A.C. 7:1C-1.5, 7:7A-16.1, 7:10-15.1, 7:14A-1.8, 7:14B-3.9, 7:19-3.8, 7:26-3A.1, 4.1 and 4A.1, 7:26A-2.1, 7:26B-1.10, 7:27-8.11, 7:30-1.1 and 7:31-1.1

Authorized By: Robert C. Shinn, Jr., Commissioner, Department of Environmental Protection.

Authority: N.J.S.A. 13:1D-124.

DEP Docket Number: 43-94-09/471.

Proposal Number: PRN 1994-536.

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

Friday, October 21, 1994 at 10:00 A.M.
New Jersey Department of Environmental Protection
Public Hearing Room, First Floor
401 East State Street
Trenton, New Jersey

Submit written comments by November 2, 1994 to:

Janis E. Hoagland, Esq.
Attention: DEP Docket No.
Office of Legal Affairs
Department of Environmental Protection
401 East State Street
CN 402
Trenton, New Jersey 08625-0402

The agency proposal follows:

Summary

The Department of Environmental Protection (Department) is proposing new rules that establish a payment schedule for certain permit application fees. Under the payment schedule, one-third of the total fee is payable when the application for the permit is submitted; one-third is payable when the application is deemed complete for purposes of beginning a technical review; and the final third is payable when the Department takes final action on the permit application.

This payment schedule is required under a recent statutory amendment. P.L. 1993, c.361; N.J.S.A. 13:1D-120 through 124. A detailed discussion of the payment schedule and the related provisions of the proposed new rules follows.

Applicability

The payment schedule in the proposed new rules applies to certain permit applications for which the fee exceeds $1,000. Determining whether the payment schedule is available depends upon the following criteria:

1. The applicant is seeking something that is considered a "permit." "Permit" is defined broadly to include any permit, registration or license issued by the Department, establishing the regulatory and management requirements for an ongoing regulated activity. N.J.S.A. 13:1D-121; N.J.A.C. 7:1L-1.2.

2. The permit is to be issued under the authority of one of several laws. The payment schedule is available for permits to be issued under any of the following laws:

- The waterfront development law;
- The Solid Waste Management Act;
- The Comprehensive Regulated Medical Waste Management Act;
- The law governing leaf composting facilities;
- The Statewide Mandatory Source Separation and Recycling Act;
- The Pesticide Control Act;
- The Industrial Site Recovery Act;
- The Toxic Catastrophe Prevention Act;
- The Wetlands Act of 1970;
- The Freshwater Wetlands Protection Act;
- The Coastal Area Facility Review Act;
- The Air Pollution Control Act;
- The Water Supply Management Act;
- The law governing well drillers and pump installers;
- The Water Pollution Control Act (except as discussed below);
- The law governing underground storage tanks;
- The Safe Drinking Water Act; and
- The Flood Hazard Area Control Act.

N.J.S.A. 13:1D-121; N.J.A.C. 7:1L-1.1(b) and 1.2.

3. The fee for the permit application is more than $1,000. The existing rules governing each type of permit establish the fee for the permit application. The payment schedule applies only to fees that exceed $1,000. If an applicant is seeking several permits simultaneously, the payment schedule is available only for each permit application fee that individually exceeds $1,000; if the aggregate of all of the permit application fees exceeds $1,000 but the fee for each permit application separately is less than $1,000, the fee for each of the permit applications is payable in full upon application. N.J.S.A. 13:1D-122; N.J.A.C. 7:1L-1.1(b).

4. The fee is not a "license or certification fee." N.J.S.A. 13:1D-123 states that the payment schedule law does not apply to license or certification fees. These are fees charged in connection with the licensing or certification of either a "member of a regulated profession or occupation," or a person who is seeking to become a member of such a profession or occupation. For example, if a person is seeking a license to collect, transport, treat, store or dispose of solid waste or hazardous waste under the "A-901" law (N.J.S.A. 13:1E-126 through 135), the fees for that license are not payable in installments. N.J.S.A. 13:1D-123; N.J.A.C. 7:1L-1.1(c).

5. No other applicable fee rule offers a more advantageous payment schedule. Under some fee regulations, permit application fees are already payable in installments. For example, under N.J.A.C. 7:26-4.3(d), fees for solid waste facility permit applications are linked to each milestone in the permit process. For most solid waste permit applications, less than two-thirds of the total fee will be due at the time of the administrative completeness determination. In those cases, it will be to the permit applicant's advantage to pay the first two-thirds of the total fee under the payment schedule in N.J.A.C. 7:26-4.3(d) rather than under the payment schedule in the proposed new rules.

The proposed new rules therefore provide that the rules that are more advantageous to the permit applicant will control payment of the first two-thirds of the total fee. N.J.A.C. 7:1L-1.1(d). However, notwithstanding any other rules to the contrary, the final one-third is not payable until the Department takes final action on the permit application.

6. The fee is not for a NJPDES permit modification or renewal. The statutory definition of "permit" excludes the renewal or modification of permits issued under the New Jersey Pollutant Discharge Elimination (System) (NJPDES). Accordingly, the payment schedule does not cover a fee for an application to renew or modify a NJPDES permit. N.J.S.A. 13:1D-121; N.J.A.C. 7:1L-1.1(e).

This statutory exclusion has no substantive effect. Under the current NJPDES fee rules at N.J.A.C. 7:14A-1.8, NJPDES permittees pay an annual fee after the permit is issued. There is no permit application fee to obtain a new permit or renew or modify an existing permit (though a portion of the first year's annual fee is due after the Department receives a completed application). For that reason, even if there were no statutory exclusion for NJPDES permits, the entire annual fee would be payable in full.

Payment Schedule

Permit application fees governed by the proposed new rules are payable in three equal installments, as follows:

- One-third when the applicant files the application for the permit, N.J.A.C. 7:1L-2.1(a)1;
- One-third within 20 days after the Department notifies the applicant that the application is a "completed application", N.J.A.C. 7:1L-2.1(a)2; and
- One-third within 20 days after the Department notifies the applicant that the Department has taken final action on the permit application. N.J.A.C. 7:1L-2.1(a)3.

The first installment is self-explanatory. A discussion of the second and third installments follows.

Completed application. N.J.S.A. 13:1D-101 requires the Department to provide a checklist of all submissions required to be made in filing a permit application with the Department. When the applicant submits all of the materials required under the checklist, the application is considered a "completed application"; it is then sufficiently complete for the Department to commence a technical review. N.J.S.A. 13:1D-102(a); N.J.S.A. 13:1D-121.

An application can also be considered "completed" even if the applicant has not submitted all of the materials required under the checklist. Within 30 days after the application is submitted, the Department must advise the applicant if the submission is lacking any of the required material. If the Department does not do so within this time, the application is deemed to be complete. N.J.S.A. 13:1D-102(b).

Once the application is deemed complete (either because the applicant has submitted all materials required under the checklist, or because the Department has not advised the applicant of any deficiencies within 30 days), the Department must notify the applicant that an installment of the fee is due. N.J.S.A. 13:1D-122(a). In the notice, the Department must certify that it has concluded its administrative review of the application, state that it has found that the application is (or by operation of law has become) administratively complete, and state the amount of the installment that is due. N.J.S.A. 13:1D-122(a)2; N.J.A.C. 7:1L-2.2(a) and (b).

The notice will also state the due date for payment. The due date is 20 days after the date the notice is mailed.

Final action. "Final action" is the decision to issue a permit, deny a permit, or conditionally issue a permit. N.J.A.C. 7:1L-1.2.

When the Department has taken final action on the permit application, it must again notify the applicant that an installment of the fee is due. N.J.S.A. 13:1D-122(a). When the final action is to issue or conditionally issue the permit, the Department may provide the notice by sending a copy of the permit to the applicant, along with a letter stating the amount of the final installment and the date it is due. N.J.A.C. 7:1L-2.2(c). The permit is not effective until the fee is paid in full, N.J.A.C. 7:1L-2.6; accordingly, the copy of the permit sent to the applicant may be marked "void" to avoid any confusion.

When the final action is to deny the permit, in the notice the Department must certify that it is taking final action, specify the action and the findings or conclusions on which it is based, and state the amount of the final installment and the due date for payment.

When the Department denies an application for a permit, or grants a permit containing conditions that the applicant finds objectionable, the applicant can request a hearing to contest this action. If the hearing request results in a contested case pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 through 21, the due date of the final fee installment is postponed. N.J.S.A. 13:1D-122(c); N.J.A.C. 7:1L-2.3. Payment of the final installment becomes due when the Commissioner issues a final decision in the contested case, or when the contested case is concluded through a settlement or other means before the final decision is issued.

Discontinuing review. The applicant may ask the Department to discontinue its review of a permit application. The statute requires that an applicant who makes such a request must pay the costs that the Department incurred in reviewing the application until the request was received. N.J.S.A. 13:1D-122(b). The proposed new rules incorporate this statutory requirement at N.J.A.C. 7:1L-2.4.

Effect of Late Payment or Non-Payment

N.J.A.C. 7:1L-2.5 explains the effect of a failure to pay an installment when due.

Under the checklists prepared under N.J.S.A. 13:1D-101, an application for a permit is not complete until the requisite fee has been paid. The enactment of the law requiring a payment schedule for certain permit application fees changes what the "requisite fee" is at any given time, but does not change the requirement that the fee be paid before the application is administratively complete. Accordingly, an application for a permit remains complete only if all required installments have been paid; if an installment is due but has not been paid, the application is no longer complete.

If the application is not complete, there are two immediate consequences. First, the Department may defer its technical review until the application is completed. If the technical review has already begun, the Department may suspend it. Second, laws such as the 90-Day Law, N.J.S.A. 13:1D-29 through 34, allot a limited amount of time for the Department to reach a decision on a permit application. This time does not run while an application is incomplete. As a result, late payment of a fee installment may delay the processing of an application.

In addition, if the installment remains unpaid for 20 days after it was originally due, the Department may deny the application. However, within 120 days after the denial for nonpayment, the applicant may submit a written request to reinstate the application. The application would then be deemed to have been resubmitted (and the time allotted for reaching a decision on the application would begin anew), without the need for the applicant to prepare and resubmit the application paperwork. In addition, the fees paid toward the original application would be credited toward the reinstated application. However, this crediting can be done only once for a given application; if the application is denied a second time for nonpayment of fees, the fees originally paid will not be credited again if the application is reinstated again.

Failure to pay an installment of a fee may also result in legal action to collect the installment, or the assessment of civil administrative penalties when authorized under other applicable regulations.

Social Impact

The Legislature has determined that establishing a payment schedule for permit application fees will facilitate and expedite the review of permit applications. N.J.S.A. 13:1D-120(e). The Legislature has further found that unduly long and burdensome permit reviews hinder timely investment, severely inhibit the availability of necessary capital, retard economic growth and development, frustrate new business ventures, and obstruct the creation of new employment opportunities for New Jersey's citizens. N.J.S.A. 13:1D-120(d).

Economic Impact

This economic impact statement outlines three types of economic impacts from the proposed new rules: the economic impact upon permit applicants; the economic impact upon the State as a whole; and the economic impact upon the Department.

Permit applicants. The proposed new rules will have a small positive economic impact upon permit applicants. Instead of paying an entire permit application fee when the application is submitted, an applicant will pay only one-third of the fee at that time. By postponing payment of the remaining two-thirds of the fee, the applicant can earn a return on that portion of the fee until it becomes due. The precise economic benefit that a particular permit applicant will obtain depends upon the following factors:

- The amount of the fee;
- The time that elapses between the date of the application and the date on which each of the two further installments comes due; and
- The return that the applicant is able to earn on the money that now need not be paid at the time of the application.

The State as a whole. As discussed above in the Social Impact statement, the Legislature has found that establishing a payment schedule for permit application fees will facilitate and expedite the review of permit applications. N.J.S.A. 13:1D-120(e). The Legislature has further found that unduly long and burdensome permit reviews hinder timely investment, severely inhibit the availability of necessary capital, retard economic growth and development, frustrate new business ventures, and obstruct the creation of new employment opportunities for New Jersey's

citizens. N.J.S.A. 13:1D-120(d). The proposed new rules will have a positive economic impact upon the State in general to the extent that they ameliorate these problems.

The Department. The proposed new rules will increase the Department's cost to administer the affected permit programs, and divert staff resources from the substantive review of permit applications.

The Department incurs costs to complete the ministerial tasks involved in processing any payment. Examples of those tasks include matching the payment to the appropriate permit application, verifying that the amount of the payment is correct, making a record of the payment, advising the permit program that the payment has been made, and depositing the payment in the proper account. If there are any problems with a payment, the Department will also need to contact the permit applicant to resolve the problem.

Individually, these tasks can be completed quickly. However, in the aggregate they consume a significant amount of resources. The Department has processed an annual average of approximately 3,000 permits with fees exceeding $1,000 in recent years, and expects that number to increase significantly when the operating permit program required under the 1990 Clean Air Act Amendments takes effect. The proposed new rules will triple the number of tasks that the Department must complete to process payments of application fees for all affected permits.

The proposed new rules will also require the Department to send notices that the second and third fee installments are due. The Department does not expect this requirement to substantially increase costs, because most affected permit programs are already sending notices of administrative completeness as well as notices of final action.

To obtain reimbursement of costs when an applicant asks that a permit review be discontinued, the Department must evaluate its processing of the permit application, calculate the costs that it has incurred, advise the applicant how much is owed, and collect the reimbursement from the applicant. Significant work is necessary to arrive at the very best appraisal of these costs.

Substantial resources will also be required to monitor each application to determine whether the payments are up to date, and to follow up with the permit applicant when installments are unpaid. To accomplish this, the Department will need to use its resources to create data processing systems, produce reports of payment status, and distribute reports to the appropriate staff.

In addition, when an application for a permit is denied the applicant may feel that there is little incentive to pay the final installment of the fee. When the last installment is unpaid, the Department will have two choices: take action to collect the payment, or forgo the payment. Either choice will consume additional resources and cause a shortfall in funding the permit programs that must be remedied through appropriations, additional fees, or the use of funds that otherwise would have been available to pay for additional permit review staff.

Environmental Impact

The proposed new rules affect only the payment of fees, and do not affect any substantive environmental requirements. For this reason, the proposed new rules will have no direct environmental impact.

Regulatory Flexibility Statement

The proposed new rules allow small businesses and other permit applicants to delay part of the payment of permit application fees. The proposed new rules do not impose reporting, recordkeeping or other compliance requirements on small businesses. Accordingly, no regulatory flexibility analysis is required.

Full text of the proposed amendments and new rules follows:

CHAPTER 1C
NINETY-DAY CONSTRUCTION PERMITS

SUBCHAPTER 1. 90 DAY CONSTRUCTION PERMIT RULES

7:1C-1.5 Fees

(a)-(l) (No change.)

(m) Any fee under this section that is subject to N.J.A.C. 7:1L shall be payable in installments in accordance with N.J.A.C. 7:1L.

CHAPTER 1L
PAYMENT SCHEDULE FOR PERMIT APPLICATION FEES

SUBCHAPTER 1. GENERAL PROVISIONS

7:1L-1.1 Purpose and applicability

(a) This chapter institutes a system for the payment of permit application fees in installments. The amount of each installment is one-third of the total fee. The due dates for the installments are based upon the Department's completion of its duties and responsibilities at specific stages of the application review process.

(b) This chapter applies to any application for a permit for which the permit application fee is more than $1,000, except as provided in (c) and (d) below. If an applicant submits applications for more than one permit, the applicability of this chapter is based on the permit application fee for each permit, and not upon the aggregate of the permit application fees for all of the permits.

(c) This chapter does not apply to any license or certification fee.

(d) This chapter does not apply to the payment of a permit application fee if:

1. Another applicable provision of this title provides for the permit application fee to be payable in installments based on milestones in the permit process; and

2. The fee for a given milestone under that other provision of this title is less than the installment would be payable under N.J.A.C. 7:1L-2.1.

(e) This chapter does not apply to a fee for an application to renew or modify a New Jersey Pollutant Discharge Elimination System permit under N.J.A.C. 7:14A.

7:1L-1.2 Definitions

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

"Applicant" means the person in whose name a permit is to be issued.

"Completed application" means an application containing all of the information designated on the checklist adopted by the Department under N.J.S.A. 13:1D-101, for the class or category of permit for which an application is made.

"Department" means the Department of Environmental Protection.

"Final action" means a decision to issue a permit, deny a permit, or conditionally issue a permit.

"License or certification fee" means any fee, assessment or other charge imposed by the Department in connection with the licensing or certification of any member of a regulated profession or occupation, or any person seeking to become a member of a regulated profession or occupation.

"Member of a regulated profession or occupation" means any person subject to regulation by licensure or certification by the Department pursuant to any law of this State.

"Permit" means any permit, registration or license issued by the Department, establishing the regulatory and management requirements for an ongoing regulated activity as authorized by federal law or the following State laws, as such laws are amended and supplemented:

1. The laws governing waterfront and harbor facilities, N.J.S.A. 12:5-1 through 11;

2. The Solid Waste Management Act, N.J.S.A. 13:1E-1 et seq., including without limitation N.J.S.A. 13:1E-5 and 26;

3. The Comprehensive Regulated Medical Waste Management Act, N.J.S.A. 13:1E-48.1 through 48.25;

4. The laws governing leaf composting facilities, N.J.S.A. 13:1E-99.21a through 99.21f;

5. The Statewide Mandatory Source Separation and Recycling Act, N.J.S.A. 13:1E-99.11 through 99.39, including without limitation 13:1E-99.21a through 99.21f;

6. The Pesticide Control Act of 1971, N.J.S.A. 13:1F-1 through 18;

7. The Industrial Site Recovery Act, N.J.S.A. 13:1K-6 through 13;

8. The Toxic Catastrophe Prevention Act, N.J.S.A. 13:1K-19 through 32;

9. The Wetlands Act of 1970, N.J.S.A. 13:9A-1 through 10;
10. The Freshwater Wetlands Protection Act, N.J.S.A. 13:9B-1 through 30;
11. The Coastal Area Facility Review Act, N.J.S.A. 13:19-1 through 21;
12. The Air Pollution Control Act, N.J.S.A. 26:2C-1 through 19.5;
13. The Water Supply Management Act, N.J.S.A. 58:1A-1 through 17;
14. The laws governing well drillers and pump installers, N.J.S.A. 58:4A-5 through 28;
15. The Water Pollution Control Act, N.J.S.A. 58:10A-1 through 14.6;
16. The laws governing the underground storage of hazardous substances, N.J.S.A. 58:10A-21 through 37;
17. The Safe Drinking Water Act; N.J.S.A. 58:12A-1 through 25; and
18. The Flood Hazard Area Control Act, N.J.S.A. 58:16A-50 through 66.

"Permit application fee" or "fee" means any fee, assessment or other charge imposed by the Department for a permit.

"Person" means any individual or entity.

SUBCHAPTER 2. PAYMENT SCHEDULES

7:1L-2.1 Payment of permit application fees in installments

(a) If the fee for a permit application is more than $1,000, the applicant seeking the permit may pay the fee in accordance with the schedule set forth in (a)1, 2 and 3 below:

1. One-third of the total fee at the time the applicant files the application for the permit.
2. One-third of the total fee within 20 days after the date specified in the notice under N.J.A.C. 7:1L-2.2, stating that the application for the permit is a "completed application"; and
3. One-third of the total fee within 20 days after the date specified in the notice under N.J.A.C. 7:1L-2.2, stating that the Department has taken final action on the permit application. The due date of this final installment may be postponed in accordance with N.J.A.C. 7:1L-2.3.

7:1L-2.2 Notice by the Department

(a) After the Department determines that an application for a permit is a "completed application," the Department shall send written notice of this determination to the applicant. In the notice, the Department shall:

1. Certify that it has completed administrative review of the application;
2. State that it has determined that the application is a "completed application";
3. State the amount of the fee installment that is due; and
4. State the date on which the fee installment is due. The due date is 20 days after the date the notice is mailed to the applicant.

(b) If an application becomes a "completed application" by operation of N.J.S.A. 13:1D-30, 13:1D-102(b), or any other law that deems an application complete if the Department fails to notify the applicant of deficiencies in the application within a specified time, the Department shall send written notice to the applicant. In the notice, the Department shall:

1. Certify that the application has become a "completed application" by operation of law; and
2. State the amount of the fee installment that is due; and
3. State the date on which the fee installment is due. The due date is 20 days after the date the notice is mailed to the applicant.

(c) After the Department determines the final action to be taken on a permit, the Department shall send written notice of the action to the applicant. If the final action is to issue the permit or to conditionally issue a permit, the Department may satisfy this requirement by sending a copy of the permit (which may be marked "void" on one or more pages) to the applicant, and stating the amount of the fee installment that is due and the due date of the installment. If the Department does not send a copy of the permit, in the notice the Department shall:

1. Certify that it is taking final action on the permit;
2. Specify the action and its findings or conclusions with regard to the application;
3. State the amount of the fee installment that is due; and
4. State the date on which the fee installment is due. The due date is 20 days after the date the notice is mailed to the applicant.

7:1L-2.3 Payment of fees in contested cases

(a) When an applicant appeals a decision of the Department to deny a permit or to include certain terms or conditions in a permit, and the appeal results in a contested case pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 through 21, the fee installment required under N.J.A.C. 7:1L-2.1(a)3 shall not be payable until:

1. A final decision in the contested case has been issued by the Commissioner of the Department pursuant to N.J.A.C. 1:1-18.6(a) or (c); or
2. The contested case has been concluded before the issuance of the final decision, such as through a settlement under N.J.A.C. 1:1-19.1 or a withdrawal under N.J.A.C. 1:1-19.2.

7:1L-2.4 Payment of fees when permit review is discontinued

If the Department discontinues its review of an application at the applicant's request, the applicant shall pay the Department the costs it incurred in reviewing the application before receiving the request to discontinue review. The Department shall send a written notice to the applicant, stating the amount of such costs and the date on which payment of such costs is due. The due date is 20 days after the date the notice is mailed to the applicant.

7:1L-2.5 Effect of non-payment of fees

(a) The determination that an application is a "completed application" depends in part upon the submission of the requisite fee. Accordingly, if an applicant fails to pay an installment of a permit application fee when the installment is due, the application will no longer be considered a "completed application" until the installment is paid.

(b) In determining when the time allotted to the Department to approve, condition or disapprove an application for a permit under any law or regulation (including, without limitation, N.J.S.A. 13:1D-31 and 32) expires, the running of that time shall be considered suspended during the period in which an application is temporarily not considered a "completed application" pursuant to (a) above.

(c) If an applicant fails to pay an installment of a permit application fee when the installment is due, that non-payment is grounds for the Department to suspend its review of the permit until the installment is paid.

(d) If an applicant has not yet paid an installment of a permit application fee within 20 days after payment was due, that non-payment is grounds for the Department to deny the application.

(e) If within 120 days after a denial for non-payment under (d) above, the Department receives a written request from the applicant stating that the applicant desires to reinstate the application, then:

1. The original application will be deemed to have been resubmitted as a new application, and any time limit for reaching a decision on the application will again be allotted to the Department in full; and
2. The fees that the applicant paid in connection with the original application shall be credited toward the new application.

(f) Fees may be credited under (e)2 above only for the first resubmittal under (e)1 above.

7:1L-2.6 Permit conditioned on payment of fee

No permit issued by the Department shall become effective until the applicant pays the fee in full. After the Department receives payment in full in connection with a permit that is to be issued or conditionally issued, the Department shall notify the applicant in writing that the permit is effective. If the Department has previously sent the applicant a copy of the permit marked "void" on selected pages, the Department shall send the applicant the originals of such pages without the marking.

7:1L-2.7 Action for nonpayment

This subchapter shall not be construed to limit the Department's remedies under any applicable law or regulation in connection with an unpaid installment of a permit application fee. Such remedies may include, without limitation, the assessment of penalties and interest, and the taking of administrative or legal action to collect the unpaid installments and interest thereon.

CHAPTER 7A
FRESHWATER WETLANDS PROTECTION ACT RULES

SUBCHAPTER 16. FEES

7:7A-16.1 Payment of fees
(a)-(d) (No change.)
(e) Any fee under this subchapter that is subject to N.J.A.C. 7:1L shall be payable in installments in accordance with N.J.A.C. 7:1L.

CHAPTER 10
SAFE DRINKING WATER ACT

SUBCHAPTER 15. FEES

7:10-15.1 Scope and authority
(a) This [chapter] **subchapter** shall constitute the rules governing the establishment of Safe Drinking Water Program fees as authorized by the Safe Drinking Water Act at N.J.S.A. 58:12A-9. This subchapter shall be operative as of July 1, 1988.
(b) Any fee under this subchapter that is subject to N.J.A.C. 7:1L shall be payable in installments in accordance with N.J.A.C. 7:1L.

CHAPTER 14A
THE NEW JERSEY POLLUTANT DISCHARGE ELIMINATION SYSTEM

SUBCHAPTER 1. GENERAL INFORMATION

7:14A-1.8 Fee schedule for NJPDES permittees and applicants
(a)-(k) (No change.)
(l) Any fee under this section that is subject to N.J.A.C. 7:1L shall be payable in installments in accordance with N.J.A.C. 7:1L.

CHAPTER 14B
UNDERGROUND STORAGE TANKS

SUBCHAPTER 3. FEES

7:14B-3.9 Payment of fees in installments

Any fee under this subchapter that is subject to N.J.A.C. 7:1L shall be payable in installments in accordance with N.J.A.C. 7:1L.

CHAPTER 19
WATER SUPPLY ALLOCATION PERMITS

SUBCHAPTER 3. FEE SCHEDULE FOR WATER SUPPLY ALLOCATION PERMITS

7:19-3.8 Fees for Water Allocation Permits
(a)-(h) (No change.)
(i) Any fee under this subchapter that is subject to N.J.A.C. 7:1L shall be payable in installments in accordance with N.J.A.C. 7:1L.

CHAPTER 26
DIVISION OF WASTE MANAGEMENT

SUBCHAPTER 3A. REGULATED MEDICAL WASTE

7:26-3A.1 Purpose, scope and applicability
(a)-(f) (No change.)
(g) Any fee under this subchapter that is subject to N.J.A.C. 7:1L shall be payable in installments in accordance with N.J.A.C. 7:1L.

SUBCHAPTER 4. FEES FOR SOLID WASTE, EXCLUDING HAZARDOUS WASTE FEES

7:26-4.1 General provisions
(a)-(b) (No change.)
(c) Any fee under this subchapter that is subject to N.J.A.C. 7:1L shall be payable in installments in accordance with N.J.A.C. 7:1L.

SUBCHAPTER 4A. HAZARDOUS WASTE FEES

7:26-4A.1 General provisions
In accordance with N.J.S.A. 13:1E-1 et seq., specifically 13:1E-6, 13:1E-18, 13:1E-42.2, and 13:1E-60d, there is hereby established a fee schedule for hazardous waste generators, transporters, and treatment, storage, or disposal facilities. Notwithstanding provisions in N.J.A.C. 7:26-4, this subchapter constitutes the rules of the Department for hazardous waste fees. **Any fee under this subchapter that is subject to N.J.A.C. 7:1L shall be payable in installments in accordance with N.J.A.C. 7:1L.**

CHAPTER 26A
RECYCLING RULES

SUBCHAPTER 2. ANNUAL FEES FOR A GENERAL OR LIMITED APPROVAL TO OPERATE A RECYCLING CENTER FOR CLASS B RECYCLABLE MATERIAL

7:26A-2.1 Fees for general or limited approval
(a) The following apply to the application fee for general or limited approval, **provided however that any fee under this subsection that is subject to N.J.A.C. 7:1L shall be payable in installments in accordance with N.J.A.C. 7:1L:**
1.-2. (No change.)
(b)-(c) (No change.)

CHAPTER 26B
ENVIRONMENTAL CLEANUP RESPONSIBILITY ACT RULES

SUBCHAPTER 1. GENERAL PROVISIONS

7:26B-1.10 Fee schedule
(a)-(i) (No change.)
(j) Any fee under this section that is subject to N.J.A.C. 7:1L shall be payable in installments in accordance with N.J.A.C. 7:1L.

CHAPTER 27
AIR POLLUTION CONTROL

SUBCHAPTER 8. PERMITS AND CERTIFICATES

7:27-8.11 Service fees
(a)-(d) (No change.)
(e) Any fee under this section that is subject to N.J.A.C. 7:1L shall be payable in installments in accordance with N.J.A.C. 7:1L.

CHAPTER 30
PESTICIDE CONTROL CODE

SUBCHAPTER 1. PESTICIDE PRODUCT REGISTRATION AND GENERAL REQUIREMENTS

7:30-1.1 Scope
(a) Unless otherwise provided by rule or statute, the following shall constitute the rule of the Office of Pesticide Control and shall govern the manufacturing, labeling, registration, and classification of pesticides, the registration of pesticide dealers and pesticide dealer businesses, the registration of applicators of pesticides, and the distribution, use, application, storage, handling, transportation, and disposal of pesticides in the State of New Jersey.
(b) Any fee under this chapter that is subject to N.J.A.C. 7:1L shall be payable in installments in accordance with N.J.A.C. 7:1L.

CHAPTER 31
TOXIC CATASTROPHE PREVENTION ACT PROGRAM

SUBCHAPTER 1. GENERAL PROVISIONS

7:31-1.1 Scope and applicability
(a)-(b) (No change.)

(c) Any fee under this chapter that is subject to N.J.A.C. 7:1L shall be payable in installments in accordance with N.J.A.C. 7:1L.

(a)

ENVIRONMENTAL REGULATION

New Jersey Pollutant Discharge Elimination System Notice of Availability of Rule Proposal Summary and Request for Public Comment

N.J.A.C. 7:14A, 7:9, 7:9B, 7:14, and 7:15

Take notice that the Department of Environmental Protection (Department) is preparing to propose substantial revisions and amendments to the rules under which discharges to the waters of the State are regulated (N.J.A.C. 7:14A, 7:9, 7:9B, 7:14, and 7:15). The Department is considering an extensive restructuring of the New Jersey Pollutant Discharge Elimination System (NJPDES). This notice briefly summarizes the anticipated changes to the NJPDES permitting program, provides notification that a comprehensive summary document (Summary) is available, and solicits public input and comments on the general policies, technical issues, and intended administrative reforms. The Department believes that public comment at this point in the process will help it complete drafting changes to the regulations it plans to propose by February 1995.

Historical Background

The current NJPDES rules were adopted and became effective on March 6, 1981, and have remained largely unchanged since that time, except for changes necessary to implement the 1990 amendments to the State Water Pollution Control Act (N.J.S.A. 58:10A-1 et seq., the Clean Water Enforcement Act). The current rules have not kept pace with Federal and State changes in statutes, other rules, policies, and procedures that have an impact on the issuance and enforcement of discharge permits. Moreover, the program's effectiveness in improving water quality has not been adequately monitored and measured. In addition, the current NJPDES rules need to be better coordinated with the Department's Surface Water Quality Standards (SWQS), N.J.A.C. 7:9B, and the Water Quality Management Planning Rules, N.J.A.C. 7:15, in order to comprehensively address water quality issues, particularly aspects affecting water quality over an entire watershed or basin.

This Summary is also published in partial fulfillment of an Agreement of Settlement entered on January 17, 1991, in the Appellate Division of the Superior Court of the State of New Jersey and a Petition for Rulemaking submitted to the Department on December 5, 1990, by the Association of Environmental Authorities (AEA) concerning various provisions of N.J.A.C. 7:14A, 7:14, and 7:9. (See 23 N.J.R. 222(a)) The issues and concerns raised in the AEA's petition, as well as the Department's current position on each issue, are included for comment in this Summary and will be addressed in full when the Department publishes a formal rule proposal.

On November 2, 1992, the Department proposed a recodification of the SWQS, which was subsequently adopted on October 29, 1993. (See 24 N.J.R. 3983(a) and 25 N.J.R. 5569(a).) On January 19, 1994, the AEA filed a Notice of Appeal challenging the adoption of the recodified SWQS. On July 14, 1994, the Department and the AEA entered into an Agreement of Settlement which enumerated several modifications to the SWQS which the Department would either propose or would evaluate for subsequent proposal. Since the Department is evaluating its position on these modifications, this proposal will not address several issues raised in that appeal. The Department intends to prepare a proposal which addresses those issues before June 1, 1995.

On February 1, 1993, the Department issued a Notice of Opportunity for Interested Party Review (IPR) in the New Jersey Register to solicit comments on restructuring the NJPDES program. (See 25 N.J.R. 411(a)) A major component of the IPR was the use of a watershed approach to water resource management, including permitting. The Department held two public Round Table discussions and received extensive oral and written comments on the Interested Party Review document. Based on this input, the Department is currently preparing a proposal which will repeal the existing NJPDES chapter and replace it with an entirely new chapter. The comprehensive summary document discusses the anticipated content of that new chapter in detail.

Scope of the Anticipated Rule Proposal

The Department is preparing a set of comprehensive and fundamental changes in the NJPDES permitting program. These modifications and clarifications address the following primary areas:

1. Watershed based water quality management;
2. Determination of assimilative capacity for various waterbodies and development of total maximum daily loads (TMDLs) and allocations to the identified pollutant sources within each waterbody;
3. Development of effluent limits, including water quality based limits;
4. An Interim Permitting Strategy for point sources; and
5. Administrative reform for streamlining the permitting process to increase program efficiency and effectiveness.

Each area encompasses a set of substantial changes, which are briefly listed below. This comprehensive summary document, which is available on request, provides an outline of those changes, a discussion of various options that the Department has considered for each set of changes, and a description of the specific rule changes (along with the supporting rationale) that the Department is planning to propose.

The regulatory revisions to be proposed are intended to accomplish the following goals:

1. List requirements and describe procedures in clear and easy to understand language;
2. Reduce redundancy by consolidating overlapping or related requirements;
3. Provide fair and predictable mechanisms for making permit decisions;
4. Increase opportunities for meaningful public participation, particularly in the development of TMDLs and watershed management plans;
5. Provide the opportunity for regulated entities to work together, as well as with the Department, local governments, and the public, to develop cost effective approaches for attaining ambient water quality standards through mechanisms such as pollutant trading;
6. Increase administrative flexibility in the issuance of discharge permits;
7. Incorporate Federal mandates so that all requirements are located in a single comprehensive document. Where Federal requirements allow the State to determine specific procedures or mechanisms to satisfy Federal mandates, describe the specific process or procedure to be used. (This occurs most frequently when several technical approaches are available to determine a specific effluent limitation);
8. Reduce technical and administrative ambiguity, while providing adequate flexibility to address site specific issues, concerns, and opportunities;
9. Insure that available funds and staff resources are targeted toward creating the greatest improvements in water quality; and
10. Reduce the level of administrative paperwork and increase the efficiency of the program.

These goals respond to criticisms of the program in recent years by the public as well as the Department's staff and also are consistent with several of the recommendations set forth in the New Jersey Institute of Technology Report to the New Jersey Legislature, *A Review of the Economic Impact of Environmental Statutes, Rules and Regulations on New Jersey Industry,* dated March 1994. The Department anticipates that these reforms will result in greater efficiency in all phases of permit issuance, ranging from completion of the permit application and determination of permit conditions and effluent limitations to issuance of the final permit.

A brief outline of the main subject areas discussed in the Summary is provided below:

Watershed Based Water Quality Management

The Department is developing a watershed based approach to resource management, including permitting, to better address regional problems and opportunities. A watershed approach will allow the Department to assess the implications of various water supply allocation scenarios, provide a sound scientific basis to assess and evaluate pollution from all sources (agricultural inputs, municipal discharges, industrial discharges, groundwater inputs, storm water impacts, etc.), and make decisions regarding the most prudent and effective ways to control pollution from all contributing sources. This represents a significant improvement over the current site specific approach used to control many chemical compounds found in effluents. Such a coordinated approach will help the Department to better identify pollution problems affecting both human health and aquatic biota, to establish priorities and mechanisms

for addressing those problems, and to issue discharge permits that are tailored to assure the environmental well-being of the State. A watershed based approach to water quality studies and permitting will also lead to a sound, scientifically based watershed management program encompassing both point source and nonpoint source loadings, and will also address the associated water quantity issues related to water supply allocations and other withdrawals from waterbodies. The Department would then be able to issue wastewater discharge permits that are designed to address previously identified needs or opportunities in the watershed.

A watershed based approach, as opposed to the site specific approach currently used to control the discharge of many chemical compounds found in effluents, would enable the Department to focus attention on specific pollutants in each waterbody and to better evaluate the effectiveness of various control measures. The process to be proposed will include:

1. Identification of those watersheds where a comprehensive approach is necessary to achieve or maintain significant water quality improvements or to preserve ambient water quality for high quality waters;
2. Development of watershed goals through a public participation process. This process will also better enable the Department to work with local governments toward environmentally sensitive land use planning;
3. Development of water quality models to assist in the determination of the assimilative capacity for various waterbodies and the allocation of that capacity to various pollutant sources;
4. Development of an implementation strategy or watershed management plan which will result in attaining the surface water quality standards (including maintenance of existing high quality waters that currently exceed the SWQS) and attaining goals established for the watershed. Additional goals may be established in the development of the watershed management plan;
5. Implementation of the plan through issuance of discharge permits and/or controls on pollutant sources. This will include the imposition of water quality based effluent limitations, which protect instream water quality and instream uses, such as drinking water and aquatic life propagation. In addition, the allocation process will encourage the development and implementation of applicable Best Management Practices (BMPs) for stormwater and nonpoint sources of pollution; and
6. Subsequent monitoring and re-evaluation of the watershed to determine if the goals have been attained as a result of the implementation of the plan.

The anticipated rule proposal will include the following necessary procedures to facilitate this process:

1. Procedures to develop waterbody and watershed lists identifying those watersheds where a comprehensive management plan is necessary to achieve significant improvements in water quality, to attain the applicable water quality standards, or to maintain existing water quality;
2. Public participation processes for the development of watershed goals, TMDLs, and watershed management plans;
3. Procedures for the assignment of wasteload allocations (WLAs) and load allocations (LAs) to various pollutant sources; and
4. Procedures for calculating effluent limitations, including water quality based limits calculated from WLAs and an interim permit limits development process for use prior to the determination of wasteload allocations.

The changes necessary to implement a watershed based permitting process will take substantial time and resources, particularly in specifically identifying the existing water quality problems, assessing the extent of those problems, and evaluating the options available for their control. In the interim, the Department is required to continue issuing discharge permits.

The Department does not, however, intend to issue permits with new final water quality-based toxics limitations for most existing dischargers. Rather, where a watershed analysis is not available, chemical specific toxics limits for most dischargers will be determined using a phased TMDL approach. This phased approach utilizes a technology-based approach for each parameter combined with a water quality goal for each parameter. The technology-based effluent standards should mostly be attainable using existing treatment. The approach also includes requirements to complete a pollution reduction study to meet the water quality goal. As expired permits are reissued with the technology-based effluent standards, the permittees will also be assigned water quality based limitations for whole effluent toxicity, usually with a schedule to attain the effluent limitation. The Department has begun to successfully issue discharge permits using this phased TMDL approach. As TMDLs are developed for various parameters, final water quality based limits would be determined and incorporated into the discharge permit.

The Department plans to propose the phased TMDL numbers described above as effluent standards for chemical specific toxicants. The proposal will also include procedures to determine if a limitation based on the effluent standard is required for a specific discharge.

When the Department issues a permit renewal using the proposed phased TMDL procedures, it would be able to incorporate effluent standards which have the effect of making the permit more protective of water quality. The pollutant reduction study requirements that the Department would incorporate into discharge permits would have the further benefit of directing permittees to find additional ways to improve effluent quality. The permittees will be able to examine factors and opportunities that may be unique to their location or facility. At the same time, permittees would have greater certainty concerning regulatory requirements, enabling them to better anticipate the expenditures needed to improve water quality.

Changes to the Surface Water Quality Standards

In the proposal to be published in February 1995, the Department will propose changes to the SWQS in three areas:

1. Antidegradation policies and procedures;
2. Mixing zone policies and procedures; and
3. Deletion of the procedures for calculating water quality based effluent limitations. These procedures will be incorporated into the NJPDES rules.

In addition, the Department is preparing subsequent proposals which will incorporate updated ammonia-N criteria specific to New Jersey, procedures for the development of site specific criteria, issues related to the analytical quantitation of various parameters, and updating metals criteria. The Department is also considering changes in the stream design flows and applicable criteria durations.

The antidegradation proposal will include:

1. Procedures to determine whether an activity will result in significant changes in water quality;
2. Procedures to determine whether an economic and social analysis is required as a part of the proposal to lower water quality; and
3. The criteria to evaluate social and economic analyses.

The mixing zone proposal will include procedures to determine the size and shape of each regulatory mixing zone.

Administrative Reform

The administrative reforms included in the proposal are designed to make the permit application and issuance procedures more efficient. Regulations will be reorganized and consolidated to the maximum extent possible and rewritten to reduce ambiguities and eliminate inconsistencies. The proposal currently being prepared will substantially rewrite, reorganize, and restructure the existing rules to reduce unnecessary internal cross-referencing and to more readily facilitate cross-referencing with the required sections of the Federal rules and requirements governing the NJPDES program. The Department is already implementing some of the administrative changes it will formally propose for inclusion in the rules. The administrative changes to be proposed include:

1. Allowing permittees the option of submitting their applications in the form of draft permits which the Department will review and, if acceptable, offer for public comment. Additionally, permittees may perform some other permit process related actions such as issuance of public notices and making arrangements for public hearings;
2. Expanding the scope of changes to existing permits that can be accomplished through minor modifications;
3. Establishing an expedited renewal process for those permits where a new review would not provide any environmental benefit, so that the Department's resources can be used to address issues of greater environmental concern;
4. Eliminating Discharge Allocation Certificates and transferring most of the current Environmental Assessment to the water quality management plan amendment process;
5. Allowing for concurrent review and processing of water quality management plan amendments and NJPDES permit applications; and
6. Providing for increased use of general permits.

Process for Public Comment on Summary

A copy of the comprehensive summary document may be obtained by contacting:

Victor Staniec, Senior Environmental Engineer
Division of Water Quality
New Jersey Department of Environmental Protection
CN 029
Trenton, NJ 08625
Telephone: (609) 292-4543

The Department will hold two Round Table discussions to provide opportunity for discussion of this Summary. The first will focus primarily on administrative aspects, while the second will focus primarily on technical aspects, as follows:

Subject: Watershed Approach, Interim Permitting Approach, Administrative Reforms
Date: Tuesday, November 1, 1994
Time: 10:00 A.M. to 2:00 P.M.
Location: New Jersey Department of Environmental Protection
Public Hearing Room, First Floor, 401 E. State Street
Trenton, New Jersey

Subject: Surface Water Quality Standards, Effluent Limits Calculation, TMDL Development
Date: Thursday, November 10, 1994
Time: 10:00 A.M. to 2:00 P.M.
Location: New Jersey Department of Environmental Protection
Public Hearing Room, First Floor, 401 E. State Street
Trenton, New Jersey

The Department is requesting that individuals interested in participating in the Round Table or in attending as an observer pre-register before **October 21, 1994** by calling Nicole Garrette at (609) 292-4543. **Interested persons** are also encouraged to submit, in writing, views, proposed regulatory language, or comments relevant to this Summary by **November 30, 1994** to the address below:

Dennis Hart, Director
Division of Water Quality
New Jersey Department of Environmental Protection
CN-029
Trenton, NJ 08625

Following the close of the public comment period, the Department will consider all comments received (both in writing and during the public meetings) in completing the formal rule proposal that is currently being prepared.

The comprehensive summary document has been divided into seven sections.

Section I provides a description of the approach the Department is considering for watershed management.

Section II describes the development of water quality models, TMDLs, and allocations to pollutant sources.

Section III describes the development of effluent limitations.

Section IV describes the types of technical data that are needed to develop TMDLs and to make water quality decisions.

Section V describes changes the Department is considering for the SWQS related to water quality-based permit development, including mixing zones and implementation of the antidegradation policy.

Section VI describes the permitting approach the Department plans to use in the interim until permitting by watershed can be accomplished.

Section VII describes administrative and procedural changes that will be included in order to streamline the permitting process and to increase program efficiency.

Section VIII is a summary of the Petition for Rulemaking filed by the Association of Environmental Authorities which provides a cross-reference between the issues raised by the AEA and the Summary document.

Generally, within each section, several issues have been summarized, the options considered by the Department for each issue are discussed, and the Department's current position, along with the supporting rationale, is provided. Public comment and suggestions are sought on each of the issues described, as well as on any other aspects of the NJPDES program.

HUMAN SERVICES

(a)

DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES

Transportation Services

Proposed Amendment: N.J.A.C. 10:50-2.2

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

Authority: N.J.S.A. 30:4D-6b(15); 30:4D-7, 7a, b and c; 30:4D-12; 42 CFR 431.53 and 440.170(a).

Proposal Number: PRN 1994-533.

Submit comments by November 2, 1994 to:

Henry W. Hardy, Esq.
Administrative Practice Officer
Division of Medical Assistance and Health Services
Mail Code #26
CN 712
Trenton, New Jersey 08625-0712

The agency proposal follows:

Summary

The transportation services chapter, N.J.A.C. 10:50, was promulgated to set forth the basic policies and procedures of the New Jersey Medicaid program relating to the transportation of Medicaid recipients by Medicaid-enrolled providers of transportation services. Transportation services for Medicaid recipients is a required component of the Title XIX (Medicaid) program pursuant to 42 CFR 431.53 and 440.170(a).

Under Federal Medicaid regulations, transportation must be available to enable Medicaid recipients to obtain necessary medical examinations and treatments. Transportation may be provided either on a fee-for-service basis as an item of medical assistance or an administrative cost. In either situation the purpose of the transportation must be for a Medicaid recipient to obtain a Medicaid-covered service(s).

The proposed amendments concern reimbursement for Medicaid-enrolled providers of ground ambulance and invalid coach service. The Division of Medical Assistance and Health Services (DMAHS) enrolls providers of ambulance (ground and air) and invalid coach service and reimburses these providers on a fee-for-service basis as an item of medical assistance.

N.J.A.C. 10:50-2 contains information pertaining to the HCFA Common Procedure Coding System (HCPCS), including procedure codes and a fee allowance schedule used by providers when billing for transportation services. The proposed revision in N.J.A.C. 10:50-2, HCFA Common Procedure Coding System (HCPCS), is summarized as follows:

The current reimbursement amount for the provision of ground ambulance service is $30.00 for a one-way trip and $30.00 for the return trip. The proposed amendment increases these reimbursement amounts, for a one-way trip and the return trip, to $58.00 each way.

The current reimbursement amount for the provision of invalid coach service is $20.00 for a one-way trip and $40.00 for a round trip. The proposed amendment increases these reimbursement amounts to $25.00 and $50.00 respectively.

The current mileage reimbursement amount for both ground ambulance and invalid coach service is $1.00 for trips in which one-way mileage equals 15 miles or less, and $1.50 for trips in which one-way mileage equals in excess of 15 miles. The proposed amendment increases these reimbursement amounts to $1.50 and $2.00 respectively.

Social Impact

The proposed amendments potentially impact on all Medicaid recipients who require transportation by ground ambulance and invalid coach service to obtain a Medicaid-covered service. The proposed amendments should assist Medicaid recipients in obtaining necessary transportation, via the mode of transportation best suited to their medical condition(s) and circumstance(s), for the purpose of obtaining medical care and treatment.

The proposed amendments also impact on transportation providers who are enrolled in the Medicaid program as providers of ground ambulance and invalid coach services, but the impact is economic rather than social. Providers of ground ambulance and invalid coach services

enrolled in the Medicaid program will continue to be reimbursed for appropriate transportation service rendered to a Medicaid recipient when the purpose of the trip is to obtain a Medicaid-covered service(s).

Economic Impact

There is no economic impact on Medicaid recipients as a result of the proposed amendments because there is no cost to Medicaid recipients for necessary transportation services to or from a Medicaid-covered service(s).

Medicaid-enrolled providers of ground ambulance service and invalid coach service will continue to be reimbursed for providing Medicaid-covered transportation services to Medicaid recipients. The economic impact on Medicaid-enrolled providers of ground ambulance service and invalid coach service will vary, depending on the number of Medicaid recipients transported.

These amendments are a result of language contained in P.L. 1994, c.67, the 1995 Appropriations Act, which requires the Commissioner to transfer funds to increase provider fees for medical transportation services. The estimated annual cost of the proposed fee increase is $7.5 million, Federal/State share combined. Assuming implementation in November 1994, the cost in State Fiscal Year '95 is estimated to be $4.4 million, Federal/State share combined.

Providers of ground ambulance service were reimbursed approximately $1.8 million in CY '93, Federal/State share combined. Providers of invalid coach service were reimbursed approximately $21 million in CY '93, Federal/State share combined.

Regulatory Flexibility Statement

The proposed amendments do not impose additional reporting, recordkeeping, or other compliance requirements on ground ambulance and invalid coach service providers, which may be considered to be small businesses under the terms of the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The amendments increase the fee allowances for certain ambulance and invalid coach services.

All Medicaid providers are required (see N.J.S.A. 30:4D-12) to record the name of the recipient to whom the service was rendered, the date of the service, the nature and extent of the service rendered, and any additional information as required by regulation. For ground ambulance and invalid coach service providers, these proposed amendments do not change the responsibility of providers with regard to reporting, recordkeeping, or other compliance requirements.

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

10:50-2.2 HCPCS procedure codes and maximum fee schedule

HCPCS Mod. Code	Description	Maximum Fee Allowance
	(a) AMBULANCE SERVICE	
A0010	Ambulance Service, Basic Life Support (BLS) Base Rate, Emergency Transport, One Way	[$30.00] **$58.00**
A0020	Ambulance Service, (BLS) Per Mile, Transport, One Way	[1.00] **1.50**
A0020 22	Ambulance Service, (BLS) Per Mile, Transport, One Way	[1.50] **2.00**
	NOTE: The higher rate is applicable for trips in excess of 15 miles one way, beginning with the first mile. The higher rate is applicable to both the one way and to the return trip.	
A0040	Ambulance Service, Air, Helicopter Service, Transport	B.R.
A0070	Ambulance Service, Oxygen, Administration and supplies, Life sustaining situation	12.00 per occurrence
A0222	Ambulance Service, Return Trip, Transport	[30.00] **58.00**
Y0005	Waiting Time—Ambulance Service—One Way Trip Only	
	¼ hour	2.50
	½ hour	5.00
	¾ hour	7.50
	1 hour	10.00
	NOTE: Reimbursable only on one way trips and only after 30 minutes have elapsed. It is reimbursable in 1/4 hour increments. Maximum reimbursement for waiting time is $10.00 (1 hour).	
	(b) INVALID COACH SERVICE	
A0130	Non-Emergency Transportation: Wheelchair Van	[20.00] **25.00**
	NOTE: Invalid Coach Service, One Way, Per Patient	
Y0002	Invalid Coach Service, Per Mile, One Way and Round Trip	[1.00] **1.50**
Y0002 22	Invalid Coach Service, Per Mile, One Way and Round Trip, in excess of 15 miles one way	[1.50] **2.00**
	NOTE: The higher rate is applicable for trips in excess of 15 miles one way, beginning with the first mile. The higher rate is applicable to both the one way and to the round trip.	
Y0010	Waiting Time—Invalid Coach Service—One Way Trip Only	
	¼ hour	1.25
	½ hour	2.50
	¾ hour	3.75
	1 hour	5.00
	NOTE: Reimbursable only on one way trips and only after 30 minutes have elapsed. It is reimbursable in ¼ hour increments. Maximum reimbursement for waiting time is $5.00 (1 hour).	
Y0060	Invalid Coach Service, Round Trip, Per Patient	[40.00] **50.00**
Y0065	Extra crew differential, round trip	20.00
Y0070	Extra crew differential, one way	10.00
Y0075	Invalid Coach Oxygen	12.00 per occurrence

(a)

DIVISION OF FAMILY DEVELOPMENT

Public Assistance Manual

AFDC-N Segment Eligibility of Aliens

Proposed Amendments: N.J.A.C. 10:81-2.6, 3.9 and 13.3

Proposed Repeal: N.J.A.C. 10:81-3.10

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

Authority: N.J.S.A. 44:10-3.

Proposal Number: PRN 1994-527.

Submit comments by November 2, 1994 to:

Marion E. Reitz, Director
Division of Family Development
CN 716
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The proposed amendments are initiated as a result of the budgetary constraints for State Fiscal Year (SFY) 1995, enacted in the State budget, Assembly No. 2000, as introduced June 20, 1994, enacted June 30, 1994. The appropriations impact of the AFDC-N segment program in the area of provision of benefits to illegal aliens will affect approximately 100 cases on the Division's current caseload.

Current rules at N.J.A.C. 10:81 allow for assistance to be provided under the Aid to Families with Dependent Children-N (AFDC-N) segment program using State-only funds to provide benefits to certain families including those who have members who are illegal aliens. Proof of citizenship or legal alien status is required for receipt of AFDC-C or-F benefits in order to qualify for Federal financial participation (FFP).

The proposed amendments seek to change the rules concerning alien AFDC-N segment eligibility so that these rules align with the provisions governing eligibility for AFDC-C and -F segments. The proposed amendments stipulate that only United States citizens and those individuals who have legal alien status will be eligible to receive AFDC program benefits under AFDC-N segment. Thus, illegal aliens and those aliens admitted as students or visitors will no longer be eligible to receive assistance under the AFDC-N segment.

N.J.A.C. 10:81-2.6(d)3 and (d)3iv are amended to delete language which allowed illegal aliens to be exempted from the requirement that they procure a Social Security number.

N.J.A.C. 10:81-3.9 precludes the participation of illegal aliens in any segment of the AFDC program. Specifically, the AFDC-N segment is being added to the AFDC-C and -F segments as requiring the applicants be U.S. citizens or legal aliens. Text at N.J.A.C. 10:81-3.9(c)2 is being deleted, since it permits illegal aliens to apply for benefits under the AFDC-N segment. A reference which is relevant to companion cases is being added at N.J.A.C. 10:81-3.9(b) and a reference to the Systematic Alien Verification for Entitlements (SAVE) program is added at N.J.A.C. 10:81-3.9(c)1. Text is added at N.J.A.C. 10:81-3.9(c)2 which states that U.S. citizen or legal alien children of illegal aliens may be eligible to receive AFDC-C, -F or -N segment benefits and AFDC-related Medicaid. Illustrations are provided as guidance in determining the appropriate AFDC benefit segment under which the U.S. citizen/legal alien child qualifies.

The amendment to N.J.A.C. 10:81-13.3 deletes text which indicated that individuals who are not U.S. citizens or legal aliens could be eligible for benefits as AFDC-N segment cases.

Social Impact

The AFDC-N segment family is made up of two natural or adoptive parents and their eligible children. The principal earner does not meet the Federal definition of unemployment and therefore does not qualify for Federally matched AFDC. New Jersey has historically provided such families, including illegal aliens, AFDC benefits using State only funds pursuant to N.J.S.A. 44:10-3.8.

The above cited Assembly Bill was enacted to eliminate providing assistance to illegal aliens under AFDC-N to bring that program in line with other programs such as Federal AFDC and food stamps and the State General Assistance program which do not provide benefits to illegal aliens.

It is estimated that the elimination of AFDC-N benefits to illegal aliens in New Jersey will impact an average of 100 cases monthly based on the Division's current caseload. The elimination of AFDC-N segment financial assistance for illegal aliens will undoubtedly have a negative impact upon these individuals and their families which will in turn place an additional burden upon social service agencies in the local communities.

Economic Impact

It is estimated that elimination of AFDC-N benefits to illegal aliens will impact an average of 100 cases monthly based on the Division's current caseload. The projected total savings are estimated to be $299,000 yearly, with the State share being $284,000, and the remainder being the county share. The elimination of AFDC-N segment financial assistance for illegal aliens will undoubtedly have a negative impact upon these individuals and their families, which will in turn place an additional burden upon social service agencies in the local communities.

Regulatory Flexibility Statement

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

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

10:81-2.6 Eligibility factors other than need

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

(d) Rules concerning Social Security numbers are as follows:

1.-2. (No change.)

3. The CWA shall obtain a supply of Social Security Form SS-5, sufficient to accommodate all AFDC applicants [(with the exception of illegal aliens)] and eligible individuals who do not already have Social Security numbers. Upon application for AFDC, the applicant shall be required to sign as many SS-5 forms as needed for the eligible family. The IM worker shall complete Form SS-5 on the basis of information provided by the applicant. Completed forms shall be forwarded to the county's respective Social Security Administration District Office (SSA/DO). A copy of the SS-5 form shall be retained in the case record, and a copy given to the client if so requested.

i.-iii. (No change.)

[iv. Inasmuch as applicants for AFDC-N need not be citizens or lawfully admitted aliens (see N.J.A.C. 10:81-3.10), illegal aliens cannot procure a Social Security number and are therefore exempt from this requirement.]

4.-6. (No change.)

(e) (No change.)

10:81-3.9 Applicant in [AFDC-C and -F] **AFDC-C, -F and -N**

(a) (No change.)

(b) The term applicant in AFDC-F **and -N** refers to natural or adoptive parents, not incapacitated, both of whom shall be required to execute the formal written application unless one such parent is not available for reasons beyond the family's control. This parent shall be required to sign as promptly as [he/she] **he or she** is available for such purpose. **(See N.J.A.C. 10:82-1.5 and 2.13 relevant to companion cases.)**

(c) To be eligible for [AFDC-C or -F] **AFDC-C, -F or -N**, or AFDC-related Medicaid an individual shall be either a citizen of the United States or otherwise permanently residing in the United States under color of law, including any alien who is lawfully present in the United States as a result of the application of Section 207(c), Section 203(a)(7) (prior to April 1, 1980), Section 208, and Section 212(d)(5) of the Immigration and Nationality Act.

1. Each [AFDC-C and -F] **AFDC-C, -F or -N** and AFDC-related Medicaid applicant shall, as a condition of eligibility, provide a written statement of citizenship or legal alien status. If the applicant(s) is not a United States citizen, he or she shall provide documentation, subject to verification, of satisfactory immigration status. When the applicant or other person for whom the application is being made is an alien, his or her legal status shall be verified through evidence provided by the applicant with the United States Immigration and Naturalization Service. **(Refer to N.J.A.C. 10:81-13 for alien verification procedures through the Systematic Alien Verification for Entitlements (SAVE) program.)**

i.-iv. (No change.)

2. Assistance through the [AFDC-C and -F] **AFDC-C, -F or -N** segments and AFDC-related Medicaid shall not be granted to an illegal alien or to aliens admitted as students or visitors. [Individuals who are not United States citizens and who do not meet the criteria for legal alien status (and therefore ineligible for federally funded AFDC and Medicaid benefits) are not subject to the alien verification requirements in (c)1 above. Such individuals may be eligible for benefits under the AFDC-N segment (see N.J.A.C. 10:81-3.10(a)1). CWAs shall advise those individuals of their right to apply for those benefits.] **However, United States citizen/lawfully admitted children of illegal aliens may still be eligible to receive AFDC-C, -F or -N segment benefits and AFDC-related Medicaid. The situations described in (c)2i through iii below serve as illustration of how to determine AFDC-C, -F, or -N status for U.S. citizen/lawfully admitted children of illegal aliens.**

i. In the case of one illegal parent with U.S. citizen/lawfully admitted children, the children shall be eligible for AFDC-C due to parental deprivation (one parent is absent). The eligible unit will consist of the U.S. citizen/lawfully admitted children. There is no assistance payment for the illegal alien parent but his or her income shall be counted as available to the eligible unit in accordance with N.J.A.C. 10:82-2.9(d).

ii. If one parent is a legal alien, or a U.S. citizen and qualifies the children for AFDC-F segment, the children and legal alien/citizen parent shall be eligible under the -F segment. The other

parent's income shall be counted as available to the eligible unit in accordance with 10:82-2.9(d) but his or her needs are not considered in determining the grant amount.

iii. If one or both parents are not legal aliens or legal alien/U.S. citizens and the parents do not meet the criteria to qualify the children for AFDC-F, the children may, if otherwise eligible, qualify for -N segment benefits if they are U.S. citizens/lawfully admitted aliens. If both parents are illegal aliens, the parents' income is counted as available to the eligible unit in accordance with N.J.A.C. 10:82-2.9(d) and the children form an -N segment unit of their own. If one parent is an illegal alien and the other parent is a legal alien/U.S. citizen, the children plus the legal alien/U.S. citizen parent form an AFDC-N segment unit.

3.-4. (No change.)

10:81-3.10 [Applicant in AFDC-N] **(Reserved)**

[(a) The term applicant in AFDC-N refers to natural or adoptive parents, not incapacitated, both of whom shall be required to execute the formal written application unless one such parent is not available to sign the application for reasons beyond the family's control. This parent shall be required to sign as promptly as he or she is available for such purpose. (See N.J.A.C. 10:82-1.5 and 2.13 relevant to companion cases.)

1. Citizenship and alienage: Applicants for AFDC-N need not be citizens or lawfully admitted aliens and are not subject to the alien verification requirements unless they are United States citizens or legal aliens applying for food stamps or AFDC-related emergency assistance.]

10:81-13.3 Citizenship/alien status

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

(e) AFDC-N segment cases are not subject to the requirements of the SAVE Program unless they are United States citizens or legal aliens eligible for food stamps or AFDC-related Emergency Assistance. [Individuals who are not United States citizens and do not meet the criteria for legal alien status are ineligible for Federally funded AFDC benefits; however, they may be eligible for benefits as AFDC-N segment cases (N.J.A.C. 10:81-3.10(a)1). CWAs shall advise such individuals of their right to apply for those benefits.]

(a)

DIVISION OF FAMILY DEVELOPMENT

Assistance Standards Handbook
AFDC-N Segment Eligibility Of Aliens
Proposed Amendment: N.J.A.C. 10:82-2.3

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

Authority: N.J.S.A. 44:10-3.

Proposal Number: PRN 1994-528.

Submit comments by November 2, 1994 to:

Marion E. Reitz, Director
Division of Family Development
CN 716
Trenton, New Jersey 08625

The agency proposal follows:

Summary

This amendment is being proposed in conjunction with proposed amendments to N.J.A.C. 10:81 concerning illegal aliens and the elimination of their eligibility for assistance benefits under the AFDC-N segment.

The proposed amendment is initiated as a result of the budgetary constraints for State Fiscal Year (SFY) 1995, enacted in the State budget Assembly No. 2000, as introduced June 20, 1994, enacted June 30, 1994. The appropriations impact of the AFDC-N segment program in the area of provision of benefits to illegal aliens will affect approximately 100 cases on the Division's current caseload. The projected total savings are estimated to be $299,000 yearly, with the State share being $284,000 and the remainder being the county share.

N.J.A.C. 10:82-2.3(b) currently discusses the treatment of income of noneligible individuals living in the household of an eligible unit. Text is expanded to include the treatment of income of an illegal alien living in the eligible unit's household. Specifically, income of the illegal alien parent is to be considered available to the eligible unit.

Social Impact

It is estimated that the elimination of AFDC-N segment benefits to illegal aliens in New Jersey will impact an average of 100 cases monthly on our current caseload. The elimination of AFDC-N segment financial assistance for illegal aliens will undoubtedly have a negative impact upon these individuals and their families, which, in turn, will place an additional burden upon social service agencies in the local communities.

Economic Impact

It is estimated that elimination of AFDC-N segment benefits to illegal aliens will impact an average of 100 cases monthly on the Division's current caseload. The elimination of AFDC-N segment financial assistance for illegal aliens will undoubtedly have a negative impact upon these individuals and their families, which, in turn, will place an additional burden upon social service agencies in the local communities. The projected total savings are estimated to be $299,000 yearly, with the State share being $284,000 and the remainder being the county share.

Regulatory Flexibility Statement

The proposed amendment has been reviewed with regard to the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The amendment imposes no reporting, recordkeeping or other compliance requirements on small businesses; therefore, a regulatory flexibility analysis is not required. The rules govern a public assistance program designed to certify eligibility for the Aid to Families with Dependent Children program to a low-income population by a governmental agency rather than a private business establishment.

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

10:82-2.3 Income from eligible and noneligible individuals in the household

(a) (No change.)

(b) Noneligible individual: A noneligible individual is neither sanctioned nor required by law or regulation to be included in the eligible unit. When a noneligible individual is living in the household of an eligible unit, the income from that living arrangement to the eligible unit shall be treated in accordance with N.J.A.C. 10:82-4.3(c) if extensive personal services are provided, or N.J.A.C. 10:82-4.12. **If the non-eligible individual is an illegal alien parent, (see N.J.A.C. 10:81-3.9), his or her income shall be considered available to the eligible unit and shall be calculated in accordance with the step-parent deeming formula at N.J.A.C. 10:82-2.9(d).**

(c) (No change.)

LAW AND PUBLIC SAFETY

(b)

DIVISION OF CONSUMER AFFAIRS
STATE BOARD OF CHIROPRACTIC EXAMINERS
Scope of Practice
Reproposed Amendment: N.J.A.C. 13:44E-1.1

Authorized By: Board of Chiropractic Examiners, Robert Tarantino, D.C., President.

Authority: N.J.S.A. 45:9-41.23(h).

Proposal Number: PRN 1994-531.

Submit written comments by November 2, 1994 to:

Kay McCormack, Executive Director
State Board of Chiropractic Examiners
Post Office Box 45004
Newark, New Jersey 07101

The agency proposal follows:

Summary

The State Board of Chiropractic Examiners is reproposing an amendment to N.J.A.C. 13:44E-1.1, Scope of practice, which sets forth not only the methodology but also the diagnostic and analytical procedures that fall within the scope of chiropractic care. The proposed amendments were originally proposed on September 7, 1993 as PRN 1993-499 at 25 N.J.R. 3931(b). Based not only on public comments but also on renewed discussion among its members, the Board has decided to change the original proposal in the following ways.

The previous references that appeared throughout the proposal regarding whether a "theory, modality or procedure" is unsubstantiated have been deleted in favor of references to a "diagnostic or therapeutic system or method" because of concerns expressed by the public that regulation of "theory" would make the scope of this rule overly broad.

Another change involves the deletion of the option whereby the Board might have otherwise deemed "other factors" relevant in determining whether a system or method is unsubstantiated; the Board agreed to delete this provision because it is redundant. Moreover, the Board agreed to delete that option because according to revised subsection (h) licensees who engage in a system or method that the Board deems unsubstantiated but which is not expressly prohibited in subsection (g) will no longer be subject to license suspension or revocation, nor to monetary penalties aside from costs associated with receiving a cease-and-desist order and the refunding of fees obtained from the utilization of an unsubstantiated system or method until such time as the Board has adopted an amendment to subsection (g) that does expressly prohibit the system or method in question unless the other conditions set forth in subsection (h) are relevant.

In addition, the Board has decided to revise subsection (g) as follows: to revise and expand, for the sake of clarity, the provision that references "networking" or "network chiropractic"; to provide for an exception whereby craniopathy or craniology is deemed to be within the scope of chiropractic provided that craniopathy or craniology is part of the sacro-occipital technique; and to include hair analysis and meningeal massage as among those systems or methods that the Board deems to be unsubstantiated.

Finally, new subsection (i) sets forth the procedure whereby a licensee may seek an advisory ruling as to whether the Board deems a system or method to be unsubstantiated.

Aside from these specific changes, the reproposal reflects the original proposal in that it consists of three new subsections, (f), (g) and (h), that will further define the scope of chiropractic care by citing certain systems or methods that lie beyond the scope of chiropractic care in order to protect the public from unsubstantiated practices that might otherwise be "marketed" under the guise of chiropractic care. Thus the intent of the proposed amendments is to counteract the surge in the use of unsubstantiated chiropractic systems or methods that misrepresent the profession to the public and thereby threaten its credibility and damage its ability to serve the public.

Subsection (f) would prohibit licensees from representing or utilizing an unsubstantiated system or method as constituting chiropractic care. Subsection (f) further outlines some specific factors that the Board may take into consideration in determining whether or not a system or method employed by a licensee is unsubstantiated and thereby exceeds the chiropractic scope of practice. Those factors include whether the system or method is an integrated part of the academic curriculum of accredited chiropractic colleges; whether it is validated, or is as of yet too speculative in nature; and whether it is accepted by a responsible and substantial segment of the chiropractic community. In essence, the threshold that any given system or method needs to satisfy is that it must have gained either widespread academic, scientific or chiropractic community acceptance.

Subsection (g) addresses systems and methods specifically identified as excluded from the scope of chiropractic care. This list of unsubstantiated services includes, but is not limited to, "networking." While subject to additions by the Board, the list will in its present form give both the public and licensees a clear sense of chiropractic systems and methods excluded from the scope of chiropractic care.

Subsection (h) states that even if a system or method is not specifically identified in subsection (g), the Board may decide that it is unsubstantiated and order the refund of fees earned by its utilization and issue a cease-and-desist order that will remain in effect until such time as the Board adopts an amendment to subsection (g) that expressly prohibits the system or method in question. The subsection provides for two exceptions, however, in that a licensee utilizing an unsubstantiated system or method that endangers the public health, safety or welfare or who has previously been issued a cease and desist order for the unsubstantiated system or method at issue may be found to have committed a violation of N.J.S.A. 45:1-21 by having utilized such a system or method or by not complying with the provisions of proposed subsections (f) and (g).

Social Impact

Given the recent increase in unsubstantiated services being offered to the public by some licensees, the reproposed amendment will undoubtedly have a major social impact. Patients and the public at large are likely to experience the impact in the following two ways: through a severe if not complete reduction in licensees who offer the unsubstantiated services because they know they would otherwise be operating outside the scope of chiropractic care, and a corresponding decrease in confusion as to what services constitute chiropractic care. The decrease in confusion should result because licensees will no longer be permitted either to represent or to bill for unsubstantiated chiropractic services, conduct that inevitably attempts to confuse those services with legitimate chiropractic care.

The reduced confusion should aid the public to make more informed decisions as to whether to pay an individual offering services that are not within the scope of chiropractic care.

Economic Impact

The economic impact of the reproposed amendment will be felt by those members of the profession who are currently offering or engaging in unsubstantiated chiropractic services and who will not be able to do so under the reproposed amendment to the scope of chiropractic care. In instances where an unsubstantiated system or method has not been expressly prohibited but is found to be unsubstantiated at an administrative hearing, licensees may need to refund fees earned by the utilization of that unsubstantiated system or method and to bear the costs associated with receiving a cease-and-desist order.

For its part, the public will also be affected by the reproposed amendment. The public stands to benefit from greater clarity regarding the scope of chiropractic care because such clarity should eliminate payments for unsubstantiated services, thereby enabling insurance companies to realize savings that may be passed on to consumers. In particular, consumers may in some instances benefit from the return of fees earned by a licensee engaged in the utilization of a system or method deemed to be unsubstantiated pursuant to an administrative hearing.

Regulatory Flexibility Analysis

If, for the purposes of the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., chiropractors are deemed "small businesses" within the meaning of the statute, the following statement is applicable:

The proposed amendment, which governs and defines systems and methods that are unsubstantiated and cannot be offered or represented either as chiropractic care or as the basis of reimbursement, will apply to all of the approximately 3,000 current licensees of the Board of Chiropractic Examiners. No reporting or recordkeeping is required, nor does the amendment require initial capital costs or the retention of professional services or any other costs of compliance. The only compliance requirement is adherence to the proposed amendment.

The Board considers the amendment to be reasonable and to be the minimum necessary for the protection of the public health, safety and welfare. For that reason, the proposed amendment must be uniformly applied to all licensees without differentiation as to size of practice.

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

13:44E-1.1 Scope of practice

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

(f) A licensee in the course of the practice of chiropractic shall not utilize, represent or hold out the use of, or advertise in any manner any unsubstantiated diagnostic or therapeutic system or method including, but not limited to, any such examination, test, substance, device or procedure. In making the determination that a system or method is unsubstantiated, the Board shall consider factors including, but not limited to, the following:

1. Whether the system or method is taught as part of the core curriculum or in a regular course for credit in a school approved by the Board pursuant to N.J.S.A. 45:9-41.6. For the purpose of this rule, the fact that a system or method is or has been offered in

a one-time not for credit or not regularly scheduled seminar, lecture or program shall not suffice. The system or method must be integrated into the academic curriculum of an accredited chiropractic college;

2. Whether the system or method is accepted by a responsible and substantial segment of the chiropractic community; or

3. Whether the system or method or its claimed effects are speculative or experimental. "Claimed effects" may include claims made by or attributable to a chiropractor by his or her words or action.

(g) The following systems and methods, including any diagnostic, analytical and treatment procedures related thereto, are found to be unsubstantiated:

1. "Networking" or "network chiropractic" when combined with unsubstantiated or speculative claimed effects regarding psychological or emotional conditions or "clearouts";

2. Craniopathy or craniology, except when part of the sacro-occipital technique;

3. Arm-mentoring/surrogate testing;

4. Any technique which purports to utilize procedures involving the patient's electromagnetic field, including but not limited to "harmonic therapy";

5. Applied kinesiology as applied to the visceral organs or for nutritional analysis;

6. Hair analysis; and

7. Meningeal massage.

(h) In adition to the systems and methods specified in (g) above, the Board may determine in an administrative hearing 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, that a system or method is unsubstantiated and therefore not within the scope of chiropractic. In the event the Board determines that a system or method not expressly prohibited in (g) above is unsubstantiated, the Board may impose disciplinary sanctions limited to a cease and desist order, costs, and the ordering of refunds of fees obtained from the utilization of an unsubstantiated system or method. The Board shall not be so limited, however, in any such proceeding where:

1. The unsubstantiated system or method poses an imminent danger to the public health, safety and welfare including, but not limited to, physical danger to patients or defrauding of patients or third party payors; or

2. The licensee has been previously ordered to cease and desist with respect to the particular unsubstantiated system or method in issue.

(i) A licensee may, at any time, seek an advisory ruling from the Board as to whether a system or method will be deemed unsubstantiated within the meaning of this section. A request for such ruling should be submitted in writing to the Board and shall include all data, information and materials supporting such system or method. The Board, upon receipt of such a request, may advise the licensee to refrain from offering or performing the system or method until the Board renders its ruling. Nothing in this subsection shall prohibit the Board from acting under (h) above if it so deems necessary.

TRANSPORTATION

(a)

DIVISION OF TRAFFIC ENGINEERING AND LOCAL AID
BUREAU OF TRAFFIC ENGINEERING AND SAFETY PROGRAMS

Speed Limits
Rising Sun Square Road-Old York Road
Bordentown Township, Burlington County
Proposed Amendment: N.J.A.C. 16:28-1.181

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

Authority: N.J.S.A. 27:1A-5, 27:1A-6, 39:4-98 and 39:4-198.

Proposal Number: PRN 1994-522.

Submit comments by November 2, 1994 to:

William E. Anderson
Manager
New Jersey Department of Transportation
Bureau of Traffic Engineering and Safety Programs
1035 Parkway Avenue
CN 613
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The Department of Transportation proposes to amend N.J.A.C. 16:28-1.181 to revise certain "speed limit" zones along Rising Sun Square Road-Old York Road (under State jurisdiction) in Bordentown Township, Burlington County, for the efficient flow of traffic, the enhancement of safety and the well-being of the populace.

Based upon the request of Dennis Cox, Project Engineer for the Bureau of Preliminary Engineering, an investigation was conducted by the Bureau of Traffic Engineering and Safety Programs and it was concluded that the speed limit be reduced along Rising Sun Square Road-Old York Road due to a 90 degree turn between Tennis Court and I-295, causing a hazardous condition for the large volumes of traffic that use the roadway as a connector route between Route I-295 and Exit 7 of the New Jersey Turnpike.

Appropriate signs shall be erected in areas where the speed limit zones have been changed.

Social Impact

The proposed amendment will revise the current speed limit of 40 miles per hour to 30 miles per hour along Rising Sun Square Road-Old York Road (under State jurisdiction) in the vicinity of the 90 degree turn between Tennis Court and I-295 in Bordentown Township, Burlington County, for the efficient flow of traffic, the enhancement of safety and the well-being of the populace. Appropriate signs will be erected to advise the motoring public.

Economic Impact

The Department and local government will incur direct and indirect costs for mileage, personnel and equipment requirements. The Department will bear the costs for the installation of "speed limit" zone signs. The costs involved in the installation and procurement of signs vary, depending upon the material used, size and method of procurement. Motorists who violate the rules will be assessed the appropriate fine in accordance with the "Statewide 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]):

16:28-1.181 Rising Sun Square Road-**Old York Road**

(a) The rate of speed designated for Rising Sun Square Road-Old York Road (under State jurisdiction) described [herein below] **in this section** shall be [and hereby is] established and adopted as the maximum legal rate of speed thereat for both directions of traffic:

1. Bordentown Township:

[i. 40 mph between Old York Road and Route I-295.]

i. Zone 1: 40 miles per hour between the State of New Jersey-Township of Bordentown jurisdictional line and Tennis Court.

ii. Zone 2: 30 miles per hour between Tennis Court and Route U.S. 206.

(a)

DIVISION OF TRAFFIC ENGINEERING AND LOCAL AID

BUREAU OF TRAFFIC ENGINEERING AND SAFETY PROGRAMS

Restricted Parking and Stopping

Route U.S. 9

Middle Township, Cape May County

Proposed Amendment: N.J.A.C. 16:28A-1.7

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

Authority: N.J.S.A. 27:1A-5, 27:1A-6, 39:4-138.1, 39:4-198 and 39:4-199.

Proposal Number: PRN 1994-523.

Submit comments by November 2, 1994 to:

William E. Anderson
Manager
New Jersey Department of Transportation
Bureau of Traffic Engineering and Safety Programs
1035 Parkway Avenue
CN 613
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The Department of Transportation proposes to amend N.J.A.C. 16:28A-1.7 to establish "handicapped parking spaces," "time limit parking," and a "no parking loading zone" area on Route U.S. 9 in Middle Township, Cape May County. The provisions of these amendments will improve the flow of traffic and enhance safety along the highway system.

The amendments are being proposed at the request of the local government of the Township of Middle by Resolution No. 140-94 adopted on June 21, 1994, and as part of the Department's on-going review of current conditions. The traffic investigations conducted by the Department's Bureau of Traffic Engineering and Safety Programs concluded that the establishment of the various parking restriction zones along Route U.S. 9, in Middle Township, Cape May County, were warranted. Signs are required to notify motorists of the restrictions proposed herein.

Social Impact

The proposed amendments will establish various parking restrictions along Route U.S. 9 in Middle Township, Cape May 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 local government will bear the costs for the installation of appropriate parking restriction zone signs. The costs involved in the installation and procurement of signs vary, depending upon the material used, size and method of procurement. Motorists who violate the rules will be assessed the appropriate fine in accordance with the "Statewide Violations Bureau Schedule," issued under New Jersey Court Rule 7:7-3.

Regulatory Flexibility Statement

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

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

16:28A-1.7 Route U.S. 9

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

[(c) The certain parts of State highway Route U.S. 9 described in this subsection are designated and established as "restricted parking" space, for the use of persons who have been assigned handicapped vehicle identification license plates or 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. Restricted Parking Space zone in Middle Township, Cape May County:

i. Along the southbound (westerly) side:

(1) Beginning at a point 55 feet south of the southerly curb line of Church Street and extending 22 feet southerly therefrom.]

(c) The certain parts of State highway Route U.S. 9 described in this subsection shall be designated and established as "handicapped parking" areas, where parking is prohibited in spaces appropriately marked for vehicles for the physically handicapped pursuant to N.J.S.A. 39:4-197.5. In accordance with the provisions of N.J.S.A. 39:4-199, permission is granted to erect appropriate signs at the following handicapped parking areas:

1. In Cape May County:

i. In Middle Township:

(1) Along the southbound (westerly side):

(A) Beginning at a point 55 feet south of the southerly curb line of Church Street and extending 22 feet southerly therefrom.

(d) The certain parts of State highway Route U.S. 9 described in this subsection shall be designated and established as "time limit parking" zones, where parking is prohibited except as specified. In accordance with the provisions of N.J.S.A. 39:4-199, permission is granted to erect appropriate signs at the following established time limit parking zones:

1. In Cape May County:

i. In Middle Township:

(1) One hour time limit parking daily, along both sides:

(A) Beginning at the northerly curb line of Steel Road-Hand Avenue (County Road 658) to the southerly curb line and prolongation of the southerly curb line of Church Street.

(e) The certain parts of State highway Route U.S. 9, described in this subsection, shall be designated and established as "loading 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 loading zones:

1. In Cape May County:

i. In Middle Township:

(1) Along the southbound (westerly side):

(A) Beginning at a point 330 feet north of the northerly curb line of Mechanic Street (County Road 615) and extending 50 feet northerly therefrom.

(a)

DIVISION OF TRAFFIC ENGINEERING AND LOCAL AID
BUREAU OF TRAFFIC ENGINEERING AND SAFETY PROGRAMS

Restricted Parking and Stopping
Route U.S. 40
Pilesgrove Township, Salem County
Proposed Amendment: N.J.A.C. 16:28A-1.28

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

Authority: N.J.S.A. 27:1A-5, 27:1A-6, 39:4-138.1, 39:4-198 and 39:4-199.

Proposal Number: PRN 1994-535.

Submit comments by November 2, 1994 to:

William E. Anderson
Manager
New Jersey Department of Transportation
Bureau of Traffic Engineering and Safety Programs
1035 Parkway Avenue
CN 613
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The Department of Transportation proposes to amend N.J.A.C. 16:28A-1.28 to establish a no stopping or standing zone on Route U.S. 40 in Pilesgrove Township, Salem County. The provisions of this amendment will improve the flow of traffic and enhance safety along the highway system.

This amendment is being proposed at the request of the local government of the Township of Pilesgrove in a Resolution adopted on August 9, 1994, and as part of the Department's on-going review of current conditions. The traffic investigations conducted by the Department's Bureau of Traffic Engineering and Safety Programs concluded that the establishment of a no stopping or standing zone along Route U.S. 40 in Pilesgrove Township, Salem County was warranted. Signs are required to notify motorists of the restrictions proposed herein.

Social Impact

The proposed amendment will establish a no stopping or standing zone restriction along Route U.S. 40 in Pilesgrove Township, Salem County, to improve traffic flow and enhance safety. Appropriate signs will be erected to advise the motoring public.

Economic Impact

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

Regulatory Flexibility Statement

The proposed 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**):

16:28A-1.28 Route U.S. 40

(a) The certain parts of State highway Route U.S. 40 described in this subsection shall be designated and established as "no stopping or standing" zones where stopping or standing is prohibited at all times.

1.-3. (No change.)

4. No stopping or standing in Pilesgrove Township, Salem County:

i. Along both sides between Jill Road and Sharptown-Auburn Road.

ii. Along both sides beginning at a point 400 feet west of East Lake Road and extending to a point 750 feet east of East Lake Road (approximate mileposts 11.60 to 11.80).

5.-9. (No change.)

(b) (No change.)

(b)

DIVISION OF TRAFFIC ENGINEERING AND LOCAL AID
BUREAU OF TRAFFIC ENGINEERING AND SAFETY PROGRAMS

Restricted Parking and Stopping
Route N.J. 47
Middle Township, Cape May County
Proposed Amendment: N.J.A.C. 16:28A-1.33

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

Authority: N.J.S.A. 27:1A-5, 27:1A-6, 39:4-138.1, 39:4-198 and 34:4-199.

Proposal Number: PRN 1994-529.

Submit comments by November 2, 1994 to:

William E. Anderson
Manager
New Jersey Department of Transportation
Bureau of Traffic Engineering and Safety Programs
1035 Parkway Avenue
CN 613
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The Department of Transportation proposes to amend N.J.A.C. 16:28A-1.33 to establish a no stopping or standing zone on Route N.J. 47 in Middle Township, Cape May County. The provision of this amendment will improve the flow of traffic and enhance safety along the highway system.

This amendment is being proposed at the request of the local government of the Township of Middle, County of Cape May in Resolution No. 140-94 adopted on June 21, 1994, 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 concluded that the establishment of a no stopping or standing zone along Route N.J. 47 in Middle Township, Cape May County was warranted. Signs are required to notify motorists of the restrictions proposed herein.

Social Impact

The proposed amendment will establish a no stopping or standing zone restriction along Route N.J. 47 in Middle Township, Cape May 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 local government will bear the costs for the installation of appropriate parking restriction zone signs. The costs involved in the installation and procurement of signs vary, depending upon the material used, size and method of procurement. Motorists who violate the rules will be assessed the appropriate fine in accordance with the "Statewide Violations Bureau Schedule," issued under New Jersey Court Rule 7:7-3.

Regulatory Flexibility Statement

The proposed 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**):

16:28A-1.33 Route 47

(a) The certain parts of State highway Route 47 described in this subsection shall be designated and established as "no stopping or standing" zones where stopping or standing is prohibited at all times except as provided in N.J.S.A. 39:4-139. In accordance with the provisions of N.J.S.A. 39:4-198, proper signs shall be erected.

1. In Cape May County:

i. In Middle Township:

(1) Along both sides:

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

(C) Between Kimbles Beach Road and Hand Avenue (approximate mileposts 10.66 to 10.74).

(2) (No change.)

ii. (No change.)

2.-3. (No change.)

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

(a)

DIVISION OF TRAFFIC ENGINEERING AND LOCAL AID

BUREAU OF TRAFFIC ENGINEERING AND SAFETY PROGRAMS

Bridge Usage

Route N.J. 47

Middle Township, Cape May County

Proposed Amendment: N.J.A.C. 16:30-9.14

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 39:4-198.

Proposal Number: PRN 1994-524.

Submit comments by November 2, 1994 to:

William E. Anderson
Manager
New Jersey Department of Transportation
Bureau of Traffic Engineering and Safety Programs
1035 Parkway Avenue
CN 613
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The Department of Transportation proposes to amend N.J.A.C. 16:30-9.14 to establish bridge restrictions on Route N.J. 47 on the bridge over Bidwells Creek in Middle Township, Cape May County. The provisions of this amendment will improve the flow of traffic and enhance safety along the highway system.

This amendment is being proposed at the request of the Region IV Traffic Engineer in a memorandum dated August 3, 1993, citing a safety hazard and right of way damage to the bridge and areas near the bridge, and as part of the Department's on-going review of current conditions. The traffic investigations conducted by the Department's Bureau of Traffic Engineering and Safety Programs determined that the establishment of bridge restrictions along Route N.J. 47 on the bridge over Bidwells Creek in Middle Township, Cape May County, was warranted. Signs are required to notify the public of the restrictions proposed herein.

Social Impact

The proposed amendment will establish bridge restrictions on Route N.J. 47 on the bridge over Bidwells Creek in Middle Township, Cape May County, to improve traffic flow and enhance safety. Appropriate signs will be erected to advise the public.

Economic Impact

The Department and local government will incur direct and indirect costs for mileage, personnel and equipment requirements. The local government will bear the costs for the installation of appropriate signs. The costs involved in the installation and procurement of signs vary, depending upon the material used, size and method of procurement. Persons 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**):

16:30-9.14 Route 47

(a) The certain parts of State highway Route 47 described in this subsection shall not be used for the purposes described herein. In accordance with N.J.S.A. 39:4-198, authority is granted to erect appropriate signs.

1. No jumping, diving, crabbing, fishing or loitering along both sides of the entire length of the bridge over the waterway listed:

i. Cape May County:

(1) The bridge over Grassy Sound in Lower Township[.];

(2) The bridge over Bidwells Creek in Middle Township known as Bridge No. 0507-12 (approximate milepost 12.11).

(b)

DIVISION OF TRAFFIC ENGINEERING AND LOCAL AID

BUREAU OF TRAFFIC ENGINEERING AND SAFETY PROGRAMS

Turn Prohibitions

Route N.J. 47

Middle Township, Cape May County

Proposed Amendment: N.J.A.C. 16:31-1.8

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

Authority: N.J.S.A. 27:1A-5, 27:1A-6, 39:4-123, 39:4-183.6 and 39:4-199.1.

Proposal Number: PRN 1994-525.

Submit comments by November 2, 1994 to:

William E. Anderson
Manager
New Jersey Department of Transportation
Bureau of Traffic Engineering and Safety Programs
1035 Parkway Avenue
CN 613
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The Department of Transportation proposes to amend N.J.A.C. 16:31-1.8 concerning turning movements along Route N.J. 47 to effect "no left turns" in Middle Township, Cape May County. The proposed amendment has been further codified in compliance with the Department's rulemaking format.

The provisions of this proposed amendment will improve the flow of traffic and enhance safety along the highway system.

The amendment is being proposed at the request of the local government of the Township of Middle, County of Cape May, by Resolution No. 166-94 adopted by the Township Council on July 19, 1994, requesting left turn prohibitions on certain portions of Route N.J. 47, and as part of the Department's on-going review of current conditions. The traffic investigations conducted by the Department's Bureau of Traffic Engineering and Safety Programs concluded that the establishment of the turning movement restrictions along Route N.J. 47 were warranted. Signs are required to notify motorists of the restrictions proposed herein.

Social Impact

The proposed amendment will establish turn restrictions along Route N.J. 47 in Middle Township, Cape May County, to improve traffic 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 Depart-

ment will bear the costs for the installation of appropriate regulatory 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]):

16:31-1.8 Route 47

(a) Turning movements of traffic on certain parts of State highway Route 47 described in this subsection are regulated as follows:

1. No left turn:

[i. In Deptford Township, Gloucester County:

(A) From north on Route 47 to west on Bankbridge Road.]

i. In Cape May County:

(1) In Middle Township:

(A) From northbound on Route 47 to westbound into the K-Mart driveway (approximate milepost 3.85).

(B) Eastbound from the K-Mart driveway to northbound onto Route 47 (approximate milepost 3.85).

(C) From northbound on Route 47 to westbound into the driveway of the United States Post Office (approximate milepost 4.10).

(D) Eastbound from the United States Post Office driveway to northbound on Route 47 (approximate milepost 4.10).

ii. In Gloucester County:

(1) In Deptford Township:

(A) From northbound on Route 47 west into Bankbridge Road (approximate milepost 69.42).

2. No "U" turn:

i. In the City of Vineland, Cumberland County:

[(A)](1) From 925 feet south of College Drive to a point 1,065 feet south of College Drive.

(a)

DIVISION OF TRAFFIC ENGINEERING AND LOCAL AID

BUREAU OF TRAFFIC ENGINEERING AND SAFETY PROGRAMS

Turn Prohibitions
Route U.S. 130
Burlington City, Burlington County
Proposed Amendment: N.J.A.C. 16:31-1.22

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

Authority: N.J.S.A. 27:1A-5, 27:1A-6, 39:4-123, 39:4-124, 39:4-125, 39:4-183.6, 39:4-198 and 39:4-199.1.

Proposal Number: PRN 1994-526.

Submit comments by November 2, 1994 to:

William E. Anderson
Manager
New Jersey Department of Transportation
Bureau of Traffic Engineering and Safety Programs
1035 Parkway Avenue
CN 613
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The Department of Transportation proposes to amend N.J.A.C. 16:31-1.22 concerning turning movements along Route U.S. 130 to effect no left turns and no "U" turns in Burlington City, Burlington County.

This proposed amendment has been codified in compliance with the Department's rulemaking format.

The provisions of this amendment will improve the flow of traffic and enhance safety along the highway system.

This amendment is being proposed at the request of the local government of the City of Burlington in a letter dated June 14, 1994, requesting the turning prohibitions to eliminate traffic congestion on Route U.S. 130 at Bordentown Street (County Road 657) and as part of the Department's on-going review of current conditions. The traffic investigations conducted by the Department's Bureau of Traffic Engineering and Safety Programs concluded that the establishment of the turning movement restrictions along Route U.S. 130 were warranted. Signs are required to notify motorists of the restrictions proposed herein.

Social Impact

The proposed amendment will establish turn restrictions along Route U.S. 130 in Burlington City, Burlington County, to improve traffic 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 appropriate regulatory 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**):

16:31-1.22 Route U.S. 130

(a) Turning movements of traffic on certain parts of State highway Route U.S. 130 described in this subsection are regulated as follows:

1.-4. (No change.)

5. In Burlington City, Burlington County:

i. No left turn:

(1) From northbound on Route U.S. 130 to westbound on Bordentown Street (County Road 657) (approximate milepost 47.45).

(2) From southbound on Route U.S. 130 to eastbound into the driveways of Burlington Billiards (approximate mileposts 47.43 to 47.46).

ii. No "U" turns:

(1) From northbound on Route U.S. 130 to southbound on Route U.S. 130 at Bordentown Street (County Road 657) (approximate milepost 47.45).

(2) From southbound on Route U.S. 130 to northbound on Route U.S. 130 at Bordentown Street (County Road 657) (approximate milepost 47.45).

TREASURY-GENERAL

(b)

DIVISION OF PENSIONS AND BENEFITS

Police and Firemen's Retirement System
Election of Member-Trustees; Procedures
Proposed Repeal and New Rule: N.J.A.C. 17:4-1.4

Authorized By: Board of Trustees, Police and Firemen's Retirement System, Regina Trauner, Secretary.

Authority: N.J.S.A. 43:16A-13(2)(c).

Proposal Number: PRN 1994-532.

Submit comments by November 2, 1994 to:
Peter J. Gorman, Esq.
Executive Assistant
Division of Pensions and Benefits
CN 295
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The proposed repeal and new rule clarify the election procedures for police and firemen trustee members of the Board of Trustees of the Police and Firemen's Retirement System. The new rule reflects the current procedures and policies used to conduct elections of police and firemen trustees. Presently, the signatures of 300 active police members and 300 active fire members are required on nominating positions for their respective trustee candidates. The new rule requires the signatures of 500 active police members to sign nominating petitions for their respective trustee candidates. Since there are three times as many police members as there are fire members, the new rule will more reasonably conform the number of members signing nominating petitions to the actual proportion of the membership.

This proposed new rule states that the Secretary, at least four months prior to the expiration of the term of each elected trustee, or immediately upon a vacancy on the Board, shall prepare and distribute to the certifying officers an election notice. Such notice is to be distributed by the certifying officer to each member eligible to vote.

The election notice shall state the position and term to be filled; the nominating petitions that are required; dates of the election; and identify all present members of the Board.

Essentially, the rules concerning nominating petitions and the actual election procedures remain basically unchanged. The new rule requires that each candidate submit certain biographical material to the Board Secretary, who will have such material distributed to the certifying officers or on the election ballot. This new rule also provides for detailed recount procedures.

Social Impact

The proposed repeal and new rule will benefit the members of the retirement system by clarifying and defining the procedure for the election of police and fire trustees and specifying the manner for resolving disputes and challenges in elections. The new rule will affect future candidates for trustee positions upon the Board of Trustees.

Economic Impact

The proposed repeal and new rule will not have any overall significant, adverse economic effect upon the system or the individuals who may be affected. There may be a small reduction in the costs incurred by the Division of Pensions and Benefits, since there may be a smaller number of candidates as a result of the requirement that increases the minimum number of signatures required on the nominating petitions.

The proposed new rule may increase administrative costs of the Division of Pensions and Benefits, but such costs are minimal and will not have any serious financial impact. Such costs may include increased printing charges and manpower costs, if a recount of the election is involved. Overall costs will not be changed.

Regulatory Flexibility Statement

A regulatory flexibility analysis is not required because the proposed amendments do not impose reporting, recordkeeping or other compliance requirements upon small businesses as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. Since the rules of the Division of Pensions and Benefits only impact upon public employers and/or public employees, the amendments will not have any effect upon small businesses or private industry in general.

Full text of the proposed repeal and new rule follows (addition indicated in boldface **thus**; deletion inducated in brackets [thus]):

[17:4-1.4 Election of member-trustee

(a) The procedure for the election of a police or fire representative to the Board of Trustees, is set forth in subsections (d) of this Section:

(b) Election notices:

1. Election notices will be distributed to each member who is eligible to vote.

2. The distribution will be through the certifying agents.

3. The election notice will advise the member of the election, the position and term to be filled, that nominating petitions are required, the dates of the election and identify all present members of the Board.

(c) Nominating petitions:

1. The nominating petition forms will be forwarded to each member requesting the same.

2. The petition forms will explain that at least 300 members who are eligible to vote for the position are required to sign the petition for the candidate.

3. The candidate will be an eligible police or fire member according to the position being voted upon.

4. The petition form will require the name and employer and request the membership number or social security number of each petitioner.

5. The form will explain that a member must sign but one petition—police members petitioning for a police candidate, and firemen members for a fire candidate.

6. The dates for filing and returning the petitions will be identified.

7. The ballot position will be determined by a drawing conducted at a time and place determined appropriate by the secretary of the retirement system. All candidates will be invited to attend such a drawing.

8. If only one candidate is nominated for a position, the candidate is deemed elected to the position without balloting. A notice to the respective membership will be distributed indicating no contest since only one candidate was nominated by petition.

(d) Ballots:

1. Ballots will be printed for each eligible member.

2. They will identify such eligible voter by name.

3. The ballots will be distributed together with postage paid return envelopes by the certifying agent.

4. A receipt will be signed by each certifying agent, acknowledging the receipt and distribution of such ballots.

5. The ballot will require the signature of the member identified upon it.

6. The instructions will also advise that the signature identifying the voter will be severed from the ballot proper before it is removed from the envelope, thus assuring a secret ballot.

7. Failure to sign a ballot, or voting for more candidates than instructed, will be cause for rejection of the ballot.

8. The candidate receiving the highest number of legal votes will be elected to the position.

9. The secretary of the Board will oversee the election to ensure that the vendor complies with all requirements and assure the validity of the final election count.]

17:4-1.4 Election of member-trustee

(a) The procedures for the election of a police or fire trustee representative to the Board of Trustees are set forth in this section.

(b) Eligible candidates shall include any active or retired member of the Police and Firemen's Retirement System. Only police members may seek police seats and only fire members may seek firemen seats on the Board of Trustees. All candidates shall comply with any and all requirements as provided by law and these rules. Any candidate who fails to comply with the law and these rules is automatically disqualified as a candidate.

(c) The following apply to election notices:

1. At least four months prior to the expiration of the term of each elected trustee or immediately upon a vacancy on the Board, a notice shall be prepared and distributed by the Secretary of the Board through the certifying officers to each member who is eligible to vote. The notice shall also inform the members that petition forms are available at the office of the retirement system.

2. The election notice shall also:

i. Advise the member of the election;

ii. State the position and term to be filled;

iii. State that nominating petitions are required;

iv. State the dates of the election;

v. Identify all present members of the Board; and

vi. Contain other information specified by the Board of Trustees.

3. Election notices shall be forwarded in bulk and in appropriate number to the certifying officer or other appropriate fiscal officer of each employing agency, together with instructions as to who is to receive the notices.

4. A receipt and report shall also be forwarded to each certifying officer or appropriate fiscal officer. Such form shall be returned to the Secretary and shall include documentation of:

i. Receipt of the notice by the certifying officer or other appropriate fiscal officer; and

ii. The extent to which the certifying officer or other appropriate fiscal officer has distributed the notice to eligible members.

5. Election notices shall be distributed to each member who is eligible to vote, as shown on a master list of members that shall be compiled by the Secretary and made available for review to any candidate at the office of the Division of Pensions and Benefits. Any challenge or questions concerning eligible voters shall be made prior to the close of the voting deadline. Failure to challenge the list or any part of it prior to this deadline shall disallow any challenge or question raised after the close of voting.

(d) The following apply to nominating petitions:

1. Nominating petition forms shall be available at the office of the Secretary of the Police and Firemen's Retirement System.

2. Nominating petitions shall be forwarded to each active or retired member requesting them.

3. The petition forms shall explain that:

i. For police trustee, at least 500 active police members, who are eligible to vote for the position, are required to sign the petition for the candidate.

ii. For fire trustee, at least 300 active fire members, who are eligible to vote for the position, are required to sign the petition for the candidate.

4. The petition form shall require the candidate's name and employer, and the membership number or Social Security of each petitioner.

5. The form shall explain that a member shall sign only one petition, with police members petitioning for a police candidate and fire members petitioning for a fire candidate.

6. The dates for filing and returning the petitions shall be identified, as well as the approximate date that ballots shall be sent to employers for distribution to voters.

7. A candidate named on a petition shall sign the petition in a designated space indicating that he or she is willing to be a candidate.

8. If only one candidate is nominated for a position, the candidate shall be deemed elected to the position without balloting. A notice to the respective membership shall be distributed indicating no contest since only one candidate was nominated by petition.

(e) The following apply to distribution of ballots:

1. For each eligible voter, there shall be forwarded to the certifying officer a ballot which shall include the following information and instructions:

i. The name of the eligible voter;

ii. The closing date of the election;

iii. The name of each candidate nominated and the name of his or her employer;

iv. Instructions to the voter for the proper casting of the ballot shall be shown upon the ballot or upon a separate sheet; and

v. Instructions that the candidate receiving a plurality of the legal votes cast shall be declared elected to the position.

2. The ballot positions shall be determined by a drawing conducted at a time and place determined appropriate by the Secretary of the retirement system. All candidates shall be invited to attend such a drawing.

3. The ballots, together with postage-paid return envelopes, shall be distributed by the certifying officers.

4. A receipt shall be signed by each certifying officer, acknowledging the receipt and distribution of the ballots.

5. The instructions shall also advise that the signature identifying the voter shall be severed from the ballot before it is removed from the envelope, thus assuring a secret ballot.

6. Failure to sign a ballot or voting for more candidates than instructed shall be cause for rejection of the ballot.

7. Mutilated ballots, illegible ballots, ballots with a write-in vote, multiple votes or any other ballot where it cannot be determined whom the voter intended to vote for shall be declared invalid and not considered.

8. The candidate receiving the highest number of legal votes shall be elected to the position.

9. The Secretary of the Board shall oversee the election process to ensure that the vendor complies with all of the requirements and assures the validity of the final election count.

10. The candidates whose names are printed upon the ballots shall be informed as to the method and the date of counting the ballots and shall be invited to be present or to be represented at the counting of the ballots.

(f) The following apply to biographical information:

1. An informational sheet of biographical information regarding each candidate shall be prepared by the Division of Pensions and Benefits. The information regarding each candidate shall be submitted by the candidate and the informational sheet shall also be approved by the Board of Trustees.

2. The Secretary shall inform each candidate that a background may be included with or upon the ballot and provide them with the opportunity to submit information regarding such material.

3. If not included upon the ballot, the biographical information shall be distributed to the certifying officer of each employing agency at the time of distribution of ballots or notice of election without balloting or otherwise distributed as approved by the Board of Trustees so that the members of the retirement system shall have reasonable opportunity to read and consider the biographical information regarding the candidates.

4. Copies of the informational sheet shall be distributed to the certifying officer of each employing agency at the time of distribution of ballots or notices of election without balloting.

5. The informational sheets shall be posted at appropriate places throughout the workplace of each employing agency or be otherwise distributed as approved by the Board of Trustees so that the members of the retirement system shall have reasonable opportunity to read and consider the biographical information regarding the candidates.

(g) The following apply to recount procedures:

1. Any candidate or member, who shall have reason to believe that an error has been made in counting or declaring the vote, may, within 20 days of the certification of the results of the election, request, in writing, that the Board of Trustees shall, at its next regular meeting or at a special meeting, hold a hearing to consider the request and determine whether a recount shall be held. The Board shall notify all candidates of its decision within 10 days thereafter. At such hearing, any member of the Board, who is a candidate on the contested ballot, shall not vote in the Board's decision on the request. Each candidate on the contested ballot shall be invited to attend the Board's meeting and may present evidence to support his or her beliefs.

2. If a candidate or other interested party requests a recount within the prescribed time, this request shall be granted if a recount could possibly affect the results of the election. All ballots received shall then be recounted and the recount shall be supervised by the election board. The election board shall certify the results of the recount to the Board of Trustees. If a recount is not requested within 20 days, the ballots may be destroyed.

3. Upon election and the taking of an oath of office, police and fire member trustees shall serve for a term of four years. In the event that no member is certified as the winner of an election, the incumbent trustee shall serve until a successor is certified by the Board of Trustees.

RULE ADOPTIONS

PERSONNEL

(a)

MERIT SYSTEM BOARD

Selection and Appointment Disposition of a Certification

Adopted Amendment: N.J.A.C. 4A:4-4.8

Proposed: July 5, 1994 at 26 N.J.R. 4823(b).
Adopted: September 7, 1994, by the Merit System Board, Linda M. Anselmini, Commissioner, Department of Personnel.
Filed: September 12, 1994 as R.1994, d.507, **without change.**

Authority: N.J.S.A. 11A:2-6(d) and 11A:4-1 et seq.

Effective Date: October 3, 1994.
Expiration Date: May 12, 1998.

Summary of Hearing Officer's Recommendations and Agency Responses:

A public hearing concerning the proposed amendment was held on July 28, 1994. Henry Maurer served as hearing officer. No comments were received on the proposed amendment and no recommendations were made by the hearing officer. The hearing record may be reviewed by contacting Janet Share Zatz, Director, Division of Appellate Practices and Labor Relations, Department of Personnel, CN 312, Trenton, New Jersey 08625.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the adoption follows:

4A:4-4.8 Disposition of a certification

(a) (No change.)

(b) The appointing authority shall notify the Department of Personnel of the disposition of the certification by the disposition due date in the manner prescribed by the Department. The report of disposition of the certification shall include:

1. Name of the eligibles to be permanently appointed;
2. The effective date of the requested permanent appointments;
3. In local service, the appointee's salary;
4. A statement of the reasons why the appointee was selected instead of a higher ranked eligible or an eligible in the same rank due to a tied score;
5. In situations where an appropriate list is used, the title and functions of the appointee's employment; and
6. Any other requested information.

(c)-(e) (No change.)

COMMUNITY AFFAIRS

(b)

DIVISION OF HOUSING AND DEVELOPMENT

Alternative Claim Procedures for Fire Retardant Treated (FRT) Plywood Failures

Adopted Amendments: N.J.A.C. 5:25A-1.3, 2.1 and 2.5

Adopted New Rule: N.J.A.C. 5:25A-2.6

Proposed: July 5, 1994 at 26 N.J.R. 2706(a).
Adopted: September 7, 1994, by Deborah DeSantis, Deputy Commissioner, Department of Community Affairs.
Filed: September 12, 1994 as R.1994, d.506, **with technical changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 46:3B-13 et seq.

Effective Date: October 3, 1994.
Expiration Date: April 20, 1997.

Summary of Public Comments and Agency Responses:

Comments were submitted by Dennis A. Estis, Esq., representing developers and homeowners associations that were parties to the litigation that resulted in these rule changes, and by William C. Casano, Esq. and A. Dennis Terrell, Esq., attorneys for Home Owners Warranty Corporation (HOW).

COMMENT: Mr. Estis, on behalf of his clients, recommends that the following sentence be added to the definition of "major structural defect": "Until it has been actually determined by the Bureau that inevitable premature failure of the FRT Plywood roof sheating exists, the condition shall not be classified as a major structural defect." He states that this added language "fosters the intent of the New Jersey Legislature to offer protection to the thousands of homeowners and other claimants, such as builders, harmed by the presence of FRT Plywood roof sheathing and ensures that responsible third parties remain accountable even though fire retardant treated plywood may have been installed in roofs, although not determined by the Bureau to be in a condition which constitutes 'inevitable premature failure' within the first two years of a claimant's new home warranty."

RESPONSE: Since the text of the amended rule, as proposed by the Department, already refers to a determination of inevitable premature failure being made "in accordance with N.J.A.C. 5:25A-2.5(b) and 2.6," both of which refer to the condition being found to exist by the Bureau before any payment can be made by the State Fund, it is not clear how the additional language would result in any substantive change, or why clarification is needed. Conversely, if the intent of the commenter's proposed additional language is to make a substantive change that would affect the rights or duties of any party, such a change would be of a nature that cannot properly be made on adoption and that would require a new proposal.

Mr. Estis' concern about fair treatment for those who have been harmed by the use of FRT plywood roof sheathing in their dwellings, however, is one that the Department shares. Though it is not possible to make the change that he requests at this time, the Department is working to protect the rights of these homeowners through an equitable settlement of all outstanding litigation regarding this matter.

COMMENT: Home Owners Warranty Corporation (HOW) objects to the proposed amendments that would no longer make it necessary that damage to a load bearing portion of the home resulting in a major structural defect occur prior to the expiration of the 10 year warranty. HOW further objects to lowering the threshold for determining inevitable premature failure of FRT plywood to specimens that show "moderate" deterioration. HOW considers the classification scheme to be arbitrary and "too vaguely defined to permit application," since it does not specify how much pressure is to be applied and how much give the wood must exhibit, and requests the Department to "abandon all efforts to use the 'moderate' classification as a means to determine whether a major construction defect exists." HOW regards the additional period allowed for filing of claims after the expiration of the 10-year warranty period as unauthorized by statute and as a taking against it and other private warranty companies and therefore requests the deletion of the proposed N.J.A.C. 5:25A-2.1(b)1 and 2. In support of these assertions, HOW cites statements made by the Department in the course of the litigation over the rules. Finally, HOW contends that the Economic Impact statement that accompanied the proposal failed to acknowledge the impact on private warranty companies and understated the impact on the State Fund.

RESPONSE: As stated in the Summary of the rule proposal, the reason that this proposal was made is that the existing rules, to the extent that they were inconsistent with the holding of the Appellate Division in its July 30, 1993 decision, were no longer valid. Though the Department took a position in the litigation that opposed the changes being sought by the plaintiffs, it is now obligated to comply with the decision if it intends to have enforceable rules. HOW's objections to the extensions of the period in which claims may be filed and to the elimination of the requirement that there be actual damage within the 10-year period are, in fact, objections to the decision; the Department does not have the option of refusing to make these changes to its rules.

In response to HOW's objection of the Department's use of its existing classification scheme for deterioration to determine inevitable premature failure, the Department points out that it was directed, by the court, to develop procedures for predicting inevitable premature failure within six months. Since scientific breakthroughs cannot be counted on to occur in accordance with a predetermined schedule, the best practical alternative for the Department, in its effort to comply with the court's decision, was to make reasonable use of the existing classification system. While HOW has cited expert opinion as to shortcomings of the existing system, it has not offered a better system. If and when it, or anyone else, does so, the Department will give any recommended changes full consideration.

HOW challenges the Economic Impact statement as inconsistent with earlier Department statements warning of harm to the State Fund if claim eligibility were broadened. However, in the time since the earlier statements were made, the Department was able to determine that the actual volume of FRT-related damage, and of consequent claims, was lower than had been expected and the additional claims that will have to be honored as a result of the court's decision are not of a volume that will result in the level of costs that had originally been anticipated. In response to HOW's contention that it has failed to acknowledge or consider the effect of the rules on private warranty companies, the Department points out that the economic impact statement refers to "monies expected to be recovered by the Department from responsible parties," and that this clearly includes private warranty companies. In any event, the Department was not free to refuse to comply with the court's decision, regardless of the impact on private warranty companies or other affected parties.

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

5:25A-1.3 Definitions

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

...

"Major structural defect" means any actual damage to the load bearing portion of a building that affects its load-bearing function, or is imminently likely to vitally affect use of the building for residential purposes. "Major structural defect" also means and includes inevitable premature failure of FRT plywood roof sheathing if it can be determined, in accordance with N.J.A.C. 5:25A-2.5(b) and 2.6, within the 10 year coverage period of the claimant's new home warranty, that a major structural defect will occur. "Major structural defect" shall have the same meaning as "major construction defect," as used in the Act.

5:25A-2.1 Claim eligibility

(a) (No change.)

(b) Except as otherwise provided in this subsection, warranty coverage or eligibility for warranty claim coverage shall be in effect only during the 10-year period prescribed by the New Home Warranty and Builders' Registration Act.

1. With regard to new homes in which the warranty coverage expired, or will expire, between July 11, 1991 and *[90 days from the effective date of these 1994 amendments]* ***January 1, 1995***, any eligible claimant may file a claim for the remediation of FRT plywood until *[one year from the effective date of these 1994 amendments]* ***October 3, 1995***. Any eligible claimant that continues to have coverage under a new home warranty may file and/or refile claims at any time during the warrant period.

2. Any claimant that filed a timely claim pursuant to the act prior to *[the effective date of these 1994 amendments]* ***October 3, 1994***, which claim was not approved, may refile the claim for a reevaluation of eligibility in light of *[these 1994 amendments]* ***this section as revised effective October 3, 1994*** at any time during the warranty period or until *[one year after the effective date of these 1994 amendments]* ***October 3, 1995***, whichever is later.

(c) Except where a longer period is permitted pursuant to (b) above, any person who has instituted a civil action may file a claim pursuant to this section at any time up to and including *[the 120th day following the effective date of these 1994 amendments]* ***January 31, 1995***.

(d) The commencement date of the warranty on common elements is the date the element was first put to use. Therefore, the warranty commencement date on roof sheathing in a development in which roofs are common elements is the commencement date of the first warranty issued in each structure.

(e) Holders of new home warranties with extended structural defect coverage are eligible to file a claim up to the end of the tenth year.

5:25A-2.5 Claim examinations

(a) (No change.)

(b) To be eligible for funding, the condition of the FRT plywood sheathing must qualify as a major structural defect, as defined in N.J.A.C. 5:25A-1.3. In accordance with the classification system described in N.J.A.C. 5:25A-2.5(a), if the roof sheathing is characterized as "severe" or "failure" by the Bureau, the defect shall be classified as a major structural defect. If a condition of inevitable premature failure, as determined in accordance with N.J.A.C. 5:25A-2.6, is found to exist by the Bureau, the condition shall also be classified as a major structural defect.

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

5:25A-2.6 Predictive testing procedure for inevitable premature failure

FRT plywood roof sheathing shall be examined in accordance with the procedure and classification system described in N.J.A.C. 5:25A-2.5(a). FRT plywood roof sheathing found by the Bureau, using that classification system, to have experienced deterioration that is "moderate" or worse shall be deemed to be in a condition of inevitable premature failure.

EDUCATION

(a)

STATE BOARD OF EDUCATION

Notice of Extended Expiration Dates New Jersey Administrative Code Title 6

Take notice that, pursuant to Executive Order No. 22(1994), the expiration dates for each chapter of rules in Title 6 of the New Jersey Administrative Code have been extended by 18 months. The extended expiration dates are set forth in the following table:

EDUCATION—TITLE 6

N.J.A.C.	Expiration Date
6:1	7/11/97
6:2	6/8/00
6:3	12/7/99
6:5	4/22/97
6:7	7/2/96
6:8	6/11/98
6:9	11/3/99
6:11	3/21/97
6:12	9/8/97
6:20	1/16/97
6:21	1/11/01
6:22	1/16/97
6:22A	4/8/00
6:24	7/11/97
6:26	2/1/01
6:28	8/10/00
6:29	8/8/96
6:30	12/6/00
6:31	5/16/96
6:39	12/9/00
6:43	2/10/97
6:46	10/10/98
6:51	2/5/98
6:53	10/10/98

6:64	3/14/99
6:68	8/26/96
6:70	2/5/01
6:78	4/8/00

ENVIRONMENTAL PROTECTION

(a)

ENVIRONMENTAL REGULATION
LAND USE REGULATION PROGRAM
Notice of Administrative Correction
Rules on Coastal Zone Management
General Land Areas
Development Potential
N.J.A.C. 7:7E-5.5

Take notice that the Department of Environmental Protection has discovered an error in the adopted text of N.J.A.C. 7:7E-5.5, published in the July 18, 1994 New Jersey Register at 26 N.J.R. 2990(a). As explained in the Department's Response to Comment 301 (26 N.J.R. 3020) and as depicted in the original adoption document, R.1994 d.380, the last sentence of N.J.A.C. 7:7E-5.5(c)2iii was not adopted by the Department. However, the deletion of that sentence from the subparagraph was not shown in the notice of adoption at 26 N.J.R. 3065 due to typographic error. This notice is published in accordance with N.J.A.C. 1:30-2.7.

Full text of the corrected rule follows (deletion indicated in brackets [thus]):

7:7E-5.5 Development Potential

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

(c) The standards relevant to Major Commercial and Industrial Development Potential are as follows:

1. (No change.)

2. High Potential sites meet all of the following criteria:

i.-ii. (No change.)

iii. Infill: A part of the site boundary shall be either immediately adjacent to, or immediately across a road from, existing major commercial or industrial development, or in Development Regions, the property proposed for development is adjacent to or across the road from existing commercial developments. [For commercial development of less than 100,000 square feet of enclosed building area, the property proposed for development is adjacent to or across the road from commercial or residential development.]

3.-4. (No change.)

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

(b)

ENVIRONMENT PROTECTION
AIR QUALITY REGULATION PROGRAM
Air Pollution Control
Operating Permits
Adopted New Rules: N.J.A.C. 7:27-22.1 through 22.7, 22.9 through 22.19, 22.27, 22.28, and 22.32
Adopted Amendments: N.J.A.C. 7:27-1, 8 and 18.1

Proposed: September 7, 1993 at 25 N.J.R. 3963(a) (see also 25 N.J.R. 4836(a) and 26 N.J.R. 793(a)).

Adopted: September 1, 1994 by Robert C. Shinn, Jr., Commissioner Department of Environmental Protection.

Filed: September 7, 1994 as R.1994, d.502, **with substantive and technical changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3) **and with proposed N.J.A.C. 7:27-8.14 through 8.17, 22.8, 22.20 through 22.26, 22.30 and 22.31 not adopted.**

Authority: N.J.S.A. 13:1B-3, 13:1D-9, and 26:2C-1 et seq.

DEP Docket Number: 46-93-08/156.

Effective Date: October 3, 1994.

Operative Date: October 31, 1994.

Expiration Date: Exempt.

The New Jersey Department of Environmental Protection (Department) herein adopts portions of the Air Pollution Control Operating Permits rules, and revisions to the Preconstruction Permits rules, which were proposed on September 7, 1993 at 25 N.J.R. 3963(a). The operating permits rule adoption is required by the Federal Clean Air Act and by rules promulgated by the U.S. Environmental Protection Agency (EPA) at 40 CFR Part 70 (Part 70). The Part 70 rules dictate the minimum requirements of the operating permit program.

Two companion rule adoptions appear in this issue of the New Jersey Register. One contains amendments to N.J.A.C. 7:27A-3, to establish penalties for violations of Subchapter 22, and penalty amounts for facilities with continuous monitoring systems (CMS). The other contains amendments to the Department's emission statement rules at N.J.A.C. 7:27-21. Some of the amendments proposed to Subchapter 21, which deal only with operating permit facilities, are not being adopted at this time; they will be reproposed along with sections of the operating permit rules.

The Department is not adopting all of the provisions proposed in September 1993. Several important issues arose during the review of the public comments on the rule proposal. Some of these issues are adequately resolved through clarifications of the rule upon adoption. However, resolution of some of these issues would require changes to the proposed rule which are too substantial to make upon adoption under the New Jersey Administrative Procedures Act, N.J.S.A. 52:14B-1 et seq., and the implementing rules of the Office of Administrative Law at N.J.A.C. 1:30-4.3. Therefore, some sections of the 1993 proposal are expected to be reproposed on or before November 7, 1994. The Department will hold a public hearing on the reproposal and will accept written comments.

Summary of Hearing Officers's Recommendations and Agency Response:

Two companion proposals to the operating permits proposal were published in the September 7, 1993 issue of the New Jersey Register, one proposing penalties at N.J.A.C. 7:27A-3 for violations of these proposed rules, and one at N.J.A.C. 7:27-21, requiring yearly emissions reporting for those subject to these proposed rules. The Department held a joint public hearing on all three proposals on October 12, 1993 at the Department's public hearing room in Trenton, New Jersey. Then Assistant Commissioner Richard Sinding served as the hearing officer. Five people spoke at the hearing.

After reviewing the oral testimony and written comments submitted at the hearing, Assistant Commissioner Sinding recommended that the Department review the types of changes which can be made at a permitted facility and try to minimize any delay and paperwork required for each change; clarify the portions of the rule which address the replacement of existing equipment at permitted facilities; examine the interaction of Subchapters 8 and 22 and minimize delays caused by the application of both programs to one facility or action; ensure that the rules are consistent with the Federal operating permits rule; and examine the applicability provisions to ensure that no pollutant or facility is unnecessarily regulated beyond Federal requirements or in a way that does not benefit the environment.

In response to these recommendations, the Department plans to revise many of the provisions regarding permit modifications and operational flexibility. Because these planned revisions would constitute substantial changes on adoption, they will be made in an upcoming proposal of amendments to Subchapter 22. In addition, the Department has begun the process of separating the existing preconstruction permit program in Subchapter 8 from the new operating permit program in Subchapter 22, in the interests of clarity and simplicity.

Interested persons may inspect a copy of the hearing record, or obtain a copy for a fee, by contacting:

Janis Hoagland, Administrative Practice Officer
Department of Environmental Protection
Office of Legal Affairs
401 E. State Street
CN 402
Trenton, New Jersey 08625-0402

Summary of Public Comments and Agency Responses:

In general, this rule adoption includes the portions of Subchapters 1, 8, and 22 which are needed to begin implementing the operating permit program. Adoption of these sections will allow the Department and the regulated community to move forward with the operating permit program in order to comply with the Federal Clean Air Act (CAA).

Specific sections being reserved in this adoption are N.J.A.C. 7:27-22.8, Air quality simulation modeling and risk assessment; N.J.A.C. 7:27-22.20 through 25, which deal with permit modifications or "operational flexibility"; N.J.A.C. 7:27-22.26, MACT and GACT standards; N.J.A.C. 7:27-22.30, Renewals; and N.J.A.C. 7:27-22.31, Fees. The fee section of Subchapter 22 will be reproposed, in substantially the same form as it was proposed in September 1993, with minor revisions in response to public comment. The remaining Subchapter 22 rule sections not adopted herein are expected to be reproposed in six to eight weeks, with changes aimed at increasing industry flexibility and certainty. In particular, a substantial reworking of the operational flexibility sections will appear in the upcoming reproposal.

Relationship of Subchapters 8 and 22

Many commenters were concerned by the Department's linking of Subchapter 8, Preconstruction Permits, and Subchapter 22, Operating Permits, and felt that the interaction of the two rules may cause duplication of effort, confusion, and delay in the permit review and issuance process. Because there are many actions that would be subject to both subchapters, the Department had created a combined permitting system in order to minimize duplication and delay. However, the combined system included many cross references between the two subchapters, and required a facility operator to consult two subchapters with two different sets of complex regulatory requirements. The confusion caused by this proposed new structure outweighed the streamlining benefits of the combined system. Therefore, the Department intends to separate the two programs, and remove the cross references between the two subchapters. Some of the rule changes necessary to accomplish this are adopted herein, and some will be included in the upcoming reproposal.

The reproposed subchapters will allow each subchapter to stand alone so that a facility subject to one subchapter would only have to consult that subchapter to determine all permitting requirements which apply. It is anticipated that Subchapter 22 will be permitting rules for major stationary sources and will incorporate preconstruction permit requirements from Subchapter 8. Subchapter 8 will become permitting rules for minor sources and will retain the existing permit and certificate requirements.

Another provision of the September 7, 1993 proposal, at N.J.A.C. 7:27-22.3, required that a preconstruction permit approval be included in an operating permit application in order for the operating permit application to be considered administratively complete. The Department has developed a streamlined permit review plan in which both permit reviews would use the same application form, and review for the operating permit requirements would proceed simultaneously with the review for the preconstruction permit requirements. This will be a "seamless" permitting process whereby a facility's application for both preconstruction and operating approval will be reviewed simultaneously as one application.

Subchapter 8 Permits and Certificates

This adoption includes only portions of the amendments proposed to Subchapter 8, reflecting the above-described decision, in response to concerns raised during the comment period, to separate Subchapter 8 from Subchapter 22. Although the Department had planned to use a combined permit review process for facilities subject to both subchapters, commenters felt that having to consult applicability and compliance requirements set forth in two different subchapters would be too confusing and time consuming (see discussion of the relationship of the two subchapters above). Therefore, this adoption is the first step towards separating the Subchapter 8 preconstruction permit requirements from the Subchapter 22 operating permits rule provisions. Further steps toward this goal will be made in the upcoming reproposal of sections of Subchapter 22, and in future regulatory actions by the Department.

Most of the proposed amendments to Subchapter 8 are not being adopted because they depended on the linkage between Subchapter 8 and Subchapter 22. The current rules at N.J.A.C. 7:27-8 will therefore continue in effect. The exceptions to this are found mainly in N.J.A.C. 7:27-8.2, Applicability, which is being adopted substantially as proposed, because it includes several important clarifications and simplifications.

Despite the fact that this adoption will result in few changes in current Subchapter 8, the adoption may appear somewhat confusing because of the conventions of rule promulgation. These conventions dictate that the adoption indicate what has been changed from the text proposed in September 1993, rather than what has been changed from the currently effective Code. For example, many amendments to Subchapter 8 proposed in 1993 were correlated with proposed Subchapter 22 provisions, and now must be removed because the subchapters will no longer be linked. To retain a provision found in the currently effective Subchapter 8, but proposed for deletion in the 1993 proposal, the Department must show the provision as an addition to the proposal in this adoption. Thus, it may appear that the Department is adding a provision to the Code, when in fact the Department is merely refraining from deleting it, thus leaving the Code as it was prior to the proposal.

Applicability

As mentioned above, most of the proposed changes to the applicability section of Subchapter 8 are being adopted as proposed. However, the requirement that a permit be obtained for equipment emitting certain levels of certain Hazardous Air Pollutants (HAPs) is not being adopted. In addition, the proposed amendment to the definition of "substantial component," which had considerable bearing on the applicability of the permit program, is not being adopted. The proposed definition would have meant that any burner with a rated heat input of 10 million BTU per hour or greater would be a substantial component, and thus any change to it would require a new permit.

Fees

The Department had proposed to amend the fee schedule for preconstruction permits. The proposal lowered certain fees, and established fees for environmental improvement pilot test approvals and for certain changes to permits (for example, seven-day-notice changes). This adoption includes all of these proposed amendments except those which added fees for changes to permits. Also, the date upon which a facility may stop paying preconstruction permit fees and begin paying only operating permit fees is being changed to correspond to that date as set forth in the operating permit rule.

Subchapter 22 Operative Permits

As mentioned above, many important issues arose during the public comment period regarding Subchapter 22, and therefore, some portions of the rule are not being adopted, but will be reproposed. Following is a discussion of the key issues concerning Subchapter 22.

Applicability

The proposed new rules set threshold levels for a facility's potential to emit air contaminants which, if a facility meets or exceeds these threshold levels, will trigger the requirement for an operating permit. It also stated, at N.J.A.C. 7:27-22.2(a)1 that fugitive emissions must be included in the calculation of a facility's potential to emit. This requirement is somewhat more stringent than the Federal operating permits rule, set forth at 40 CFR Part 70 (referred to herein as "Part 70"), which requires fugitive emissions to be included in this calculation only for facilities in 28 listed industries. After the Department published its proposal, the United States Environmental Protection Agency (referred to herein as "EPA") published guidance which has further narrowed this requirement by reducing the list of air contaminants for which fugitives must be included. In response to this new EPA guidance and substantial comment from regulated industries, the Department will repropose this provision to only require that fugitive emissions be included in calculations of potential to emit for the facilities and contaminants as required by EPA.

The proposal also included a provision at N.J.A.C. 7:27-22.2(a)2 which required permits for all facilities subject to National Emission Standards for Hazardous Air Pollutants (NESHAPs). Again, this is somewhat more stringent than Part 70, which does not require permits for NESHAP sources until the EPA completes a rulemaking to determine how the operating permit program should be structured for non-major facilities. In response to comments from the regulated community, the Department reviewed the number of facilities its proposed provision would affect, and concluded that the requirement could be deleted without significant detriment to the environment. In addition, deleting this requirement will ease slightly the administrative burden this permit program creates for the Department. Therefore, the reproposal will delete this requirement. The requirement will, of course, be adopted in the future upon EPA rulemaking as stated above.

Application Contents

The proposal included provisions at N.J.A.C. 7:27-22.6, Application contents, which divided source operations at a facility into three categories: exempt activities, insignificant source operations, and significant source operations. Exempt activities would not be included in an operating permit application. Both insignificant and significant source operations must be included in an operating permit application but a much higher degree of detail is required for significant source operations.

The comments reflect substantial concern and confusion over the distinction made between insignificant and significant source operations. Many commenters believed that the provisions at N.J.A.C. 7:27-22.6 would make many source operations subject to operating permit requirements which had never been subject to the Department's preconstruction permit requirements.

Provisions at N.J.A.C. 7:27-22.6(e) have been clarified to better define which source operations at a facility can be classified as insignificant. Source operations which are not subject to an applicable requirement, are not listed in N.J.A.C. 7:27-8.2(a), and are not an exempt activity per N.J.A.C. 7:27-22.6(c), may be claimed as insignificant. A number of detailed provisions in N.J.A.C. 7:27-22.6(e), borrowed from Subchapter 8, have been deleted and replaced with these simpler provisions.

Many commenters suggested additions to the exempt activities listed in N.J.A.C. 7:27-22.6(c). The Department agrees that some of these source operations should be considered exempt. However, adding other activities to those in the proposed rule would be considered too substantial a change to be made upon adoption and therefore will be addressed by the Department in the upcoming reproposal. A few changes have been made to this section to clarify activities already considered exempt in the proposed rule.

The reproposal will also include adjustments to Tables A, B, C and D in Appendix I to Subchapter 8. These tables determine de minimis levels of emissions, below which a contaminant need not be listed on a permit application. The reproposed tables will adjust these de minimis levels based on recent updates in the available data on the toxicity of these air contaminants, and on recent guidance from EPA.

Permit shield

In the proposed new rules, the Department included the "permit shield" provided for in Part 70. A permit shield is a permit provision which states that compliance with the relevant conditions of the operating permit is considered compliance with the facility's applicable requirements. To be consistent with Part 70, the Department has extended the shield as far as EPA allows in Part 70. These issues are described in detail in the response to comments on N.J.A.C. 7:27-22.17, Permit shield, below.

Operational Flexibility and Permit Modifications

The most controversial sections of the proposal were those dealing with changes to an existing operating permit, also know as "operational flexibility" or "permit modifications," proposed at N.J.A.C. 7:27-22.20 through 22.25. A great many comments were received from the public, regulated industries, and EPA. Often, a commenter's views were in direct conflict with another commenter's views. Many of the comments indicated a good deal of confusion over what degree of flexibility the Department is authorized to provide to permittees under Part 70. Accordingly, the Department has engaged in extensive meetings and discussion with representatives of regulated industry, environmental groups, and EPA. Based on these meetings and discussions, the Department is developing a framework for operational flexibility which will maximize industry flexibility while protecting air quality, and ensuring consistency with Federal requirements. However, because this framework is still in the developmental stages, and will require substantial changes to these sections of the rules, the operational flexibility sections cannot be adopted at this time. The relevant sections are reserved in this adoption, and will be reproposed.

Emissions Trading

In this adoption, many clarifications are made to the emissions trading section, N.J.A.C. 7:27-22.28. However, the section has not been expanded to include trading between facilities, despite many comments in support of this concept. Even though the Department intended to allow such trading under certain circumstances, the proposal did not make this clear. The reproposal will include such an expansion. The most likely way N.J.A.C. 7:27-22.28 will be reproposed to allow inter-facility emissions trading will be by deleting the phrase "intra-facility" from the term "intra facility emissions trading." As adopted, the section remains limited to intra-facility emissions trading.

Fees

In this adoption, the Department is not adopting N.J.A.C. 7:27-22.31 regarding fees. It expects to repropose the fee provisions in the next issue of the New Jersey Register. In that reproposal, some changes will be made to address a suggestion, raised in comments, that the Department add a cap on application fees and a de minimis actual emissions level below which fees are not required. By reproposing the fee section, the Department will retain the flexibility to act quickly should the State Legislature enact a statute authorizing an emissions-based fee. If the Legislature does not so act, the Department will proceed to adopt an equipment-based fee as necessary to meet the CAA mandate to charge adequate fees to support the program.

The Department received oral and written comments from 43 persons. At the request of several commenters, the public comment period was extended to November 23, 1993. See 25 N.J.R 4836(a).

The following persons commented on the proposal:

1. Raymond A. Tripodi, P.E., Manager of Licensing and Permits—Environmental Affairs Department, Public Service Electric & Gas Company
2. Frank A. Rogers, Air Quality Meteorologist, Mobil Research and Development Corporation
3. Hank Van Handel, Director of Environmental Affairs, Bayway Refinery Company
4. Lisa Fleming, Environmental Health Specialist, City of Vineland Electric Utility
5. Diana L. Forman, Superintendent—Environmental Control, Merck & Co., Inc. and/or Diane M. Krell, Site Environmental Engineer—Environmental Control, Merck & Co., Inc.
6. Joseph R. Cerchiaro, Chairman—Environmental Subcommittee, New Jersey Health Products Council
7. Vincent F. Bennett, Environmental Engineer, Schering-Plough Corporation
8. Hal Bozarth, Executive Director, Chemical Industry Council of New Jersey
9. Geoffrey L. Oberhaus, Environmental Engineer, Occidental Chemical Corporation
10. Dr. Jim Sinclair, P.E., First Vice President, New Jersey Business & Industry Association
11. Lenora Strohm, Staff Project Engineer, General Motors
12. Robert W. Niemi, P.E., Environmental Control Engineer, Ford Motor Company
13. Paul Reinermann III, Environmental Specialist, U.S. Generating Company
14. John Yavorsky, Ph.D., P.E., Ambient Engineering Inc.
15. Russell D. Potter, P.E., Finch Consulting Corporation
16. Wheaton Industries, Inc. (submitted on its behalf by Brendan K. Collins, Ballard Spahr Andrews & Ingersoll)
17. William M. Hanna III, Mechanical Engineer and Joanne J. Scully, P.E., Vice President—Engineering, Recon Systems Inc.
18. Martin M. Gurvitch, P.E., Manager—Environmental Control Department, FMC Corporation
19. Maureen A. Healey, Director—Federal Environmental and Transportation Issues, The Society of the Plastics Industry, Inc.
20. Philip D. Carnevale, President, Institute of Scrap Recycling Industries, Inc.—New Jersey Chapter
21. Gary Garetano, Assistant Director, Hudson Regional Health Commission
22. Ronald Harkov, Ph.D., Program Director, ERM and Mary Beth Koza, Environmental Manager, Bristol-Myers Squibb
23. James W. Klickovich, Coordinator—Environmental Affairs and Charles E. Ash, Engineer—Environmental Affairs, Atlantic Electric
24. Neale R. Bedrock, Lowenstein, Sandler, Kohl, Fisher & Boylan
25. Cheryl E. Searcy, Consultant—Environmental Affairs, DuPont Chemicals
26. Francis A. Ferraro, Director—Environmental Engineering, Wheelabrator Environmental Systems Inc.
27. Kenneth Eng, Chief—Air Compliance Branch, Air and Waste Management Division, United States Environmental Protection Agency—Region II
28. Mirah A. Becker, Environmental Program Manager, Ogden Projects, Inc.

29. Glenn Roberts, Director—Government Relations, Flavor & Extract Manufacturers Association of the United States and Fragrance Materials Association of the United States

30. James A. Connolly, P.E., Senior Environmental Advisor, Hoffman-La Roche

31. Thomas J. Detweiler, Associate Director, Chemical Industry Council of New Jersey

32. Industrial Advisory Group Operating Permit Work Group (submitted on behalf of, by Diana L. Forman)

33. D. J. Campbell, Refinery Regulatory Advisor and R. M. Ivory-Moore, State Regulatory Advocate, Mobil Oil Corporation

34. John A. Maxwell, Associate Director, New Jersey Petroleum Council

35. Carolyn Seifried, Manager—Environmental Compliance, Warner-Lambert Company

36. Richard Dunk, Ph.D. and John J. Scassellati, D.A., Jersey Central Power & Light Company

37. Clean Air Action Corporation (submitted on behalf of, by David P. Novello, Freedman Levy, Kroll & Simonds)

38. Wendy L. Hileman, Director—State Government Affairs-NE, BP America

39. Irwin S. Zonis, Peridot Chemicals (New Jersey), Inc.

40. James A. Shissias, General Manager—Environmental Affairs, Public Service Electric and Gas Company

41. Arlene Borowsky, Senior Program Manager, ENSR Consulting and Engineering

42. Hassan Nekoui, Manager, Environmental Services (Air), Sandoz Pharmaceutical Corporation

43. Barbara Warren, Project Director—New York Toxics Project, Consumer Policy Institute

The following is a summary of the timely submitted comments and the Department's responses. The number(s) in parentheses after each comment identifies the respective commenter(s) listed above.

General Comments

1. COMMENT: In regard to N.J.A.C. 7:27-8, these commenters are encouraged by the amount of public participation they have recently seen in New Jersey's regulatory development process, and encourages DEPE to continue efforts in educating the public on regulatory developments in order to obtain well-informed public comments. In regard to N.J.A.C. 7:27-22, several commenters expressed appreciation for the opportunity to comment on this important regulation. Several commenters appreciated the work groups, and hope that this will continue. One commenter specified their interest in developing utility-specific permit application forms through the utility air permits work group. Numerous commenters offered assistance for this and future regulatory efforts. (1, 3, 4, 5, 6, 7, 11, 12, 13, 14, 16, 17, 19, 20, 21, 23, 29, 30, 31, 31, 32, 36, 37, 40, 41)

RESPONSE: The Department appreciates these comments in support of its rulemaking efforts.

2. COMMENT: Some commenters stated that DEPE has in recent years implemented a good process in rulemaking, including public workshops, workgroups, and interested party review, that was followed for the VOC and NO_x RACT rules but not for this proposed rule. Two commenters were disappointed that no written drafts of the regulations were available prior to their actual proposal, resulting in the proposed regulations being a surprise to those who worked in the development process. While there were workshops and a Work Group, DEPE steered the Group's attention solely to the development of application forms. DEPE is encouraged to reassemble this group and to work diligently together to develop a rule that meets the requirements of Title V. (3, 4, 33, 40)

RESPONSE: The Department has engaged in extensive discussion with the regulated community regarding the technical issues raised by the operating permits rule. Throughout the rule development process, the Department conducted regular meetings with at least two workgroups and shared information regarding these rules. To the extent that the technical discussions with the public may have been more detailed during the development of the VOC RACT and NO_x RACT rules, this reflects the fact that the operating permit rule is a procedural framework for regulation, which focusses less on technical issues and more on administrative issues. In addition to the above workgroups, the Department conducted two informational workshops and made many presentations at conferences and meetings. The Department has continued to work with the operating permits general issues workgroup since the close of the comment period. Written drafts were not made available prior to the proposal because of the tight deadline for completion of the rules, and because of the difficulty of ensuring fair access to such drafts for all interested parties in a short period of time.

3. COMMENT: These commenters commended the Department for their time and effort in developing the proposed regulations. Several commenters noted that the proposals are thoughtfully considered, organized and written, and consistent with Federal guidance. Another commenter acknowledged the pressure DEPE has been under to develop numerous regulations in a relatively short time period. One commenter expressed support for the substance of what the Department is proposing, while another commenter believes DEPE has developed a credible program that will provide the framework for sound regulation. DEPE's proposed changes continue the trend of improvement seen in past revisions of Subchapter 8. The relaxation of the requirement for permitting due to the use of air pollution control equipment should ease the regulatory burden on industry and allow DEPE to focus its resources on more important issues. (17, 1, 3, 5, 12, 43, 19, 38, 13, 37)

RESPONSE: The Department acknowledges and appreciates the supportive comments.

4. COMMENT: We are happy to see the continuation of the preconstruction permitting program and its applicability to modifications. (43)

RESPONSE: The Department appreciates this comment in support of the rule.

5. COMMENT: This commenter believes that DEPE should identify any requirements in Subchapter 8 that can be reduced. For example, some of the activities requiring minor modifications should be in the seven-day-notice category. (4)

RESPONSE: The Department has thoroughly reviewed Subchapter 8 in an attempt to reduce regulatory requirements, as suggested by the commenter. Much of this review has been shared with the regulated community and environmental groups as part of an ongoing effort to improve the entire permitting program, including both Subchapter 22 and Subchapter 8. As a result of the numerous comments received during the public comment period, the Department intends to repropose the sections of Subchapter 8 relating to modifications of preconstruction permits in order to provide facilities more flexibility.

6. COMMENT: Throughout this rule, the phrase "preconstruction permit or certificate" should be rephrased to "preconstruction permit or operating certificate" to eliminate confusion. The terms "certificate" and "operating certificate" are used interchangeably, but only the latter term is defined, so only it should be used. DEPE uses the terms "permit" and "pre-construction permit" interchangeably. Only the defined term, "pre-construction permit," should be used. (40, 13)

RESPONSE: The suggestion to use the term "operating certificate" has merit, and the Department has made this change by amending the definition of the term "operating certificate" to include the term "certificate." As to the term "permit," the Department has attempted to use this term only when it clearly references a term used previously in the same sentence or paragraph, so as to make it clear whether a pre-construction permit or an operating permit is being referred to. Although the commenter has not pointed out specific provisions which are confusing, the Department has made every effort to ensure the clarity of this adoption document.

7. COMMENT: This commenter recommends that DEPE establish an intra-facility emission trading permitting procedure within Subchapter 8 for those sources not subject to Subchapter 22. This would be particularly valuable for facilities wishing to take an enforceable emissions cap to avoid major source classification. (22)

RESPONSE: Because this was not part of the proposal, the Department cannot adopt such a program at this time. However, the Department is examining various emission trading options, and will include this in its considerations for possible future rulemakings.

8. COMMENT: Several commenters requested that the comment period be extended at least an additional 30 days. Furthermore, one commenter requested that DEPE schedule at least one additional public hearing. Several commenters expressed appreciation for the extension of the comment period granted by DEPE. (8, 5, 6, 7, 1, 3, 4, 34)

RESPONSE: In response to commenter's requests, the Department extended the comment period on the proposal until November 23, 1993. However, rather than an additional public hearing, the Department held an informal public roundtable, open to the public.

9. COMMENT: These commenters recommend that DEPE adopt the operating permit program outlined by EPA, as is being done by other

states. This proposal fails to streamline and coherently implement State and Federal air permitting requirements. Instead, it ignores the intent of the Clean Air Act and imposes numerous substantive requirements without attendant environmental benefits, including requiring that DEPE have prior notification of virtually every activity. DEPE has woven the existing Subchapter 8 into Subchapter 22, rather than basing its notice requirements on significant emissions increases, resulting in a complete loss of operating flexibility. Operations which may be freely undertaken today, and which other states will continue to allow, will now have to be stopped until notice is provided. (12, 38, 40)

Another commenter states that DEPE has attempted to combine two permitting systems (Federal and State) which are incompatible, so that the operating permit program goes beyond the intent of Title V and Part 70, and eliminates flexibility. Separating the two subchapters would result in the following improvements: restrictions on operating flexibility may be eased, delays in the review process will be avoided, a more logical flow to the permitting process will be established, the length of the various eligibility and applicability lists will be reduced, and the potential for "short circuits" between the subchapters can be eliminated. Alternatively, some commenters recommend a single subchapter for major facilities, with requirements for a State of the Art (SOTA) analysis within the modification sections. Under the proposed combined rule, preconstruction review will preclude any minor modifications from occurring rapidly, placing New Jersey industry at a competitive disadvantage to sources in jurisdictions with streamlined minor modification procedures. The Department should define the term "permit" to include "operating permit as per Title V of the CAA" or, in the alternative, waive the Subchapter 8 preconstruction permit requirements for sources subject to the operating permit. These commenters believe that the DEPE has the authority to do this. In the event the Department determines it does not have the authority, it must propose appropriate legislation. The proposed regulation precludes emission trading as intended by the CAA, and renders an emission cap and operational flexibility meaningless. (5, 6, 7, 22, 23, 29, 31, 32, 33, 34, 1, 4, 25, 40, 35)

RESPONSE: In response to this comment, the Department is reconsidering the relationship of the Subchapter 8 provisions and the Subchapter 22 provisions. The changes to the rules contemplated by the Department that are needed to address this comment are substantial changes and cannot be adopted at this time. The Department intends to propose the substantial changes within four to eight weeks of this adoption. These changes will unveil a newly re-engineered air permitting program.

10. COMMENT: Another commenter stated that the use of fugitive emissions, relatively low threshold de minimis emission rates, and early incorporation of non-major New Source Performance Standards (NSPS) and National Emission Standards for Hazardous Air Pollutants (NESHAP) would require additional resources of the regulated community as well as DEPE, with marginal environmental benefit. One commenter urged DEPE to take advantage of all opportunities allowed by EPA to provide flexibility for the State's industrial facilities. (12, 38, 40)

RESPONSE: The Department is attempting to maximize flexibility for facilities with operating permits. With respect to non-major facilities subject to federal NSPS or NESHAP regulations, the Department will be deferring the requirement for these facilities to submit operating permit applications, consistent with 40 CFR 70. Regarding the de minimis threshold emission rates, please see the response to Comment 161 dealing with this subject. For responses on comments regarding fugitive emissions, please see the responses to Comments 160 and 161.

11. COMMENT: This commenter requests that DEPE prepare an operating permit guidance manual, updated annually, and present workshops, to aid the regulated community in understanding the complexities of the new permitting program. With such a manual, DEPE staff would spend less time answering questions and working to obtain complete applications. (28)

RESPONSE: The Department plans to develop such a manual. In addition, the Department will continue its current practice of holding regular training seminars for the public regarding permitting.

12. COMMENT: This commenter requests that DEPE differentiate among strictly State, State-interpreted Federal requirements, and those Federal requirements taken directly from the 40 CFR Part 70 regulations in the final New Jersey Title V program rules. (28)

RESPONSE: Each operating permit will include a list of each applicable requirement with a reference to whether it is a State only requirement or a Federal requirement, as required by EPA's Part 70 rules. Applicable requirements are determined Federally enforceable by viewing the Federal Register to find those provisions that are approved by EPA in the New Jersey State Implementation Plan (SIP). To aid applicants in determining which requirements are Federally enforceable, the Department intends to publish a "guide to applicable requirements" along with the operating permit application forms.

13. COMMENT: Will DEPE expect existing permitted facilities to resubmit information and reports that were submitted during the original permit process or subsequent permit renewals? The reporting requirements for initial permit applications, complete permit applications, and all other reporting requirements should be summarized in one table instead of scattered throughout the regulation. (13, 28)

RESPONSE: The EPA Part 70 rules require existing facilities to submit operating permit application forms whether the information required by Part 70 is already contained in a State permit or not.

14. COMMENT: One commenter noted that sources with approved batch policy permits should be allowed to use this existing format rather than essentially re-permitting the entire process unit. (5, 22, 29)

RESPONSE: Subsequent to the proposal of Subchapter 22, the Department established an operating permit application forms workgroup, consisting of members of the Department and interested members of industry, with the intent of developing forms that comply with the requirements of Subchapter 22 while minimizing the additional resources needed to implement and comply with the operating permit program. The workgroup's finding with respect to batch plants was that the existing format for batch plants could be simplified and incorporated into the operating permit. The initial operating permit application forms are expected to be published by the Department shortly after this rule adoption.

15. COMMENT: The Resource Recovery Facility Task Force has developed procedures for allowing higher emissions of certain pollutants during periods of facility start-up, shutdown, and emergency malfunctions, as allowed by P.L. 1993, c.89 (the Sinagra Bill). This proposed rule is silent on P.L. 1993, c.89, and appears to make implementation of the Task Force procedures very difficult. The rule should clearly state that these policies may be implemented, and that periods of warm-up of a furnace or boiler are not a change of operations, even if it occurs with a different fuel, that is, natural gas for warm-up versus municipal solid waste (MSW) during normal operations. (26)

RESPONSE: The proposal does incorporate the requirements of the Sinagra bill at N.J.A.C. 7:27-22.16(l), including the affirmative defense afforded by the bill. In addition, applicants for operating permits are to include a discussion in their applications and proposed permit provisions to specifically address start-up, shutdown, and maintenance conditions. See N.J.A.C. 7:27-22.6(i)

16. COMMENT: Several commenters requested that the DEPE withdraw and repropose the regulations after review and incorporation of comments. One commenter suggested that DEPE focus on sections of the regulations that govern the submission of initial applications and reserve the sections on modifications, to provide DEPE with additional time. (4, 5, 32, 33, 34, 40)

RESPONSE: As stated in the introduction to this rule adoption, various sections of the rule are not being adopted and have been reserved with the intent of reproposing these sections in the near future. Please read the introduction for a discussion of the sections that will be reproposed.

17. COMMENT: Many commenters believe the regulations will unnecessarily increase the burden on the existing regulated community, provide an unfair disadvantage to business in New Jersey, and offer minimal improvement on the quality of the environment. (5, 6, 7, 12, 13, 22, 23, 33, 34, 32)

RESPONSE: The State is required to implement an operating permit program pursuant to 40 CFR 70. The provisions of these rules do add additional administrative requirements to both the regulated community and the regulators. If the state does not implement the Federal rules, the burdens would be worse as EPA would implement Federal sanctions, including the loss of Federal highway funding, and severe limits would be imposed on construction of new industries in New Jersey. EPA would be also required by the Federal Clean Air Act to implement a Federal operating permit program. This would cause an even greater negative economic impact on the State's economy.

18. COMMENT: Another commenter finds that the lengthy and overlapping lists of eligibility cut-offs are confusing, the cross references

are hard to follow, and many provisions must be consulted to determine how to comply. These things may cause inadvertent noncompliance. (4, 5, 6, 7, 12, 13, 22, 23, 32, 33, 34, 40, 23)

RESPONSE: The Department has attempted in the adoption to clarify any portions of the rule which were confusing. Although cross references may be somewhat confusing, they eliminate a great deal of duplication, and thus ultimately cause less confusion than would a rule without cross references. Furthermore, as stated in the introduction of this rule adoption, the Department intends to repropose Subchapters 8 and 22 so that they each stand alone. This will further reduce confusion as any cross-references between the two subchapters would be minimized, if not eliminated.

19. COMMENT: Another commenter notes that by rolling Subchapter 8 into the Subchapter 22 program through the definition of "administratively complete," DEPE has added another layer of bureaucracy that will be inordinately time-consuming and place an unfair burden on the competitiveness of New Jersey industry. Several commenters stated that the resulting program goes well beyond the CAA and Part 70, resulting in a complete loss of operational flexibility. (5, 23, 32, 33)

RESPONSE: The Department disagrees that the Subchapter 22 definition of an administratively complete application will place an unfair burden on New Jersey industry. Although an approved Subchapter 8 permit is required for an administratively complete permit application under Subchapter 22, both applications can be submitted simultaneously, and the Department will review them simultaneously. Only the most complex permit applications will require a longer review than that provided for under Subchapter 8. It is not clear in what ways the commenter feels that the operating permit program goes beyond the CAA and Part 70. Therefore, the Department is unable to respond to the second portion of the comment, except to say that the Department believes that its operating permit program complies with Federal requirements.

20. COMMENT: One commenter feels that there is a double jeopardy presented, in that a violation of one subchapter will probably be a violation of the other, and permittees would be subject to penalties for both. (4)

RESPONSE: As stated in the introduction of this rule adoption, Subchapters 8 and 22 are intended to be reproposed such that a facility would be subject to only one of these subchapters. The separation of Subchapters 8 and 22 would eliminate any possibility of double jeopardy.

21. COMMENT: The proposed rule allows permittees to implement administrative amendments, seven-day-notice changes, and minor modifications prior to receiving DEPE's approval of these applications. However, if DEPE ultimately denies one of these applications, there will be a lapse between the time of denial and the time when the permittee is made aware of the denial (and sometimes, a lapse until the permittee can undo the change). A permittee should not be subject to penalties during either of these periods. Instead, denial should not be effective until the notice of the denial is received by the permittee. Also, a permittee should have 30 days from the date of the receipt of the denial to resume compliance with the original terms of the permit or to file an appropriate application. If DEPE believes that it does not have this option under the Federal rules, the Department should notify the applicant in advance of a date certain for denial of its application. For example, DEPE could notify an applicant for an administrative amendment that its application will be denied within 30 days from the date of the notice. (16)

RESPONSE: The "at risk" type of permit procedure to which the commenter refers was repeatedly requested by members of the regulated community in workshops, hearings and meetings with the Department and is consistent with the flexibility provisions of Part 70. The procedure provides permittees with flexibility to make small changes in operation, while providing the Department the assurance that important changes will still be submitted to the Department for approval before they are made. The permittee's flexibility is provided by waiving pre-approval rights on these smaller changes. The assurance that the procedure will not be abused is provided by the risk of penalties which the permittee will incur if a significant change is submitted through the at risk procedure. The commenter's suggestion would remove any risk to the permittee which is contrary to Part 70. A permittee may seek an affirmative approval of a change through the minor modification procedures which would provide the commenter the assurances being sought.

22. COMMENT: This commenter believes that the Department's estimates of cost to the applicant are greatly understated. The commenter estimates that $4.5 million per year will be spent for its facility on permit-related activities which are not aimed at emissions reduction. This figure is more than 20 times DEPE's estimate. (40)

RESPONSE: The cost to applicants was estimated by the Department by utilizing EPA's data of the average costs on a national basis. It would be impossible for the Department to estimate costs for all affected facilities since each facility's situation is unique. The Department acknowledges the commenter's estimate of the cost for its facility.

23. COMMENT: A commenter expressed concern over the economic impact of the proposed regulations on the petroleum industry, and the possibility that some companies might close refineries or portions of them because of rising environmental costs. Another commenter believes that the proposed regulations will have an adverse impact on pharmaceutical facilities, and specifically on research and development in New Jersey. (6, 42, 33, 34)

RESPONSE: The Department is aware that these rules will not be without economic impact on the refinery industry as well as many others. However, the Department has no discretion under the Federal Clean Air Act and must adopt an operating permit rule.

24. COMMENT: Many startup, shut down, and bypass or malfunction scenarios will be explicitly identified for the first time in an operating permit application. Under current DEPE guidance, these prior existing situations could be subject to PSD permitting when these operations are first identified in the operating permit application. It is inappropriate for newly identified but existing operations that are already included in the State ambient air inventory to have to undergo PSD permitting. DEPE should only undertake what is Federally mandated. (3)

RESPONSE: EPA's Part 70 rule requires operating permits to include Federal Prevention of Significant Deterioration (PSD) requirements. The decision on whether start-up, shutdown, and malfunction emissions should be included to determine PSD applicability will be made in accordance with PSD regulations and EPA guidance.

25. COMMENT: There are many Section 313 Toxic Release Inventory (TRI) toxics as well as extremely hazardous substances that are not currently on the hazardous air pollutant (HAP) list. We hoped New Jersey would have a more inclusive list of air toxics in their program. We would like to hear more about what the State plans to submit under 112(l). (43)

RESPONSE: The Department has not yet proposed rules under section 112(l) of the CAA (42 USC 7412(l)), because EPA has not yet released a final rule providing guidance to the states on what it should contain. When the Department proposes these rules, an opportunity for public comment will be provided.

26. COMMENT: Whenever limited operation is a key component of achieving permitted allowable emissions, a written log book showing hours of operation should be required, in order to allow verification of hours during compliance inspections. (21)

RESPONSE: The Department agrees that enforceable permit conditions are required to ensure compliance. Although a log book may be acceptable in some circumstances, alternative methods could be used such as: hour meters, fuel flow monitors, or other types of monitoring equipment that ensure operation of a source in compliance with the conditions of the operating permit.

27. COMMENT: In all cases where a chemical name is used, the CAS number should also be used to avoid confusion. (15)

RESPONSE: Not all chemicals have CAS numbers; therefore, the suggested change has not been made.

N.J.A.C. 7:27-1.4 Definitions

28. COMMENT: The commenter contends that definitions found throughout N.J.A.C. 7:27 should be consolidated into N.J.A.C. 7:27-1.4. (25, 5, 32)

RESPONSE: The Department has previously considered implementing this suggestion. However, for many persons subject to this N.J.A.C. 7:27, only a few subchapters are relevant to their operations. They keep on hand and make reference to only these relevant subchapters. Considering this, the Department determined that placing the definition of terms used in a subchapter within that subchapter is more convenient for such persons than placing all definitions in some other location. Therefore the Department has not consolidated all definitions at N.J.A.C. 7:27-1.

29. COMMENT: DEPE is to be commended on the definition of "responsible official" as an individual other than a top corporate official. However, if a regulated business does not fall under subparagraph 1iii(1), it will have to obtain approval from the DEPE in advance. Subparagraph 1iii(2) should be reworded to read as follows: "(B) The delegation of

authority to the representative whose name has been submitted to the Department. No advance Department approval is required." (33, 34)

RESPONSE: The provision to which the commenter refers covers only the cases where a corporation wants to designate as its "responsible official" a person other than the persons listed in subparagraphs 1i, 1ii, or 1iii(1) of the definition. If an entity wants to designate a person other than these apparently "responsible officials," it is important that the Department have the right to ensure that the designated person is in fact responsible. To avoid having to seek approval of its designation of a "responsible official," a regulated entity can merely designate one of the persons listed in the above mentioned subsections of the definition.

N.J.A.C. 7:27-1.31 Right to enter

30. COMMENT: With respect to N.J.A.C. 7:27-1.31(a)2, these commenters are concerned that confidentiality could be jeopardized. (7, 33, 34, 15)

RESPONSE: Confidentiality of any information that a company gives to representatives of the Department during a Departmental inspection would be protected under N.J.A.C. 7:27-1.6(a). However, the commenters are correct in pointing out that the current rules do not provide an adequate procedure by which the regulated entity can assert a claim of confidentiality regarding information that the Department's representatives have taken from the facility, for example, photographs taken by a Department inspector. To rectify this, the Department intends to propose revisions to N.J.A.C. 7:27-1.6 to establish such a procedure.

31. COMMENT: Commenters state that N.J.A.C. 7:27-1.31(a) should limit Department inspections to any reasonable time at which a facility is in operation, or to normal business hours, except during emergencies. (30, 7, 16)

RESPONSE: In general, the Department will only seek access to a facility during its hours of operation. However, if the Department has reason to suspect that a significant violation may be occurring, it needs the authority to obtain immediate access to the premises in order to cause the violation to cease and in order to gather evidence for its enforcement action. If the rule limited the Department's right to enter to "emergencies," a recalcitrant facility could, by litigating the existence of an emergency, delay the Department's ability to gain access. The Department is convinced that the cost of any such delay in terms of potential harm to human health and the environment far outweighs any inconvenience to the facility that might be caused by the need for an "off hours" inspection. Accordingly, it has not revised the rule in response to these comments.

32. COMMENT: With respect to N.J.A.C. 7:27-1.31(a)2, some commenters request that an inspector only be allowed to inspect, photograph or sketch information pertaining to the permit or piece of equipment in question. One commenter recommends that photography be limited to equipment which has already received a permit, for which a permit has been applied, or for which the inspector feels there is a need for a permit." Some commenters want limits on inspectors conducting sampling, because of trade secrecy, confidentiality, proprietary information, transportation, the right against self-incrimination, and even Federal drug laws. (11, 7, 33, 34, 5, 32, 24)

RESPONSE: There is no need to limit what an inspector can inspect, photograph, or sketch because the Department's inspectors would never have any reason to inspect, photograph, or sketch anything that they did not believe could reasonably be related to the violation of laws under its jurisdiction. As to concerns about trade secrets and other purportedly confidential information, please see the response to Comment 30 above. To the degree that persons feel that their constitutional right against self-incrimination might be compromised by providing information to the Department, or that they might be violating federal law by providing that information, they may assert those claims in response to the demand for the information. If the parties cannot at that point reach a mutually acceptable resolution of the issue, it can then be presented to a court or other appropriate forum.

33. COMMENT: With regard to N.J.A.C. 7:27-1.31(a)5, inspectors must comply with all site safety codes and practices consistent with that of the normal operation of the plant or facility. Any special equipment should be provided by the facility being inspected. Refusal by the inspector to wear required protective clothing or equipment should be considered grounds for refusal of entry into the facility or area requiring these items. (7)

RESPONSE: The Department agrees that its inspectors should follow all applicable safety codes and practices while at a facility, and it requires its inspectors to do so.

34. COMMENT: These commenters believe that N.J.A.C. 7:27-1.31(c), requiring that facility personnel assist Department inspectors, should be deleted. This requirement is not within the statutory authority of the CAA or the Air Pollution Control Act, and raises issues of corporate and individual liability for actions taken at the direction of the Department. The provision would interfere with facility operations and adversely impact collective bargaining agreements and employment contracts. Also, the Department assumes no responsibility in the cost of monitoring, and the request for "assistance" is not limited in any way. The owner or operator cannot guarantee that sampling equipment and a laboratory are "available" at the Department's discretion. The operating permit fee program should provide sufficient funds to properly administer the program, including monitoring compliance. (11, 24)

RESPONSE: The Department disagrees with the commenter that this requirement of the rule is not within the Department's statutory authority. Such assistance, if requested, is necessary for the Department to properly conduct facility inspections. In fact, owners or operators might well prefer to have designated facility staff present and involved in inspections of their facility. The word "appropriate" has been added to the rule text to clarify that not just any employee present on site is expected to assist the Department in the performance of an inspection. Rather, the Department expects that the owner or operator will designate an "appropriate" employee or representative to perform this function on its behalf. The Department anticipates that owners or operator will consider any concerns about corporate liability, facility operations and employment contracts when designating the employee.

As to the comment regarding the Department's role in the costs of monitoring at a facility, it is not the Department's responsibility to pay for the cost to the regulated community for monitoring to determine if a facility is complying with the limits set forth in its operating permit. These costs are traditionally and appropriately born by the individual permittee.

The deletion of the word "and" in the phrase "to conduct sampling and to determine" clarifies that the facility must provide sampling assistance, but need not make a lab available for analysis.

35. COMMENT: The word "any" in N.J.A.C. 7:27-1.31(c) makes this provision unrealistic. In facilities where there may be more than 500 people, it is not reasonable to expect "any" employee to provide DEPE with the appropriate assistance relative to an inspection. This section should read "any appropriate employee or representative of any owner or operator, shall, upon request, assist the Department.... (33, 34)

RESPONSE: The Department agrees with this comment, and has modified the phrase at N.J.A.C. 7:27-1.31(c) to read "any **appropriate** employee...."

N.J.A.C. 7:27-1.39 Certification of information

36. COMMENT: The commenter recommends that the certification state that: "This certification is made on behalf of (name of owner/operator/applicant/etc. located at (address)." Additionally, "on behalf of..." should appear at any signature line. (11)

RESPONSE: The Department has not made the suggested addition because it is not necessary. Regardless of whom a signatory represents, the signatory is still responsible for verifying, to the extent possible, the accuracy of information submitted to the Department. Further, the suggested language might confuse a signatory into thinking that her or his liability is somehow less than it is.

37. COMMENT: N.J.A.C. 7:27-1.39(a)1 could penalize an individual who exercised due diligence and submitted the best available information that was believed to be accurate. This section could prove to be a disincentive to correct previously submitted information for fear of criminal liability. This section should be revised to read "... I am aware that there are significant civil and criminal penalties ... for knowingly submitting false, inaccurate..." (33, 34, 41)

38. COMMENT: N.J.A.C. 7:27-1.39(a)1 and 2 go beyond the specific requirements of both the CAA and the New Jersey Air Pollution Control Act. Two commenters recommend that certification be required only by the responsible official, consistent with Part 70 of the Federal requirements. The proposed language could be interpreted to put field technicians and/or junior-level consultants in the position of assuming personal liability for work done under the aegis of a consulting organization. Only one individual should certify on behalf of the consulting organization. (11, 33, 34, 40, 41)

39. COMMENT: N.J.A.C. 7:27-1.39(a)1 and 2 should be modified to match the certification required by N.J.A.C. 7:27-21, which includes

language regarding estimations. Air permit applications include information based on estimation techniques using professional judgment, similar to emission statements. (5, 32)

40. COMMENT: Regarding N.J.A.C. 7:27-1.39(a)2, this commenter is concerned that the responsible official seems to be able to admit less than full knowledge of what is being submitted. The language should reflect the recommendations of the State and Territorial Air Pollution Program Administration (STAPPA) and the Association of Local Air Pollution Control Officials (ALAPCO) in their guidance—since responsible officials are held accountable for the accuracy of the submission, they have a "duty to conduct a reasonable inquiry into the accuracy of the information." The certification by the responsible official should include that they have examined all documents being submitted, and based on personal knowledge of the facility and its operations, its emissions and compliance, as well as careful inquiry into the accuracy of the information, etc. (43)

41. COMMENT: These commenters believe N.J.A.C. 7:27-1.39(a)2 imposes an undue and unrealistic burden on the responsible person, and is not needed. If the Department's intent is to assure that the information received is the best available information, then Section (a)1 is sufficient. If paragraph (a)2 is not deleted, then the Department should revise the language as follows: "I certify under penalty of law that I have queried those individuals responsible for obtaining this and I believe..." (33, 34)

RESPONSE TO COMMENTS 37, 38, 39, 40 AND 41: The Department is studying the recommendations of these commenters and will address these issues in the reproposal which will be published this fall. An opportunity for further comment will also be provided at that time.

N.J.A.C. 7:27-8.1 Definitions

42. COMMENT: The reference to Subchapter 22 modifications in the definition of "alteration" is unnecessary and disruptive of the permitting process. This reference should be removed. (4)

RESPONSE: The proposed new definition of alteration and the proposed deletion of the existing definition are not being adopted at this time. The existing definition of alteration will remain in this section.

43. COMMENT: These commenters believe it is imperative for the "repair or maintenance" exclusion to be returned to the definition of "alteration." (30, 33, 34, 40)

RESPONSE: The Department is not adopting the proposed changes to the alteration definition so the original definition of "alteration" remains in this section. Therefore, repair or maintenance will continue to be exempt from the definition of alteration.

44. COMMENT: The commenter appreciates the intent implied by the proposed revisions to the definitions of "amendment" and "alteration." However, this intent appears to lapse when a facility wished to physically remove a source covered under a multi-source air permit. Bureau of New Source Review personnel have officially stated that the removal of equipment constitutes a physical change which falls under the definition of alteration. Therefore, these facilities must submit a full air permit application, full application fee, and potentially subject the remaining unchanged sources to regulations and policies that did not exist when the original permit was approved. Assuming the only change is the removal of sources, it seems unfair and a waste of DEP resources to subject these permit modifications to a full permit review. (17)

RESPONSE: The Department is not changing the present definition of amendment and alteration at this time. Substantial portions of Subchapter 8 will be reproposed in four to eight weeks, and an opportunity for public comment will be provided. The Department will consider placing the "removal of a source" into the definition of "administrative amendment" at that time.

45. COMMENT: The commenter recommends that the definition of "alternate operating scenario" be further clarified to specify approval by the Department, and suggests the following language: "Alternative operating scenario" means an approved plan for operating a facility...." (11)

RESPONSE: The Department is not adopting the definition of "alternative operating scenario" at this time. The definition will be added to the reproposal of Subchapter 8 and will be reconsidered at that time.

46. COMMENT: A distinction should be made between those requirements that are "State only" requirements and those that are Federal requirements under the definition of "applicable Federal requirement." Since applicable requirements must be identified within the operating permit itself, including the regulatory reference, the commenter strongly recommends that this definition be revised to include only those limitations or conditions that are Federal requirements and consistent with the Federal program. (11)

RESPONSE: The Department is not adopting the definitions of "applicable Federal requirement," "applicable requirement," and "applicable State requirement at this time. The comment will be addressed when these definitions are added to the reproposal document.

47. COMMENT: The commenter recommends that "any applicable plastics grinding equipment" be deleted from the definition of "Category I." This proposed requirement could negatively impact plastics recycling locally without providing significant benefit to air quality. (11)

RESPONSE: Placing "applicable plastics grinding equipment" in Category I does not require additional equipment to be permitted, but merely reduces the permit fee for equipment already subject to the rule. Therefore, the Department will maintain "any applicable plastic grinding equipment" in the definition of Category 1.

48. COMMENT: With regard to the definition of "Category I," items 10 through 13 contain the word "applicable." This term in each of these definitions is ambiguous. If the intention of this word is to refer the reader to N.J.A.C. 7:27-8.2, Applicability, please add the modifier "as specified by N.J.A.C. 7:27-8.2." (30)

RESPONSE: The Department has added "as specified by N.J.A.C. 7:27-8.2" to the definitions of Category I in place of "applicable."

49. COMMENT: The definition of "delivery vessel" is not consistent with that outlined in N.J.A.C. 7:27-16.1, which also includes tank trailers. It is recommended that one all-encompassing set of definitions be established to maintain consistency throughout the Air Pollution Control Regulations (Chapter 27). (7)

RESPONSE: The Department has changed the definition of delivery vessel to be consistent with Subchapter 16's definition. This does not enlarge the scope of applicability of the definition. It simply states that vehicles that were not delivery vessels at one time will be defined as such if they were modified so that they could transport liquid VOC. The original definition of delivery vessel was initially consistent with Subchapter 16, but that has been modified with subsequent revisions to Subchapter 16. This change merely updates the original definition.

50. COMMENT: The definition of "environmental improvement pilot test" is vague enough to allow a major increase in emissions, including toxics, with only the State deciding whether the project is truly an environmental improvement. The commenter recommends strict limits on the size and duration of these tests, and opportunity for public comment on "tests" that have the potential to result in significant emissions. (43)

RESPONSE: The pilot test is limited to a maximum of 90 days duration. The Department has not changed the definition of "environmental improvement pilot test" since the permit application for the pilot test will receive a technical review which will ensure compliance with all applicable emission limits.

51. COMMENT: With regard to the definition of "stationary storage tank," most operating plants will not know in advance that a delivery vessel will remain on site for more than one month. It is therefore recommended that DEP require a facility to obtain a permit for a stationary storage tank for delivery vessels once these vessels are on site for more than one month. (22W-R) Also, it is unclear if this regulation is meant to govern only delivery vessels used continuously on site for more than one month or is cumulative use would also be included. If the intent is for continuous use, it is recommended that the definition be changed as follows: "Stationary storage tank—any delivery vessel, excluding a railcar, used for storing VOC continuously at a facility for more than one month." (7, 22)

RESPONSE: The definition has been clarified. A delivery vessel need not be used continuously for 30 days at a location, but must be on-site for this duration to be considered a stationary storage tank. "remaining on site" has been added to the definition as a further clarification.

52. COMMENT: The commenter suggests adding a reference to operating permits as well as the preconstruction permit in paragraph 2 of the definition of "substantial component." (4)

RESPONSE: The Department has added "operating permit" to paragraph 2 of the definition of "substantial component," to clarify that equipment may be designated a substantial component in an operating permit as well as in a preconstruction permit.

53. COMMENT: The commenter believes that the use of the phrase "equipment or control apparatus" within the definition of "substantial component" is forced, creates confusion, and does not seem logical. (4)

RESPONSE: The Department has revised the definition of "substantial component" to eliminate confusion by removing "any equipment, or control apparatus" and adding "in respect to replacement, the entire piece of equipment, or control apparatus " to the revised definition.

54. COMMENT: The commenter believes that the third item in the definition of "substantial component" should be eliminated. There is no reason for utilities to go through the permitting process for burners at this time. The important aspects of the utility will be addressed by other rules, and utilities do not need this extra burden. Utilities should be able to replace broken equipment promptly in order to avoid disruption of electrical services. (4)

RESPONSE: The Department agrees with this suggestion and is not adopting paragraph 3 of the definition of "substantial component" which basically returns the definition of "substantial component" to its earlier form. The inclusion of 10 million BTU per hour burners will be reviewed at the time of reproposal.

55. COMMENT: These commenters request that the concept of "substantial component" be deleted from N.J.A.C. 7:27-8.1, or that the definition be revised to read: "This definition does not include emergency or planned replacement-in-kind, regardless of dollar value." These commenters recognize that the intent of defining components is to facilitate the State's interest in performing SOTA review of certain emission sources and control devices prior to their installation. The definition has resulted in a severe burden on industry in situations where a piece of equipment that has no impact on emissions, such as a glass-lined reactor, fails and stops production while a permit is obtained for its replacement. To avoid these types of situations, the Department should list the control devices and emission source which should be subject to SOTA review prior to installation and delete the concept of substantial components. (5, 32)

RESPONSE: The definition of substantial component remains as it has been since being adopted in March of 1991 except for a minor change in wording to clarify the meaning. "Adding emergency" and "planned replacement in kind" will be considered at reproposal of Subchapter 8 and 22. In addition, other types of rule changes to ease the burdens cited by the commenter will be considered.

N.J.A.C. 7:27-8.2 Applicability

56. COMMENT: These commenters support the Department's proposal to eliminate the requirement that all air pollution control apparatus obtain pre-construction permits. (29, 40)

RESPONSE: The Department appreciates this comment. The adoption of this revision to N.J.A.C. 7:27-8.2 is the result of discussions between the regulated community and the Department. Not requiring a permit for the installation of an air pollution control device otherwise not applicable will allow the regulated community to be a good neighbor without being penalized for the installation of control apparatus.

57. COMMENT: The revision to N.J.A.C. 7:27-8.2(a)15 will result in some previously unpermitted water treatment equipment, including settling basins, being required to receive preconstruction permits and operating certificates. The phrase "which may emit air contaminants" is no longer tempered by the deleted language regarding TXS and VOC concentrations. This appears to be inconsistent with exemptions provided for POTWs and domestic treatment works. (13)

RESPONSE: The Department has not changed N.J.A.C. 7:27-8.2(a)15. The commenter is mistaken, in that, since this section merely clarifies what pieces of water and waste equipment require permits and certificates, and does not include additional equipment which was not previously required to be permitted. The exemptions for de minimis TXS and VOC still remain in the definitions.

58. COMMENT: With regard to N.J.A.C. 7:27-8.2(a)15, these commenters believe that the exclusion of industrial treatment systems from the exemption appears to be a double standard since many publicly owned treatment works (POTWs) will treat the same wastes as industrial treatment systems. (5, 7, 32) One commenter believes that this exclusion of industrial waste and water treatment equipment was apparently unintentional. (25) It is therefore recommended that the exemption afforded POTWs and domestic treatment works for aeration basins, lagoons, and settling basins, be expanded to include industrial treatment systems. (7, 32, 5) Two commenters recommend that the provision be recorded to read: "Any waste or water treatment equipment which may emit air contaminants including but not limited to .... except for aeration basins, lagoons, and settling basins at any treatment works." (5W-CV, 32W-CV) Another commenter recommends deleting the phrase "at publicly owned treatment works or domestic treatment works" from the end of the introductory paragraph. (25, 5, 7, 25, 32, 25)

RESPONSE: The Department has not made the suggested changes to extend the exemption in N.J.A.C. 7:27-8.2(a)15 to industrial aeration basins, lagoons, and settling basins. Industrial operations have never been exempt, and should not be, because the potential to emit air contaminants from effluent of industrial operations is greater than from POTWS or DTWs, and the Department should evaluate these potentials.

59. COMMENT: The commenter recommends that the term "VOC" be changed to "applicable VOC" in N.J.A.C. 7:27-8.2(a)15i to be consistent with Subchapter 16. (7)

RESPONSE: The Department has not included "applicable VOC" at this time but will consider this when Subchapter 8 is reproposed. The Department must define "applicable VOC" in the definitions before a change can be made.

60. COMMENT: In regard to N.J.A.C. 7:27-8.2(a)15, the commenter notes that their facilities operate settling basins for coal storage runoff and storm water runoff collection, and therefore this section should be revised to exempt settling basins at coal-fired power plants. Paragraph N.J.A.C. 7:27-8.2(b)4 should also be revised accordingly. (13)

RESPONSE: The Department has not specifically exempted coal storage runoff or storm water runoff collection because the Department should review these types of collection systems if they exceed the *de minimis* VOC or TXS levels.

61. COMMENT: With regard to N.J.A.C. 7:27-8.2(a)17, compliance with the de minimis level of 0.1 pounds per hour will be difficult to demonstrate satisfactorily. A continuous emission of 0.1 pounds per hour has a potential emission of 876 pounds per year, which is higher than that given in Tables A or B, or the default HAP de minimis value of 400 pounds per year given in Table C. It is much more reliable for purposes of compliance demonstration to use a pounds per year rate for a low emission source. N.J.A.C. 7:27-8.2(a)17 is unnecessary, because N.J.A.C. 7:27-8.2(a)21 provides a lower gross emission rate, and can be easily verified by demonstrating that a piece of equipment does not handle the applicable (Table A, B, or C) amount of TXS per year. 1,1,1-Trichloroethane, the only material which is not a listed HAP, can be specified at 400 pounds per year (or another annual rate if the Department deems appropriate, in N.J.A.C. 7:27-8.2(a)21. (30)

RESPONSE: The Department has not changed N.J.A.C. 7:27-8.2(a)17. The de minimis level of .1 lb/hr can be found in N.J.A.C. 7:27-17, and as an aid to the applicant was included in N.J.A.C. 7:27-8.2(a)17. This represents no change in the regulation. N.J.A.C. 7:27-8.2(a)21 will not be adopted as proposed and has been deleted in this adoption.

62. COMMENT: The proposed N.J.A.C. 7:27-8.2(a)19 eliminates "control apparatus" as a criteria for permit requirements if the equipment served by the control apparatus does not by itself require a permit. It seems this provision is directed towards laboratory hood activities in research and development (R&D), quality assurance (QA) and quality control (QC) facilities. This exclusion is not clear in the proposed regulation and should be clarified. (42)

RESPONSE: As stated at N.J.A.C. 7:27-8.2(a)19, equipment which is not required to obtain an air permit will not need a permit just because an air pollution control device has been installed. This will apply to all equipment, and is not directed at laboratory operations only. The reference to control apparatus on equipment covered by this applicability section is to ensure that the control apparatus associated with permitted equipment be included as part of the permit. As an example, a control device on a mixer processing more than 50 lbs/hr of raw materials in one hour would have to be included as part of the permit application. A control device on a mixer processing less than 50 lb/hr of raw materials would not have to be included as part of the permit application.

63. COMMENT: With regards to N.J.A.C. 7:27-8.2(a)19, the Department is commended for creating the exemption which should obviously apply to control apparatus serving equipment that does not need a permit. However, with the advent of the CAAA mandates, it might be beneficial for DEP to follow EPA's lead and not require permits for control apparatus in an effort to encourage, or at least not discourage, persons from forging ahead with pollution control. (4)

RESPONSE: See the response to Comment 62.

64. COMMENT: Proposed N.J.A.C. 7:27-8.2(a)21 must be deleted because it imposed substantive new requirements on industry and is contrary to the intent of Part 70. Sources which the Department currently

considers inconsequential would be subject to the full requirements and, in doing so, has completely restricted the operating flexibility of New Jersey industry. (40)

RESPONSE: The Department is not adopting N.J.A.C. 7:27-8.2(a)21 at this time. The data to determine the values selected will be again reviewed.

65. COMMENT: Under N.J.A.C. 7:27-8.2(a)21, the Agency has proposed potential to emit thresholds for HAP sources requiring preconstruction permits. DEP has not demonstrated why these thresholds were selected or whether they are protective of public health. The thresholds should not be implemented without a justifiable scientific basis. (22)

RESPONSE: See the response to Comment 64.

66. COMMENT: These commenters believe N.J.A.C. 7:27-8.2(a)21i should exclude valves, flanges, safety relief devices and pumps. To require a facility to evaluate and permit types of equipment that may have the potential to emit pollutants in the event of a failure, but normally do not emit pollutants, is unreasonable and would subject the Department and the regulated community to a significant burden with no environmental benefit. This equipment is already regulated under N.J.A.C. 7:27-16.18 and should be exempt from this rule. These commenters recommend adding the following sentence to this section: "This rule is no applicable to equipment regulated under 7:27-16.18." (33, 34)

RESPONSE: See the response to Comment 64.

67. COMMENT: With regard to N.J.A.C. 7:27-8.2(a)21, emission rates for equipment emitting HAPS should also include an hourly emission rate trigger. A suitable rate would be 0.05 pounds per hour or the 0.1 pound per hour used for TXS in N.J.A.C. 7:27-8.2(a)17. Thus, any equipment emitting greater than 0.05 pounds per hour or 0.1 pounds per hour of a HAP would require a permit. Annual emission rates are not readily identifiable during compliance inspections since heavy reliance must be placed on "projected" materials throughput over a year, which may be highly variable. Hourly emission rates can more accurately be assessed by a compliance inspector at the time of inspection. (21)

RESPONSE: See the response to Comment 64.

68. COMMENT: Concerning N.J.A.C. 7:27-8.2(a)21i, the inclusion of the compounds dioxin and furan is understandable. However, the use of the general descriptive terms of "Total dioxin and furans" would include all items which do not have the same degree of hazard. The Department needs to clarify its intent regarding whether or not all dioxins and furans are covered by this legislation. (7)

RESPONSE: See the response to Comment 64.

69. COMMENT: N.J.A.C. 7:27-8.2(b) should be broadened to include any and all pressure vessels maintained under a pressure greater than one atmosphere, provided that any vent serving such vessel has the sole function of relieving pressure under emergency conditions. Since only fugitive emissions occur from these vessels and the fugitive emissions will be included on a total unit or facility-wide basis, listing and control of these vessels as source operations should not be a permit requirement. (33, 34)

RESPONSE: The Department has not included all pressure vessels in the exemptions because pressure vessels often have significant emissions. Such a vessel used in a process could have releases and, if a VOC is involved, these releases would be used to calculate allowable emissions. A pressure vessel is subject to constant, repetitive and varied uses that a storage vessel does not endure. Cleaning after each use also contributes to emissions being generated.

70. COMMENT: Concerning N.J.A.C. 7:278.2(b)4, the commenter recommends deleting the phrase "at publicly owned treatment or domestic treatment works" from the end of the sentence. (25)

RESPONSE: The Department has not removed "at publicly owned treatment or domestic treatment works" from the exemptions at N.J.A.C. 7:27-8.2(b)4. Permits have been required for industrial treatment works since 1985. Originally this exemption was at N.J.A.C. 7:27-8.2(a)15 but was moved to 8.2(b)4 for clarity. For further information see the response to comment 83. The commenter's suggestion would remove industrial treatment works from the permit requirement. This would adversely affect air quality, since emissions from industrial treatment works are generally significantly greater than emissions from domestic or publicly owned treatment works.

71. COMMENT: Concerning N.J.A.C. 7:27-8.2(b)6, the commenter questions whether it is the intent of the Department to include laboratory hoods in its preconstruction permit program since it has been implied that this provision is intended to exclude laboratory hoods. (7) The Preamble clearly states that the requirement to obtain a permit for control apparatus has been deleted, if the equipment served by the apparatus does not itself require a permit. Discussions with the Department have indicated that this provision was directed toward laboratory hoods typically found in R&D, QA and QC situations. In the regulation itself, this exclusion is not clear and should be clarified. (6, 7)

RESPONSE: N.J.A.C. 7:27-8.2(a)19 clearly states that the only control apparatus which requires a permit is that which serves equipment requiring a permit. The Department is removing N.J.A.C. 7:27-8.2(b)6 because it is redundant.

72. COMMENT: The commenter suggests adding a new N.J.A.C. 7:27-8.2(b)7 to exclude flanges, connectors, agitator seals, or other similar components from requiring a preconstruction permit under N.J.A.C. 7:27-8.2(b)7, since most of them will be regulated under the leak detection and repair program promulgated in Subchapter 16. (5, 32)

RESPONSE: The Department has not added a new N.J.A.C. 7:27-8.2(b)7 to include the items listed because these components do not require permits at the present time and listing them may cause unnecessary confusion.

73. COMMENT: These commenters agree with and commend DEP for not requiring permits for air pollution control devices for sources that would not otherwise require a permit. However, DEP should provide better clarification of this decision by providing specific language in a separate paragraph, N.J.A.C. 7:27-8.2(b)7. (7, 22) This new paragraph should read: "Any control apparatus attached to equipment which does not in and of itself require a permit." (7, 22)

RESPONSE: The Department has not added such a paragraph as requested, as the Department believes that N.J.A.C. 7:27-8.2(a)19 adequately addresses this issue.

74. COMMENT: The commenter suggests DEP include a new N.J.A.C. 7:27-8.2(c) to allow facilities to obtain a permit so that they may have "Federally enforceable" emissions and operational limitations. This issue is particularly important for facilities wishing to define their potential to emit with Federally enforceable emissions and operating limits. The new paragraph should read as follows: "The provisions of this subchapter shall not preclude a facility from voluntarily obtaining a permit/certificate to limit the operation of a source or sources in accordance with the term "Federally enforceable". (22)

RESPONSE: The Department has added N.J.A.C. 7:27-8.2(c) to allow for voluntary permits for equipment that would otherwise not be subject to the regulation. The term "Federally Enforceable" was not included in the provision since this term is currently under review by EPA, and will be addressed at the reproposal of certain parts of this subchapter.

N.J.A.C. 7:27-8.3 General provisions

75. COMMENT: These commenters recommend N.J.A.C. 7:27-8.3(a) be modified to read: "No person shall construct, install, or alter any equipment or control apparatus without first having obtained a preconstruction permit, except as provided in N.J.A.C. 7:27-8.2 and 8.17." Because of the changes in proposed Subchapter 8, not all equipment or control apparatus need permits unless required under N.J.A.C. 7:27-8.2. The Department should look for similar inconsistencies and correct them. (5, 32)

RESPONSE: The Department has modified N.J.A.C. 7:27-8.3(a) and (b) to include N.J.A.C. 7:27-8.2 with N.J.A.C. 7:27-8.17 as suggested by the commenter.

76. Comment These commenters believe N.J.A.C. 7:27-8.3(a) should specifically exclude repairs, routine maintenance, and replacements in kind. It is recommended that the following sentence be added to this subsection: "This section is not applicable to repairs, routine maintenance, and replacements in kind." (33, 34)

RESPONSE: The Department has not changed N.J.A.C. 7:27-8.3(a) to include repairs or routine maintenance because these items are covered in the definition of alteration. Replacement in kind is covered in the definition of amendment.

77. COMMENT: These commenters recommend that N.J.A.C. 7:27-8.3(e)2 should be deleted. It has been an ongoing concern that the Department not only regulates air emissions, but also the manner in which these emissions are achieved. The Department must cease regulating the latter. The Department and the regulated industry should agree on an emission limit. The Department should then defer to the expertise of the regulated community to devise an environmentally sound means of achieving this limit. (33, 34)

RESPONSE: The Department has not deleted N.J.A.C. 7:27-8.3(e)2 because this paragraph may be necessary to ensure that all equipment is operating in conformance with the approved permit and certificate.

N.J.A.C. 7:27-8.3(e)1 and 8.3(e)2 were proposed to be combined into a single subsection, N.J.A.C. 7:27-8.3(e), in order to simplify the rule.

78. COMMENT: N.J.A.C. 7:27-22.3(p) appears to require a duplication of information to be submitted to DEP and presents an unnecessary burden on industry as well as DEP. It is recommended that Subchapter 8 preconstruction permit be non-applicable to facilities with an operating permit. (35)

RESPONSE: At present, the New Jersey Air Pollution Control Act, N.J.S.A. 26:2C-1 et seq., does not exempt equipment fromp reconstruction review based on its being subject to operating permit requirements. However, the commenter's point is moot because the Department is not adopting N.J.A.C. 7:27-22.3(p) at this time. Substantial portions of Subchapter 22 will be reproposed in four to eight weeks. The Department will respond to the comments received on this subsection of the rule when it is ultimately adopted.

N.J.A.C. 7:27-8.4 Application for preconstruction permits and certificates

79. COMMENT: The commenter would like to suggest that a mechanism be put in place to allow a company to check on the status of an application. For example, during the 18 months that the Department can take for approval, a telephone hotline would help. (15)

RESPONSE: The Department does have an 800 number where applicants can obtain the status of their air permit application. The number is 1-800-441-0065. This is only for calls placed within New Jersey. Otherwise the number for permit information is 1-609-292-6716.

80. COMMENT: The commenter appreciates the de minimis reporting limits set forth in the proposed version of N.J.A.C. 7:27-8.4. This relieves an unnecessary burden of estimation and certification for "insignificant" emissions. However, the commenter is curious about the effects these limits will have on DEP's records (for example, APEDS database, emission inventory, and statewide potential to emit). (17)

RESPONSE: The Department appreciates the commenter's support of the de minimis reporting limits for "insignificant" emissions. The total emissions exempted by the de minimis reporting limits set in the rule will have minimal impact on DEP's records including APEDS database, emission inventory, and Statewide potential to emit.

81. COMMENT: With regard to N.J.A.C. 7:27-8.4(b), it is strongly recommended that the provision allowing information submitted to the Department to become public information be removed. Use of the submitted information should be strictly for internal use within the Department for the purpose of evaluating the potential emissions from a particular source. The public does not have the need or right to confidential information. (7)

RESPONSE: The Department has not changed N.J.A.C. 7:27-8.4(b). This provision is necessary to be in compliance with New Jersey's Public Record Laws. However, to address applicants' concerns, the Department has provided a mechanism for a company's confidential data to be protected in N.J.A.C. 7:27-1.

82. COMMENT: The term "advances in the art of air pollution control" used in N.J.A.C. 7:27-8.4(b) is not defined. The Department should interpret RACT as representing advances in the art of air pollution control. The commenter recommends that the Department require applicants to submit such details regarding the equipment or control apparatus as it considers necessary to determine that the equipment or control apparatus incorporates RACT control technology. (33, 34)

RESPONSE: The Department is currently evaluating the term "advances in the art of air pollution control." Any definition of this term will be proposed at a later date.

83. COMMENT: Concerning N.J.A.C. 7:27-8.4(m), the commenter suggests that non-major sources be held to higher de minimis thresholds than major sources subject to Subchapter 22. For those sources not subject to Subchapter 22, the requirement to include emission rates for air contaminants as outlined in Appendix I, Tables C and D, is not reasonable. (22)

RESPONSE: The Department has not differentiated between major and minor sources for the purpose of de minimis levels of air contaminants in permit applications. First, the commenter seems to be confused. This provision does not require emission rates, it merely delineates which contaminants must be listed on the permit application. In addition, it is important that the emission information obtained from both minor and major facilities be complete and consistent. Finally, the commenter has not provided any explanation of why minor sources should be held to a looser reporting standard, and the Department is unaware of any reason to do so.

84. COMMENT: The commenter recommends that when the Department explores concepts such as grouping emissions within an application, or referring to detectability levels in an application, it would be helpful if these concepts were incorporated into the rules as well as into the technical manuals which govern applications. (4)

RESPONSE: The Department concurs with the recommendation and will make an effort to include such concepts into future technical manuals or rules.

85. COMMENT: In regards to N.J.A.C. 7:27-8.4(m)2, these commenters contend that the phrase "which could reasonably be expected to be detectable by the sense of smell outside of the facility's property boundary" is ambiguous and arbitrary. The threshold of odor detection for many chemicals can vary tremendously and in many cases is below the limit of detection for analysis. (11, 29, 33, 34) These commenters recommend N.J.A.C. 7:27-8.4(m)2 be deleted. (11, 33, 34) One commenter reminds the Department that in a previous court case, the Superior Court ruled that prohibiting any smell from crossing a facility's boundary exceeded DEP's authority. The Department was instructed to enforce the statutory language rather than its more restrictive regulatory language regarding "air pollution." (29) Since the courts have rejected this as an appropriate standard for permits, and it is not consistent with the statute or the standard in N.J.A.C. 7:27-22.16(g)8, this obsolete standard should, at a minimum, be rewritten to include the statutory standard. (29, 11, 33, 34)

RESPONSE: The Department has not altered N.J.A.C. 7:27-8.4(m)2 because it is essential for the Department to be aware of any contaminant that has the potential to be detected off of the property. The Department acknowledges that determining whether a contaminant is reasonably likely to cause odors off site is difficult. However, in the case of an odor complaint, it is essential that the Department have a complete list of contaminants emitted by nearby facilities, which could be causing the odor. Without such a list, effective odor enforcement is extremely difficult. Given that this information is crucial to the Department's ability to enforce the law, the burden of providing such information should fall upon the facility responsible for the emissions. In addition, the commenter's reference to previous case law is misplaced. In this rule, the Department is not prohibiting pollutants from crossing a property boundary. Rather, the Department is merely requiring that any contaminant likely to cause odors outside of the property boundary be reported in a permit application. This enables the Department to conduct the technical evaluation required for a preconstruction permit application.

86. COMMENT: Regarding N.J.A.C. 7:27-8.4(n), this commenter recommends that DEP revise the required statement or allow a substitute. (4)

RESPONSE: The Department has not revised N.J.A.C. 7:27-8.4(n) because it simply requires the applicant to state in writing that the requirements in N.J.A.C. 7:27-8.4(m) have been met.

87. COMMENT: The requirement under N.J.A.C. 7:27-8.4(n) is contradictory to N.J.A.C. 7:27-8.3(j). Odor detection is an extremely subjective standard and is difficult to quantify. It is recommended that the wording of N.J.A.C. 7:27-8.4(n) be changed to make it consistent with N.J.A.C. 7:27-8.3(j). (7)

RESPONSE: N.J.A.C. 7:27-8.4(n) has been removed because the Department has determined that it is unnecessary. As proposed, subsection (m) required a list of contaminants emitted, and subsection (n) required that, if no air contaminants would be emitted, an applicant must provide a statement to that effect. However, in a case where no contaminants would be emitted, the applicant would merely refrain from listing any of the information required by subsection (m). Thus, the Department would already have obtained the information required by subsection (n), making subsection (n) redundant.

88. COMMENT: The commenter recommends that N.J.A.C. 7:27-8.4(n) be removed. Requiring all New Jersey Facilities to speciate all their missions would be extremely expensive and inclusive, since the limits set in Tables A and B are often below the limit of detection for analysis. (34)

RESPONSE: Please see the response to Comment 87 above.

N.J.A.C. 7:27-8.5 Public comment

89. COMMENT: N.J.A.C. 7:27-8.5(b) would allow DEP to seek public comment when a permit is reopened for any reason. The Department has implied that they consider one to two comments a significant degree of public interest. This will greatly hinder the ability of a facility to modify a permit in a reasonable amount of time. It is recommended that public

comments be limited to those persons who have significant and legitimate objections germane to the applicable requirements associated with the permit action in question. (7)

RESPONSE: The Department has not removed N.J.A.C. 7:27-8.5(b) because this section has been in the Code since January 30, 1991 and the Department believes it is capable of determining the degree of public interest in a project by the number of comments received. The degree of public interest is not necessarily related to the number of comments received.

N.J.A.C. 7:27-8.6 Denials

90. COMMENT: The commenter recommends that N.J.A.C. 7:27-8.6(e) be clarified and revised to exempt paint spray equipment used in architectural coatings. The following language is suggested: "The Department shall deny an application for a preconstruction permit for a paint spray operation, except for equipment used in architectural coating operations, unless. . . ." The exemption would allow for the painting of buildings, bridges, the interior and exterior of houses, and items such as signs, curbs, and pavements. (11)

RESPONSE: The Department has not changed N.J.A.C. 7:27-8.6(e) as suggested, because in adopted N.J.A.C. 7:27-8.2(a)1, the Department exempts equipment used in architectural coating operations from permitting requirements.

N.J.A.C. 7:27-8.8 Conditions of approval

91. COMMENT: With regard to N.J.A.C. 7:27-8.8(d), the construction of equipment cannot occur without a preconstruction permit approved by the Department. Therefore, if the preconstruction permit has already been approved, it must have been found to incorporate "advances in the art of pollution control". If this is indeed the intent of this statement, it is redundant and should be deleted. (7)

RESPONSE: The Department has not deleted N.J.A.C. 7:27-8.8(d). The word "altered" is the key to understanding this section. N.J.A.C. 7:27-8.8(d) prohibits a permittee from altering equipment or control apparatus which already has an approved permit and certificate unless the altered equipment or control apparatus incorporates current advances in the art of air pollution control.

N.J.A.C. 7:27-8.11 Service fees

92. COMMENT: Concerning N.J.A.C. 7:27-8.11(a), these commenters recommend that the following be added: "NJDEP shall track the administrative cost of completing the permit. In no way shall the cost of the permit application exceed the cost of NJDEP's review of the permit." These commenters believe that the actual cost for the Department to review the application is considerably less than the application fees. The fees should reflect the actual costs and be reduced. (5, 32)

RESPONSE: The Department will not track the administrative cost of completing the permit because the cost incurred to track exactly how much time each review took would far exceed the usefulness of such an exercise. The Department has already developed a fee determination process based on how much time it takes to process a certain type of permit. Permits are grouped into certain categories, charged different fees for each category with additional fees for different additional sources in a permit application.

93. COMMENT: The commenter recommends adding the following to N.J.A.C. 7:27-8.11(e): ". . . inspection performed after July 1, 1994. For alterations, administrative amendments, and seven-day notice changes to the preconstruction permit, services fees set forth at the Base Fee Schedule, items 1 and 3 shall not be required when an application is filed for modifications to both the preconstruction permit and the operating permit per N.J.A.C. 7:27-22. All other fees. . . ." (25)

RESPONSE: The Department has not adopted the portion of the proposal that deals with administrative amendments and seven day notices. For a full explanation of the plans for reproposal please see the introduction to this document, above.

94. COMMENT: Process changes requiring modifications to both the preconstruction permit per Subchapter 8 and the operating permit per Subchapter 22 will be made with one application. To review one application, the Department should request only one fee. (25)

RESPONSE: See response to Comment 93.

N.J.A.C. 7:27-8.14 Administrative amendments

The Department is not adopting but is reserving this section of the rule at this time. Substantial portions of Subchapter 22 and Subchapter 8 will be reproposed in four to eight weeks. The Department will respond to comments received on this section of the rule when it is ultimately adopted. See the rule introduction above for a discussion of the changes expected in the reproposal.

N.J.A.C. 7:27-8.15 Seven-day-notice changes

The Department is not adopting but reserving this section of the rule at this time. Substantial portions of Subchapter 22 and Subchapter 8 will be reproposed in four to eight weeks. The Department will respond to comments received on this section of the rule when it is ultimately adopted. See the rule introduction above for a discussion of the changes expected in the reproposal.

N.J.A.C. 7:27-8.16 Alterations

The Department is not adopting and reserving this section of the rule at this time. Substantial portions of Subchapter 22 and Subchapter 8 will be reproposed in four to eight weeks. The Department will respond to comments received on this section of the rule when it is ultimately adopted. See the rule introduction above for a discussion of the changes expected in the reproposal.

N.J.A.C. 7:27-8.17 Exception for facilities subject to the Pollution Prevention Act

95. COMMENT: The allowances made under the Pollution Prevention regulations which have been explained in the Preambles to the regulations are truly commendable. While the pollution prevention exemption allows the installation of equipment as well as control apparatus, this commenter asserts that the exemption for facilities with operating permits could be limited to control apparatus alone, thus diminishing the risk assumed by DEP in making this allowance. (4)

RESPONSE: The intent of the Pollution Prevention Act is to provide needed flexibility without the constraints of continuously revising permits. The limitation suggested by the commenter would frustrate this statutory purpose.

N.J.A.C. 7:27-8 Appendix I

96. COMMENT: The commenter contends that the Department has clearly underestimated its economic impact analysis impact of the de minimis rate on any significant facility in N.J.A.C. 7:27-8, Appendix I. (16)

RESPONSE: The commenter is unclear on how the Department underestimated its economic impact analysis. The rule seeks to provide reasonable de minimis thresholds, based on health risk, so that unnecessary data will not be requested, thus avoiding unnecessary cost to the applicant. The de minimis rates in the appendix were based on the best available data as related to risk. The present version of Subchapter 8 sets no threshold limit for listing pollutant emission rates on a permit application. This adoption therefore lessens the burden on permit applicant.

97. COMMENT: The commenter recommends that the cutoff should be "any contaminant which can be detected by methods prescribed by DEP at the time of application and can be potentially emitted at a rate >0.5 pounds per hour or >1,000 tons per year." There is no reason to require information on the amount of an air contaminant which could be emitted by a source which does not even require a permit. DEP can determine the degree to which it wished applicants to investigate by defining (and revising as it becomes necessary) the measurement standards. (4)

RESPONSE: The Department has not changed the cutoff rates as suggested by the commenter. The number of 0.05 pounds per hour was chosen because this number is below any requirement of any other part of N.J.A.C. 7:27. If this were changed to 0.5 pounds per hour as the commenter suggests, then equipment that emits this amount may violate other sections of N.J.A.C. 7:27 without the Department's knowledge.

98. COMMENT: The commenter believes that because most insignificant source operations will be high flow but negligible concentration, the ability to readily verify that a source operation meets the criteria of an insignificant source can be much better achieved on a pound per year basis. On a continuous basis, Table D would allow an actual de minimis level of 438 pounds per year. From a regulatory viewpoint, a de minimis level of 400 pounds per year is much easier to verify than 0.05 pounds per hour. Simply demonstrating that a piece of equipment cannot handle more than 400 pounds of an air contaminant per year would be sufficient to demonstrate compliance. The commenter suggests deleting Table D entirely and add "any other contaminant 400.0" to the end of Table C. (30)

RESPONSE: The Department has not changed the de minimis rate because it is easier for the permittee to determine a pounds per hour emission rate than an annual emission rate. Determining an annual emission rate would necessitate extensive and extremely accurate record keeping.

99. COMMENT: These commenters request that the Department clarify which "furans" they are concerned with, and recommend adding the following footnote to Table C: "as defined in EPA/625/3-87/012, Interim Procedures for Estimating Risks Associated with Exposures to Mixtures of chlorinated-p-dioxin and dibenzofurans." (5, 32)

RESPONSE: The Department has added to Table C the reference "as defined in EPA/625/3-87/012". The definition of total dioxins and furans identifies the forms of dioxins for which USEPA has identified potential health effects. Data on other forms of dioxins and furans which are not included in the USEPA list would provide no additional information about the toxicity of the total dioxins and furans.

100. COMMENT: The commenter requests that the Department increase the de minimis thresholds in Table D. The de minimis emissions rate of 0.05 pounds per hour developed by the Department for conventional pollutants is far too low and would yield only 438 pounds, less than one-quarter ton, per year, of any pollutant. Facility owners have no reliable methods to estimate emissions from potentially de minimis sources, and must resort to more expensive means of emissions quantitative either to demonstrate that these sources are de minimis or to meet application requirements. The thresholds proposed by the Department are substantially lower than many Federal thresholds on hazardous air pollutants. (16)

RESPONSE: The Department has not increased the de minimis thresholds in Table D because the de minimis levels in Appendix I are the levels at which a pollutant must be listed on an application. Prior to this, the Department required every pollutant to be listed no matter what the rate of emission. These tables relax the requirements for listing pollutants. Although the de minimis values in Appendix I are generally lower than the de minimis values proposed by EPA in the 112(g) regulation, the two sets of values serve a different purpose. The values proposed in the 112(g) regulation trigger a case-by-case MACT determination for a modified source, while the values in Subchapter 8 merely set a limit on how much information must be provided if a permit is required.

101. COMMENT: The commenter states the units in Table C and Table D are not consistent. (30)

RESPONSE: The Department has changed the column headings as the commenters suggest. This will make the two tables more consistent and will reflect the true limits that the Department is interested in reviewing.

102. COMMENT: The column heading "Annual emissions (pounds per hour)" in Table D should be revised to read "Pounds per hour" for clarification. (13)

RESPONSE: See the response to Comment 101.

Subchapter 22 Operative Permits

N.J.A.C. 7:27-22.1 Definitions

103. COMMENT: These commenters recommend that the definition of "administratively complete application" be modified to require that the applicant submit preconstruction permits which have been applied for, but not yet issued by the Department. This will ensure that a violation is not created in the event that DEPE is delayed in issuing a preconstruction permit. Another commenter suggests the definition of "administratively complete" include all preconstruction permits issued to the facility as of 30 days prior to the application submission date or 120 days prior to the scheduled deadline for submission, whichever is earlier. Otherwise, there would be last minute changes to the operating permit which already has gone through a final internal review. (5, 6, 29, 30, 31, 32, 33, 34)

RESPONSE: The introduction to this rule adoption contains a discussion of the commenter's issue. This discussion is under the heading Relationship of Subchapter 8 and 22.

104. COMMENT: With regard to the definition of "administratively complete application," will currently grandfathered sources be required to obtain a Subchapter 8 preconstruction permit? (7)

RESPONSE: No. For a facility subject to this subchapter, all equipment within the facility will be covered by the operating permit. It will not be necessary to obtain a preconstruction permit for the equipment.

105. COMMENT: The commenter states the definition of "administratively complete application" makes no differentiation between requirements for initial application versus modification applications. For a modification, only those subchapter permits pertinent to that particular application should be required. (4)

RESPONSE: The application contents requirements for initial operating permits and for modifications and other types of permit actions are set forth in separate sections. In general, applications for modification only require the submittal of material pertaining to the changes proposed at the facility.

106. COMMENT: Concerning the definition of "affected state," shouldn't the definition read "contiguous and within 50 miles?" Otherwise every facility in the State is liable. (15)

RESPONSE: The definition of affected state does not identify facilities which are liable to anything. Rather, it identifies which states must be notified of permit applications for a given facility. To rephrase the definition as suggested would narrow the class of states notified beyond the requirements of Part 70. Therefore, the suggested change was not made.

107. COMMENT: These commenters believe the definition of "Air contaminant" is too broad and inconsistent with the intent of the Title V program. A more reasonable definition would be "regulated pollutants" used in EPA's Part 70 regulations. (1, 5, 6, 7, 23, 28, 29, 31, 32, 33, 34, 40, 43)

RESPONSE: See the response to Comment 162, in the section of this document entitled "Applicability," for a thorough discussion of this issue as it relates to applicability.

108. COMMENT: These commenters are concerned that the definition of "alternate operating scenario" removes the operational flexibility contained in current batch permits. The Department has made such changes into seven-day-notice changes, adding the requirement to maintain a contemporaneous log. These commenters recommend that the following be added to the definition "... If the different method of operation is contained in an approved Subchapter 8 preconstruction scenario." Some commenters contend that the definition of "Alternate operating scenario" does not reflect that scenarios must be approved. Another commenter stated that the definition of "Alternative operating scenario" is too general and the following language should be added: "In general an alternative operating scenario will require reconfiguration of equipment and/or control devices, or will involve changes in the types of materials used in the equipment. Emissions included in a preconstruction permit as occurring at different times in a process cycle or allowed under a Batch Preconstruction Permit are not considered alternate operating scenarios." (43, 11, 5, 6, 29, 31, 32)

RESPONSE: The Department has not changed the definition of "alternative operating scenarios" in response to this comment because the Department will not require facilities to notify the Department of transitions between different operating scenarios, if the scenarios are included in an approved operating permit. The purpose of N.J.A.C. 7:27-22.27 is to specify the procedures for allowing facilities to operate under alternative operating scenarios; that is, scenarios not listed in the operating permit. With respect to the comments referring to different scenarios included in an approved preconstruction permit, such scenarios would need to be included in a facility's operating permit application. If the scenarios are approved in the operating permit, the facility would then be allowed to switch between the scenarios listed in the permit without notifying the Department. As stated in N.J.A.C. 7:27-22.27, any unpermitted scenarios that a facility may wish to implement will be treated as a seven-day-notice change, minor modification, or significant modification. A separate log will not be required to keep records of switching between various operating scenarios. Rather, facilities will be allowed to propose appropriate means of recording this information in the operating permit application.

109. COMMENT: This commenter suggests states are not prohibited from incorporating National Ambient Air Quality Standards (NAAQS) requirements into permits for facilities other than temporary ones, including monitoring and reporting information in the definition of "applicable Federal requirements." (43)

RESPONSE: It is true that states are not prohibited from incorporating the NAAQS into operating permits. However, Part 70 does not require the states to incorporate such requirements. This is an issue to be resolved in the litigation of EPA's Part 70 rule. Upon a final ruling the Department intends to modify this rule consistent with the settlement.

110. COMMENT: This commenter believes it is unclear whether certain provisions of the State Implementation Plan (SIP) should be considered "applicable Federal requirements." For example, mobile

source standards cannot be considered "applicable Federal requirements" in the context of an operating permit. Similarly, the proposed definition of "applicable State requirement" could be construed to encompass numerous State regulations completely unrelated to air pollution control. (38, 40)

RESPONSE: Further clarification beyond the definitions in this rule regarding applicable requirements will be issued as guidance by the Department. In the example provided, the Employee Trip Reductions requirements being referred to are applicable requirements as they apply to facilities.

111. COMMENT: Paragraph 2 in the definition of "applicable Federal requirement" converts Subchapter 8 preconstruction permits into a Federal requirement, which is not the intent of the CAA, is not legally authorized, and would not be in the Department's best interest. This item should include only provisions of a preconstruction permit issued pursuant to a portion of N.J.A.C. 7:27-8 which is included in New Jersey's approved SIP. This change would also be more in line with the definition of "applicable State requirement." Another commenter suggested that paragraph 2 be limited to provisions of a preconstruction permit issued pursuant to Title I, Part C or D of the CAA. The definition of applicable Federal requirement places the burden on the regulated community to determine which provisions in New Jersey's air pollution control regulations have been approved under the SIP. Some commenters contend that the proposed definition of "Federally enforceable" works a similar conversion of Subchapter 8 preconstruction permits into a Federal requirement, such that paragraph 5 in that definition exceeds the intent of Congress and should be eliminated. Also, most preconstruction permits have not been approved by EPA or subjected to public notice; therefore, they cannot be considered "Federally enforceable" in accordance with the criteria established by EPA. Also, certain elements of N.J.A.C. 7:27 are not requirements of the CAA; specifically, the Subchapter 22 modeling and risk assessment provisions. (5, 6, 30, 31, 32, 33, 34, 40, 4, 27, 29, 13)

RESPONSE: Subchapter 8 is part of New Jersey's approved SIP pursuant to Title I of the Act. Accordingly, all permits and their provisions are Federally enforceable. The Department is currently preparing a guidance document, which will contain a listing of applicable requirements, to aid applicants in the preparation of permit applications. Regarding modeling and risk assessment, this rule section is not being adopted at this time.

112. COMMENT: Another commenter recommends that a distinction be made between those requirements which are "State only" and those which are Federal. The definition of "applicable Federal requirement" should include only limitations or conditions that are Federal requirements. The same comment applies to the term "Federally enforceable." A company-defined list of Federally adopted State regulations should be made available to all applicants. In addition, the final regulations and permits should indicate which permit conditions are State or Federal requirements. (1, 5, 6, 11, 29, 30, 31, 32, 33, 34, 40)

RESPONSE: The current definition of "applicable Federal requirement" does include only requirements which are Federally enforceable. As requested by the commenter and required by part 70, final permits will delineate which requirements are State and which are Federal.

113. COMMENT: The EPA recommends the word "or" should be changed to "and/or" in the definition of "applicable requirements." (27)

RESPONSE: The clarification devised by the commenter has been made using phrasing other than "and/or."

114. COMMENT: The commenter contends that the need to regulate VOC compounds, per the definition of "applicable VOC," to such low vapor pressures (0.02 psi) has not been demonstrated. VOCs with low vapor pressures will not develop vapor concentrations sufficient for existing monitoring instruments to detect them as "leaks." The standard that the Department is proposing for RACT is more stringent than the EPA MACT standards for HAPs. The standard is also inconsistent with the 0.044 psi vapor pressure level set by the EPA for both the Synthetic Organic Chemical Manufacturing Industry (SOCMI) NSPS for equipment leaks and RCRA Treatment, Storage and Disposal Facility (TSDF) equipment leaks. It is strongly recommended that the definition of "applicable VOC" be made consistent with the EPA's light liquid definition in the Hazardous Organic NESHAP (HON) Maximum Achievable Control Technology (MACT) standard for applicable VOCs. The definition should be modified as follows: "Applicable VOC" means any VOC which has a vapor pressure or sum of partial pressures of organic substances of 0.044 pounds per square inch (2.2 millimeters of mercury) absolute or greater at standard conditions. (7)

RESPONSE: This definition is consistent with the adopted definition of "applicable VOC" at N.J.A.C. 7:27-16, Control and Prohibition of Air Pollution by Volatile Organic Compounds and is used in this rule exactly the same way. The vapor pressure of a VOC is key to determining how much of it will be emitted into the atmosphere, and hence its contribution to New Jersey's air pollution problem. The higher vapor pressure suggested by the commenter would not sufficiently protect air quality. The definition contained in Subchapter 16 does achieve this goal.

115. COMMENT: With regard to the definition of "compliance plan," there is no mention of minor modification of the plan; however, it is possible that a minor modification could change the plan. (4)

RESPONSE: Because a compliance plan becomes part of the operating permit when the permit is issued, a minor modification can be made to the plan through the procedures for any minor modification.

116. COMMENT: The commenter commends the Department for the flexibility expressed in potentially allowing alternatives to emission monitors in the definition of "continuous monitoring system." (4)

RESPONSE: The Department appreciates this comment in support of the rule.

117. COMMENT: The commenter recommends including in the definition of "de minimis" under N.J.A.C. 7:27-22.1, the concentration limit of detection of the applicable method. The Bureau of Technical Services should be able to provide such a list. (14)

RESPONSE: The Department has revised the term "de minimis" to read "de minimis emission threshold." This revised term references tables adopted at N.J.A.C. 7:27-8, Appendix I. The emission levels in these tables are based on emission rates which would be considered toxic, in the case of hazardous air pollutants. These emission rates would not, in most cases, relate to the detection limits of air test methods. As for the other substances listed, these rates are considered reasonable by the Department.

118. COMMENT: EPA states that the definition of "designated Title IV representative" is not acceptable because it is different from that in 40 CFR 72. This definition must be revised so that it is identical to the definition specified under 40 CFR 72. (27)

RESPONSE: This revision has been made.

119. COMMENT: The reason for limiting the definition of "emergency" by reference to an exceedance of a "technology-based emission limitation" is not clear. The use of the word "emergency" should not be limited. Any restrictions on actions should be provided for in the particular regulations utilizing the term. (4)

RESPONSE: This rule language comes from 40 CFR 70.6(g)(1) and the Sinagra bill, and has been relocated in the rule provision relating to those laws, which are found at N.J.A.C. 7:27-22.16(e), for clarification. However, the definition of "emergency" has not been revised with this adoption.

120. COMMENT: The definition of "emergency" does not reflect the fact that, even with an effective preventive maintenance program in place, an emergency can be caused by the malfunction of a piece of equipment. Also, what might be properly designed today with current technology could be improperly designed and obsolete in the near term. This definition should be revised as follows: "Emergency" means any situation arising from sudden and . . . such as an act of God or equipment failure which requires immediate corrective action . . . This term shall not include noncompliance caused by lack of preventive maintenance. (33, 34)

RESPONSE: Proper design does not become improper with time. It merely becomes outdated. A facility will not be penalized for having older equipment if the design was proper at the time of installation.

121. COMMENT: The extremely vague definition of "equipment" coupled with the broad definition of an air contaminant could, for example, mean a pickup truck, driving on a dirt road. The term "equipment" should be changed to "stationary equipment," and the definition should be limited to any device capable of causing an emission under normal operating conditions or use. (7)

RESPONSE: The Department disagrees that the term should be so limited. In many cases, a piece of non-stationary equipment such as a portable generator can produce significant emissions. There are also instances where a facility has significant emissions stemming from movement of vehicles on unpaved roads within the facility. In such cases, EPA's rules for major sources under Title I of the Act require the reporting of such emissions. Therefore, the definition has not been limited as requested.

122. COMMENT: The terms "equipment" and "source operation" are used throughout the rules, sometimes interchangeably. "Source opera-

tion" is consistent with the terminology proposed by EPA in Part 70, while "equipment" is used only by New Jersey in its pre-construction permit program. The commenter supports the consistent and exclusive use of the term "source operation" in the proposed rule. (40)

RESPONSE: Concerning the terms "equipment" and "source operation", the commenter is incorrect in stating that the rule uses the terms interchangeably. Equipment is a subset of source operation. The rule deliberately refers in some cases to equipment, and in other cases to source operations, depending on the meaning intended.

123. COMMENT: The definition of "equipment" is too broad. Emergency and safety devices would not be covered by the Federal program, and should not be regulated. Two commenters suggest specifically excluding safety relief valves and emergency relief devices from the definition of equipment. Other commenters request that the definition of "equipment" exclude connections, such as flanges, valves, or other items that may be regulated under a leak detection and repair program. These should be excluded from the definition of equipment because they are regulated under leak detection and repair programs or they are not true sources of emissions, unlike process vessels. (5, 29, 32, 33, 34, 6, 31)

RESPONSE: The Department agrees with the commenters that safety relief valves and related devices such as flanges and valves not be included as "equipment." In fact, this definition is from the current Subchapter 8 rule which clearly does not require permits for such devices. However, not all flanges, valves, and seals are regulated under the leak detection and repair program. It is not clear what the commenter means by stating that these are not "true sources of emissions." In fact, a substantial proportion of emissions comes from flanges, valves, and seals. Therefore, the definition has not been modified to completely exclude all of these.

124. COMMENT: The terms "adjacent" and "contiguous," as used in the definition of the term "facility," are undefined and ambiguous. Definitions should be provided. (24)

RESPONSE: The Department does not plan to define these terms at this time, however Subchapter 22 uses these terms consistent with EPA's rules for major sources under Title I of the Act.

125. COMMENT: The regulated community cannot reasonably determine what provisions of its permits and/or applicable regulations are "Federally enforceable" under N.J.A.C. 7:27-22.1. The Department must set forth the specific Federally enforceable requirements, or at least provide technical manuals/guidance documents for "applicable Federal requirements" and "applicable State requirements." In the event a permit allows an alternative emission limit more stringent than a Federal limit, the Federal limit should be identified separately and distinguished as "Federally enforceable." (11, 40)

RESPONSE: As required by Part 70, the Department will identify all applicable requirements in an operating permit as either Federally enforceable or "State only." The Department will provide guidance documents to help applicants determine which requirements are Federally enforceable.

126. COMMENT: EPA states that paragraph 5 of the definition "Federally enforceable" needs to be deleted since Federal enforceability only applies to permits and orders issued pursuant to an approved SIP. Paragraph 3 already includes the requirements in an applicable SIP. (27)

RESPONSE: See the response to Comment 125 above, regarding applicable requirements and Federal enforceability.

127. COMMENT: EPA recommends the following changes to the definition "Federally enforceable": add "or promulgated under §111 of the CAA" after "40 CFR 60" to paragraph 1; add "40 CFR 63, or promulgated under §112 of the CAA" after "40 CFR 61" to paragraph 2; and revise paragraph 3 to read: "Any standard or other requirements provided for in an applicable SIP that has been approved or promulgated by EPA through rulemaking;" (27, 40)

RESPONSE: These clarifications have been made in the definition. In paragraphs 1 and 2, the Department added citations referring to the CAA sections under which the Federal rules cited in the proposal were promulgated. The Department replaced paragraph 3 for clarity.

128. COMMENT: This commenter suggested that the term "emissions trading" be used, so that it could refer to intra- or inter-facility trading. Several commenters requested that provisions be added which allow inter-facility emissions trading, using the same language that EPA used in Part 70.6(a)(8). This would encourage early reduction measures, and is required as a legal matter by Part 70. (1, 36, 37, 40, 4)

RESPONSE: The Department agrees with the commenters' suggested changes. However, these changes would be considered significant on adoption and are not included at this time. The Department will make these changes when the revisions to this rule are proposed in four to six weeks. See the introduction to this rule adoption for clarification of this issue.

129. COMMENT: This commenter contends that the proposed definition of "major facility" should be revised to be consistent with the Federal definition by deletion of facilities which have the potential to emit any contaminant, not otherwise specifically listed, in a quantity over 100 tons per year. (11)

RESPONSE: The Department's definition of "major Facility" is equivalent to the definition of "major source" at 40 CFR 70.2. The Part 70 definition states that emission of 100 ton per year of any air pollutant, qualifies a facility as a "major source." Having emissions of 100 tons per year of any air contaminant is the same.

130. COMMENT: EPA notes that the lesser quantity cut-offs were left out of the term "Major Hazardous Air Pollutant (HAP) facility." EPA recommends adding a paragraph 3 to state the following: "Such lesser quantity or different criteria as the Administrator may establish by rule." (27)

RESPONSE: This change has been made to the definition.

131. COMMENT: With regard to the definition "modification of a major HAP facility," EPA recommends adding a paragraph 3 to state: "A physical change in, or change in the method of operation of, an existing major source which results in a greater than de minimis increase in actual emissions of HAPs shall not be considered a modification, if such increase in the quantity of actual emissions of any HAP from such source will be offset by an equal or greater decrease in the quantity of another hazardous air pollutant(s) from such source which is deemed more hazardous." (27)

RESPONSE: This definition is not being adopted and is being reserved at this time. The commenter's concerns will be addressed in the revisions to this rule expected in four to six weeks. Refer to the introduction above for more details on the upcoming revisions.

132. COMMENT: This commenter suggests that the entire definition "New Jersey ambient air quality standard" be deleted. Requirements should be Federal, not individual State, standards. (38)

RESPONSE: Consistent with 40 CFR 70.5, both Federally enforceable and State-only requirements will be included in operating permits.

133. COMMENT: The commenter suggests that the Department delete the sentence regarding the inclusion of fugitive releases from the definition of "nonproduct output." (38)

RESPONSE: This definition is taken directly from the adopted pollution prevention rules at N.J.A.C. 7:1K-1.5. The definition is consistent with the Department's pollution prevention program and is not prohibited by Part 70. The term "nonproduct output" appears in this adoption only in the definitions of "co-product" and "intermediate product." These terms are used on N.J.A.C. 7:27-22.6, Application contents, where the applicant is required to submit a general description of co-products and intermediate products. The definitions of these two terms expressly exclude nonproduct output. Thus the effect of the definition is to clarify that the applicant need not include fugitive releases in its definition is to clarify that the applicant need not include fugitive releases in its descriptions of its co-products and intermediate products. Information on fugitive releases is already required of applicants elsewhere in this section, it would be redundant to include it here. Therefore, the definition will remain as is.

134. COMMENT: The commenter recommends the term "potential to emit" or "possible emissions" should specifically state that this is after controls to avoid confusion. (15)

RESPONSE: The definition does state this. The definition of potential to emit means: "the maximum aggregate capacity of a source operation or of a facility to emit an air contaminant under its physical and operational design. Any physical or operational limitation on the capacity of a source operation or a facility to emit an air contaminant, including control apparatus . . ., shall be treated as part of its design, if the limitation is federally enforceable. (emphasis added)

135. COMMENT: EPA states that the definition of "potential to emit" should clarify that emissions from grandfathered sources must also be included in calculating a source's potential to emit. "Including grandfathered sources" should be added after "source operation" on the second line of this definition. (27)

RESPONSE: The Department does not consider this addition necessary as the definition does not exempt "grandfathered sources."

Whether a source operation or facility is permitted under New Jersey's current preconstruction permit program is immaterial when calculating the potential to emit.

136. COMMENT: These commenters are opposed to New Jersey's proposal to include "fugitive emissions" in the definition of "potential to emit" because it is contrary to what is provided for in the CAA, and because calculating fugitive emissions is difficult, inexact, and theoretical. The leak detection and repair (LDAR) requirements proposed in the VOC RACT rule will minimize the future contribution of fugitive emissions from manufacturing sources. The minimal environmental benefit obtained by including fugitive emissions is offset by the tremendous burden placed on facilities, especially smaller facilities, already covered under both Subchapter 16 and Subchapter 22, and runs counter to the intended purpose of the CAA. (5, 6, 19, 29, 31, 32, 33, 34, 19, 7)

RESPONSE: The Department cannot change the definition of "potential to emit," contrary to the provisions of Part 70. However, revisions are planned to limit the inclusion of fugitives to specific facilities listed in Part 70. See introduction to this rule adoption for a discussion of the Department's intent.

137. COMMENT: It is recommended that the definition of potential to emit state that the only limitations on a facility's emissions which will be recognized in the calculation of potential to emit shall be those which are Federally enforceable, and that banked emission reductions held by the owner or operator shall be excluded from the calculation of potential to emit. Another commenter supports using the definition of this term at 40 CFR 52:21, which explicitly excludes secondary emissions from the calculation of potential to emit. (5, 6, 7, 19, 29, 31, 32, 33, 34)

RESPONSE: The definition as proposed already states that only Federally enforceable limitations will be recognized in calculating potential to emit, and that banked emissions shall not be included in the calculation of potential to emit. Regarding the commenter's concern regarding secondary emissions, the Department plans to revisit the types of emissions which must be included in the calculation of potential to emit. See the introduction to this rule adoption for a discussion of the Department's intent.

138. COMMENT: The commenter recommends that the definition of "prevention of significant deterioration" should be revised to indicate that the PSD regulations apply to sources located in attainment or unclassifiable areas. (40)

RESPONSE: The definition as proposed already indicates this.

139. COMMENT: The commenter urges caution in defining "significant source operation" as a class of things which are not something else, when the "something else" is as limited as the exempt and insignificant sources are. Basically, there is no "other" class of activities noted in either the exempt or insignificant activities, so that whatever is not listed would be classified as significant. If a catchall or "other" category within the exempt and insignificant sources lists are provided for, this definition could be acceptable. (4)

RESPONSE: The rule includes a substantial category of exempt and insignificant sources. Provisions at N.J.A.C. 7:27-22.6(e) have been clarified to better define which source operations at a facility can be classified as insignificant. Source operations which are not subject to an applicable requirement, are not listed in N.J.A.C. 7:27-8.2(a), and are not an exempt activity per N.J.A.C. 7:27-22.6(c), may be claimed to be insignificant. The Department did not intend to apply the operating permit requirements for significant source operations to minor sources which would not be subject to the Department's preconstruction permit requirements.

140. COMMENT: These commenters believe that the definition of "source operation" is ambiguous. The phrase "can be reasonably expected" in the definition of a source operation is undefined, vague, and ambiguous, and should be deleted. (24W-C) It is appropriate to distinguish between source operations and facilities, and assess penalties by source operation. Unfortunately, there are still potential ambiguities in the definition of a source operation that should be eliminated. (23W(1)-A) Whether a single source operation can include facilities and equipment covered by more than one permit is ambiguous. This is a relevant concern in the penalty regulations because the scope of the term "source operation" is the limiting factor in determining whether a violation is a first, second, or third offense for the particular source operation. The ambiguity can be eliminated by amending the definition to read: "A source operation may include one or more pieces of equipment or control apparatus but shall be limited to all those pieces of equipment or control apparatus subject, or potentially subject, to an individual Subchapter 8 preconstruction permit." In essence, the permit source at a facility should be viewed exclusive to other sources at any given facility. (23, 24)

RESPONSE: The phrase "can reasonably be anticipated" is necessary to cover situations where emissions from a process may not be obvious, but where a permittee should know that emissions are likely. The rules does distinguish between facilities and source operations (see definitions for these two terms at N.J.A.C. 7:27-22.1). A single source operation cannot include equipment or facilities covered by different permits. This is made clear in the definition of "facility" which states that a facility includes source operations, and by the general provisions at N.J.A.C. 7:27-22.2, which indicate that a permit must be obtained for each facility. Therefore, the new phrasing suggested by the comment has not been adopted. Penalties are assessed by source operation.

141. COMMENT: Use of the phrase "equipment or control apparatus" within the definition of "substantial component" does not seem logical. It creates confusion as to exactly what is meant in each provision in which it is used. Paragraph 2 of the definition should reference an operating permit in effect, as well as a preconstruction permit. (4)

RESPONSE: The phrase "equipment or control apparatus" is modified by the phrase "in respect to replacement." Therefore, if a piece of equipment is replaced, it is subject to the same criteria stated in items one through three in the definition. Correction of paragraph 2 has been made as suggested.

142. COMMENT: This commenter believes that DEPE can improve the operational flexibility of the operating permit program by removing the concept of "substantial component" from Subchapter 22. By setting a monetary limit or denoting equipment as a substantial component, DEPE makes replacing a piece of equipment which unexpectedly fails into a minor modification, at the very least, requiring roughly three months for permit approval before the piece of equipment can be replaced. (5)

RESPONSE: The Department intends to revisit the operational flexibility provisions included in both Subchapter 22 and Subchapter 8. See the introduction to this rule adoption for a complete discussion on this issue. Therefore, at this time, the definition has not been removed as suggested.

143. COMMENT: The Department has added substantive requirements to both Subchapter 8 and Subchapter 22 through its proposal to treat a burner with a heat input of 10 MMBtu/hr or greater as a "substantial component." The result of this is that replacement of such a burner must be handled as an "alteration," subject to the full permitting and SOTA air pollution control requirements of Subchapter 8. The commenter does not understand why this one type of equipment should be subject to more stringent treatment than other equipment. This is contrary to EPA's intent in Part 70 and contrary to the Department's statement in the Preamble that "Subchapter 22 does not impose any new air pollution control limitations." (40)

RESPONSE: The Department agrees with the commenter and is not adopting paragraph 3 of "substantial component" in this adoption.

144. COMMENT: The definition of "substantial component" is arbitrary and will result in a severe burden on industry. Irrespective of cost, replacement in kind of non-control components which will not have a direct affect on air emissions should be allowed without prior Departmental approval. The Departmentshould list the control devices and emission sources which should be subject to SOTA review prior to installation and eliminate the concept of substantial components altogether. Another commenter stated that replacement in kind of control components during the first five years of the permit should also be allowed without prior Departmental approval. In addition, for replacement of burners greater than 10 million BTU per hour, replacement in kind should be allowed on an emergency basis, with an application for a burner which would meet "Advances in the art of pollution control." This burner would then be installed when the next regularly scheduled replacement is planned. This would allow for the fact that, during cold weather, it is imperative that a boiler remain operative to avoid facility "freeze-ups." (7)

RESPONSE: The Department will be reevaluating the provisions of both Subchapter 8 and 22 regarding these issues. See the response to Comment 143 above and the introduction to this rule adoption for clarification of the Department's intent.

145. COMMENT: New Jersey currently allows a facility covered by a batch, pilot plant or dual permit to list potential equipment, which if used within one year, to be installed prior to notification to the Department. This operational flexibility is removed by the combination of substantial component and the Department's concept of minor modification. Three commenters recommend that the definition be modified by stating: "This definition does not include emergency or

planned replacement-in-kind, regardless of dollar value." Six commenters recommend that the definition be qualified by adding: "This definition does not include replacement-in-kind, regardless of dollar value." (5, 6, 29, 31, 32, 33, 34)

RESPONSE: It is not the Department's intent to remove any existing operational flexibility currently provided in the permit program. These comments will be considered at the time of this rule revision described in the introduction to this adoption document.

146. COMMENT: The commenter states that the definition of "temporary facility" should be revised to refer to source operations, rather than facilities, which relocate often, because the term "source operation" more accurately describes the types of activities that occur at temporary facilities. (40W-AL)

RESPONSE: Since a temporary facility can support more than one source operation, this commenter's changes have not been incorporated as suggested.

147. COMMENT: These commenters assert that the last sentence of the definition of "volatile organic compound" or "VOC" should emphasize that the list provided is the list of excluded compounds, not the list of compounds EPA has defined as VOCs in 40 CFR 51.100(s)(1). As currently worded, the definition is confusing. (5, 6, 29, 31, 32, 33, 34)

RESPONSE: The Department agrees and has clarified the definition as suggested.

148. COMMENT: The proposed N.J.A.C. 7:27-22.3(m) discusses "alternative emission limits." The term "alternative emission limit" is also used in proposed N.J.A.C. 7:27-22.6(f)6vi and 7:27-22.16(d), but is not defined in proposed N.J.A.C. 7:27-22.1. However, a similar term, "alternative maximum allowable emission rate" is found in the proposed NO_x RACT rule at N.J.A.C. 7:27-19.1. The similarity between these two terms will cause confusion, and recommends that the Department define the term "alternative emission limit" in N.J.A.C. 7:27-22.1. (40)

RESPONSE: The Department agrees with the commenter's concern and has provided a clarification in the rule text at N.J.A.C. 7:27-22.3(m) rather than define the term.

149. COMMENT: Some commenters recommend adding a definition of "continuous" to N.J.A.C. 7:27-22.1. One suggested: "Continuous" means that measurements are performed frequently enough, based on the potential variability of emissions about a mean value, to allow the owner/operator to certify compliance with an applicable emissions limitation or standard. The generally accepted meaning of continuous is "without interruption or cessation," which cannot be used when referring to continuous processing monitors in Subchapter 22 and N.J.A.C. 7:27A-3, because no process monitor is on-line at all times, due to breaks for calibration and other maintenance. Many continuous process monitors (CPMs) operate by performing measurements at discrete time intervals, a fact recognized by the Bureau of Technical Services, which specifies that CPMs may have 25 percent downtime per hour and 10 percent downtime per quarter, and still be considered to be producing valid measurements. Another commenter states that the American Heritage Dictionary defines "continuous" as uninterrupted in time sequence, substance or extent. Based on this definition the only truly continuous monitor would be either a strip or chart recorder. It is recommended that the Department adopt a definition that is consistent with that typically used by instrument manufacturers.

RESPONSE: The Department uses the term "continuous" at N.J.A.C. 7:27-22.19(f)1i. This term, as noted in the rule, is defined at 40 CFR Part 64.

150. COMMENT: Although the Department does not include the provision found in Part 70.6(c)(5), which requires that the compliance certification state whether compliance was continuous or intermittent, both the CAA and Part 70 require it. Since the regulated community will be required to certify whether their compliance is continuous or intermittent, both these words should be defined. Definitions of "continuous compliance" and "intermittent compliance" can be found in Section 64.2 of the Enhanced Monitoring Program proposed by EPA in the October 22, 1993 Federal Register. Additional guidance on this issue can be found in Part 64, Appendix A, Section 2 Measurement frequency, in the same proposal. (5, 6, 29, 31, 32, 33, 34, 7)

RESPONSE: The Department uses the term "continuous" and the term "intermittent" at N.J.A.C. 7:27-22.19 (f)1i. These terms, as noted in the rule, are defined at 40 CFR Part 64.

151. COMMENT: The commenter recommends that a definition for the phrase "Each air contaminant that it (a source operation) may emit" should be provided under N.J.A.C. 7:27-22.1 to assist in determining which air contaminants need to be evaluated under N.J.A.C. 7:27-22.6(f)5i. (13)

RESPONSE: The definition of "air contaminant" is provided in both Subchapter 8 and Subchapter 22. Also, language has been added to N.J.A.C. 7:27-22.6(f)5i which explains when an air contaminant need not be included for evaluation.

152. COMMENT: These commenters recommend that the word "log" should be defined under N.J.A.C. 7:27-22.1 as "any production records associated with the batch in question." (5, 6, 29, 31, 32)

RESPONSE: The rule language at N.J.A.C. 7:27-22.27(b) has been revised to eliminate the term "log." The rule provision now allows for any means of recording information.

153. COMMENT: The commenter maintains that the Department uses the terms "owner or operator" and "permittee" interchangeably. For consistency, the Department should use one term or the other in the proposed rules, but not both. The term "owner or operator" is defined in the Department's VOC and NO_x RACT rules. This term is not defined in the proposed N.J.A.C. 7:27-22.1, but the term "permittee" is. These commenters recommend that a definition for "owner or operator" should be provided and distinguished from "permittee." (13, 40)

RESPONSE: The Department agrees that more definition is needed, but disagrees that the terms are used interchangeably. There is a difference between the two terms, and both are needed in the rule. The term "owner or operator" is only used in reference to time periods in which the permit may not yet have been issued for the facility. In this context, the term is needed to delineate who must apply for and maintain an operating permit, and take other required actions. In other contexts, the rule refers to applicants, permittees, etc, depending on the stage of the permitting process and the status of the person referred to.

154. COMMENT: This commenter suggests that DEPE needs to define "pilot plant facilities" under Subchapter 22. The commenter suggests using the definition contained in N.J.A.C. 71K-1.5 of the Pollution Prevention Rules: "Pilot facility" means a facility or designated area of a facility used for pilot-scale development of products or processes not primarily involved in the production of goods for commercial sale. (22)

RESPONSE: The term "pilot plant" is used in the definition of the term "development" in this rule. In the context of that definition "pilot plant" is sufficiently qualified.

155. COMMENT: The commenter recommends incorporating the definition of "regulated pollutant for presumptive fee calculation" from 40 CFR Part 70 into N.J.A.C. 7:27-22.1. (30)

RESPONSE: As this term is not used in the rule, the Department has not defined it.

156. COMMENT: This commenter recommends that DEPE define "research and development facilities" under Subchapter 22. The commenter suggests using the definition contained in N.J.A.C. 71K-1.5 of the Pollution Prevention Rules: Research and development facility means a facility or a specially designated area of a facility used primarily for research, development and testing activity, and not primarily involved in the production of goods for commercial sale, in which hazardous substances are used by, or under, the direct supervision of a technically qualified person. (22)

RESPONSE: As the rule already defines "research," "development" and "facility," it is not necessary to define the phrase as suggested.

157. COMMENT: Several commenters requested that the regulation define the term "at risk," or "at the permittee's risk," so permittees can determine the usefulness of administrative amendments, seven-day-notice changes, and minor modifications. Some commenters thought that the regulated community understands "at risk" to mean "at the risk that the modification one has made will not be approved, and one will be required to do something else to satisfy the Department's requirements," that is, the "risk" implied is chiefly financial risk involving expenditures to correct the change, but not penalty assessment. Several other commenters stated that the term seems to mean "at the risk of civil and criminal penalties if the modification one has made does not meet with DEPE approval." The fact that civil and criminal penalties are attached to changes made "at risk" will discourage most, if not all, facilities from using the at risk procedures under Subchapter 22. The inability to proceed at risk will severely limit a facility's ability to respond quickly to market forces, and this loss of operational flexibility will have a detrimental effect on the competitiveness of New Jersey industry, resulting in the loss of jobs in this State. Several commenters proposed the

following definition: " 'Risk' or 'at risk' refers to the owner/operator's exposure to potential civil and criminal penalties should they choose to go ahead with a process modification prior to receiving Departmental approval." Two commenters recommended a definition to read: " 'Risk' or 'at risk' refers to the owner/operators exposure to additional financial outlays that may be required to replace equipment if the company chooses to go ahead with a process modification prior to receiving Departmental approval." (33, 5, 6, 29, 30, 31, 32, 34)

RESPONSE: The Department has not defined the terms as suggested, but rather intends to clarify the sections of the rule dealing with changes to permits. Refer to the introduction of this rule adoption for details on what the Department intends to change on reproposal.

158. COMMENT: The commenter recommends that a separate definition for "State enforceable" be added to address those requirements that are not applicable Federal CAA requirements. (11)

RESPONSE: The Department has not defined this term as suggested because the operating permit will specify both Federally enforceable and State only enforceable permit provisions.

N.J.A.C. 7:27-22.2 Applicability

159. COMMENT: It is duplicative and unnecessarily complicated to require permits under N.J.A.C. 7:27-22, N.J.S.A. 13:1D-35 (Pollution Prevention Act), and N.J.A.C. 7:27-8 (preconstruction). Facility-wide permits (FWP) pursuant to the Pollution Prevention Act should replace the Subchapter 22 permits in entirety. (25)

RESPONSE: Such an exemption would violate the Federal Part 70 rules and therefore has not been included in the adoption. However, the FWP may be considered an operating permit in the future.

160. COMMENT: Fugitive emissions should not be considered in determining the applicability of the operating permit rule to a source. The use of fugitive emissions in determining source applicability is impossible to apply accurately. (5, 6, 12, 29, 31, 32, 33, 34)

RESPONSE: In response to recent EPA guidance, the Department plans to narrow the number of facilities for which fugitives will be included in the calculation of potential to emit. However, this change is considered to be significant and can not be made with this rule adoption. The Department intends to repropose this section of the rule, along with other sections, in four to eight weeks. See the rule introduction above for a discussion of the changes expected in the reproposal.

161. COMMENT: The commenter requests an exemption from including fugitive emissions in the "potential to emit" for a process occasionally employed by scrap recyclers, similar to the exemption for welding at maintenance shops; or a DEPE statement that such emissions are presumed to be under the de minimis threshold. The process uses cutting equipment that may generate fugitive emissions and cannot practicably be moved indoors, must be portable, and has no alternatives. The commenter believes that any emissions from the process are below the proposed de minimis level. However, the emissions cannot be measured because no reliable quantification methodology exists and because the emissions vary case-by-case, depending on the materials being handled. (20)

RESPONSE: The Department intends to revise this rule section to limit the number of facilities for which fugitives will be included in the calculation of potential to emit. The facilities that must include fugitive emissions are referred to by source type in the federal rule (40 CFR Part 70). The Department will follow EPA's requirements and use the same type of reference system in Subchapter 22. Therefore, it is unlikely that the commenters will see a reference specifically to "scrap recyclers." See the response to Comment 160 above.

162. COMMENT: The Department's term "air contaminant" as used in N.J.A.C. 7:27-22.2(a) is too broad. Some of the regulated compounds may exist naturally in the atmosphere and have no known health effects. It is impossible to list or regulate all "air contaminants" as proposed. The Department should use EPA's term "regulated air pollutant" instead. EPA chose the narrower term because without it a variety of sources that have no known prospect for future regulation under the CAA would be classified as major sources and be required to apply for Title V permits. Use of the term "air contaminant" instead of "regulated air pollutant" goes beyond the scope of the CAA without providing any tangible environmental benefits, and is without basis in fact or science. Many other states use the EPA term. (40)

RESPONSE: Upon EPA's promulgation of the various rules at 40 CFR Part 63, the compounds included as a "regulated air pollutant" will become identical to those included as an "air contaminant." For example, the Hazardous Organic NESHAP rule for explosive substances will regulate hydrogen and methane. These compounds are already included as "air contaminants" in the current definition used in N.J.A.C. 7:27-8.

163. COMMENT: The Department is urged to require more non-major HAP sources to obtain operating permits. The approximate 21 minor NESHAP sources that will be added are clearly not the universe of non-major HAP sources. Area sources are also significant contributors of urban air toxics. (43)

RESPONSE: The Department has not increased the number of HAP facilities subject to the rule. Rather, the adoption reflects the minimum requirements of Part 70. Pursuant to the adoption at N.J.A.C. 7:27-22.2(b), these sources will become subject to operating permit requirements in approximately five years, when EPA is required by the CAA to promulgate rules covering these sources. Until that time, the Department will focus its resources on larger HAP emitters, which have a greater potential to harm air quality.

164. COMMENT: The commenter recommends that, consistent with Part 70, minor NESHAP sources should be deferred from having to obtain an operating permit. The Department should focus resources on those facilities mandated to obtain an operating permit under the Federal program guidelines. (11)

RESPONSE: In an effort to focus the Department's resources on Federal requirements, the Department has revised the rule to defer permitting of minor NESHAP facilities until required by Part 70. See the response to Comment 163 above regarding this issue.

165. COMMENT: EPA states that consistent with the definition of a major facility, 10 tons per year must be included in N.J.A.C. 7:27-22.2(a)1 as the threshold for the applicability of lead emissions. (27)

RESPONSE: The Department believes that lead is one of the 189 HAP's, however, this clarification has been added at N.J.A.C. 7:27-22.2(a)1ii as suggested.

166. COMMENT: EPA states that the phrase "and substances regulated pursuant to §7412(r)(3). However," should be added after the term "NESHAP" in N.J.A.C. 7:27-22.2(a)2. (27)

RESPONSE: The operating permit requirement for minor NESHAP facilities has been deferred consistent with 40 CFR Part 70. Therefore, the commenter's suggested change is no longer relevant.

167. COMMENT: The commenter believes that in N.J.A.C. 7:27-22.2(a)4, the reference to the entire 40 CFR 70.3 is ambiguous. The Department probably intended to refer more specifically to 40 CFR 70.3(a)(5), which refers to "any source in a source category designated by the Administrator pursuant to this section." (40)

RESPONSE: The Department agrees and has clarified this in the adoption.

168. COMMENT: N.J.A.C. 7:27-22.2(c) should not require R&D operations to be "solely" devoted to R&D in order to be treated as separate facilities for determining applicability of the rule. One commenter suggests that N.J.A.C. 7:27-22.2(c) allow an owner or operator to elect to treat any part of a facility used for research and development as a separate facility. By stating that a facility must be used "solely" for R&D to be treated separately, N.J.A.C. 7:27-22.2(c) implies that facilities with pilot plant or pilot plant/batch plant permits will need to include their emissions in the calculation to determine applicability. This would force non-major R&D sources which concurrently exist with major manufacturing sources to enter the permit program. Alternatively, N.J.A.C. 7:27-22.2(c) implies that facilities which perform R&D experiments with the same equipment as their manufacturing operations will not be able to exclude their R&D emissions from the calculation to determine applicability. Such inclusion would both 1) force facilities where R&D and manufacturing activities co-exist which are non-major when considered separately, to enter the operating permit program, and 2) force non-major R&D sources which co-exist with major manufacturing sources to enter the permit program. Also R&D emissions, when compared to manufacturing emissions, are minimal, and subjecting facilities to the monitoring, recordkeeping and reporting requirements of an operating permit would not be cost effective for R&D, and would not have any benefit to the State's environment. Additional regulation could drive R&D, and the jobs associated with it, out of New Jersey. (5, 6, 7, 29, 31, 32)

RESPONSE: The R&D limitations of which the commenter complains are required by Part 70. Therefore, the Department cannot relax these provisions as suggested without jeopardizing the operating permit program, and incurring severe Federal sanctions. The commenter's interpretation of N.J.A.C. 7:27-22.2(c) (adopted at N.J.A.C. 7:27-22.2(d)) is correct, in that R&D emissions, from equipment which is also used

for manufacturing, must be included in a facility's applicability calculation. In addition, the adoption clarifies how the Department will determine if a portion of a facility is an R&D facility. This will be based on the SIC code of the R&D operations, and on whether the operations are used as support for non R&D operations.

169. COMMENT: One commenter states that for a co-located R&D and manufacturing facility which is served by the same boiler, N.J.A.C. 7:27-22.2(c) is unclear as to whether the manufacturing operation or the boiler would qualify the R&D facility as a "major facility." Another commenter believes N.J.A.C. 7:27-22.2(c) is unclear as to whether a boiler would qualify an R&D facility as a "major facility." (6, 42)

RESPONSE: A boiler's emission must be included as part of the calculation of a facility's R&D emissions to determine if the R&D operations are major. However, the effect of an R&D facility being classified as major is minimal, because 90 percent of New Jersey's R&D operations are exempt activities pursuant to N.J.A.C. 7:27-22.6, and five percent will constitute insignificant activities. Therefore, even if R&D operations must be permitted, this will cause minimal effort on the part of the permittee.

N.J.A.C. 7:27-22.3 General provisions

170. COMMENT: EPA recommends that prohibitive provisions in subsections (a), (b) and (c) should not equivocate by using the term "shall ensure"; but instead use the word "shall" on its own. (27)

RESPONSE: Subsection (a) does not include the word "ensure." Subsections (b) and (c) state that the owner or operator shall ensure that certain events shall not occur. The term "shall ensure" is more inclusive because it makes the owner or operator responsible, regardless of who actually causes the prohibited event. For these reasons, the Department has not revised the rule as suggested.

171. COMMENT: N.J.A.C. 7:27-22.3(b) prohibits the operation of equipment at a facility without a valid operating permit. However, it does not specify that, until the operating permit is required, a source operation may be operated under an operating certificate. (4)

RESPONSE: The rule specifies at N.J.A.C. 7:27-22.3(h) that the prohibition against operating without an operating permit does not apply prior to certain application deadlines. These deadlines allow facilities to operate under their existing authorities.

172. COMMENT: With regard to N.J.A.C. 7:27-22.3(c), EPA suggests that the words "calculated as the potential to emit" be added after the first use of the word "rate" to clarify that it is the potential to emit of the source operation that is compared with the de minimis levels of Table A or B. (27)

RESPONSE: N.J.A.C. 7:27-22.3(c) has been clarified by incorporating the suggested language. The Department intended that these tables be compared to a source operation's potential to emit, not its actual emissions. Basing this provision on actual emissions could have conceivably allowed large source operations to escape permitting requirements if actual emissions were below de minimis levels (for example, if the source operation's use was minimal).

173. COMMENT: With regard to N.J.A.C. 7:27-22.3(c)2, this commenter suggests that the word "concentration" be removed because the de minimis levels listed in Table A and Table B are mass emission rates, not concentrations. A source operation could theoretically increase the concentration of an air contaminant and still comply with the de minimis mass emission rates listed in Table A and Table B by operating at a lower load or production rate. Requiring sources to adhere to both a mass emission rate and a concentration standard simply adds another burdensome regulatory constraint that goes beyond the intent of Part 70. (30)

RESPONSE: The Department has deleted N.J.A.C. 7:27-22.3(c)2 because it duplicates the requirements at N.J.A.C. 7:27-22.3(e) that require facilities to comply with emission or concentration limits, as well as any other requirements, established in an operating permit.

174. COMMENT: With regard to N.J.A.C. 7:27-22.3(e), this commenter suggests adding a final sentence: "Any application for which no such notice is generated shall be deemed to be administratively complete." (38)

RESPONSE: The provision to which the commenter refers makes no mention of a notice. Therefore, there appears to be some error and the Department is unable to respond to this comment.

175. COMMENT: The commenter contends that N.J.A.C. 7:27-22.3(f) would hold property owners who do not operate facilities liable for their tenants' compliance with this program and thus unduly interferes with ownership of property. The Department lacks the authority to extend joint and several liability to parties not contemplated in both the Clean Air Act and the Air Pollution Control Act. Some commenters stated that the provision is unconstitutional. (5, 6, 29, 31, 32, 24)

RESPONSE: The comment that the property owners could be held liable for compliance with Subchapter 22 is potentially correct. The Department believes that inclusion of the term "owner" in this subsection is appropriate and necessary in order to carry out its enforcement responsibilities. The Department disagrees that the language as adopted "unduly interferes with ownership of property" though it is not completely clear in what way the commenter believes the requirement so interferes. Therefore, the Department is adopting N.J.A.C. 7:27-22.3(f) as proposed but will further consider the commenter's concerns during development of the reproposal of certain parts of Subchapter 8 and 22, balancing the commenter's interest with the Department's enforcement needs. However, as to that portion of the comment regarding the Department's authority to impose joint and several liability on owners and operators, the Department bases this requirement (as well as similar requirements in other parts of N.J.A.C. 7:27) on several of its enabling statutes. First, under the Air Pollution Control Act (ACPA), N.J.S.A. 26:2C-1 et seq., the Department has broad authority to "formulate and promulgate, amend and repeal codes and rules and regulations preventing, controlling and prohibiting air pollution throughout the State or in such territories of the State as shall be affected thereby...." N.J.S.A. 26:2C-8. In addition, the APCA grants to the Department extensive powers of enforcement, inspection, and prosecution for violations of the APCA and its implementing regulations. N.J.S.A. 26:2C-14, -19. Furthermore, under its general enabling authority at N.J.S.A. 13:1D-9, the Department is mandated to formulate policies for the conservation of natural resources, the promotion of environmental protection and the prevention of pollution in the environment.

176. COMMENT: A source is allowed to operate without an operating permit only if a timely and complete application has been submitted or if the program is not applicable to that source. N.J.A.C. 7:27-22.3(h) allows a source to operate for 18 months after the application deadline is passed without an application shield. Therefore, EPA recommends that N.J.A.C. 7:27-22.3(h)1 be changed as follows: "1. Prior to the date of the applicable deadline for applying for an initial operating permit, set forth at 7:27-22.5; or." Similarly, EPA suggests that for N.J.A.C. 7:27-22.3(j) the phrase "a timely and complete renewal application has been filed" replace "an application shield." (27)

RESPONSE: The Department has made the changes to N.J.A.C. 7:27-22.3(h) as requested. These changes were needed to eliminate inconsistencies between N.J.A.C. 7:27-22.3(h)1, the applicatoin shield provisions at N.J.A.C. 7:27-22.7, and the Federal operating permit rules at 40 CFR 70.7(b) regarding when a facility can operate without an operating permit. N.J.A.C. 7:27-22.7(a) states that persons will not be subject to penalties for operating a facility without an operating permit during the time an application shield is in effect. N.J.A.C. 7:27-22.7(b) states that an application shield can be obtained by submitting an administratively complete application prior to the deadline set forth at N.J.A.C. 7:27-22.5 or 22.30. N.J.A.C. 7:27-22.7(c) states that the protection given by the application shield begins the date the application is due to the Department. The provisions of N.J.A.C. 7:27-22.7 are consistent with the Federal requirements at 40 CFR 70.7(b), which prohibits facilities from operating without an operating permit unless a timely and complete application is filed. N.J.A.C. 7:27-22.3(h)1 would have allowed facilities to operate without an operating permit, even if a timely and administratively complete application was not filed. This would violate Federal requirements and would be inconsistent with the Department's application shield provisions. The changes made to this subsection will eliminate this inconsistency.

The requested change to N.J.A.C. 7:27-22.3(j) has been made to N.J.A.C. 7:27-22.3(h)2 instead. Since both sections refer to application shields, and application shields can only be obtained when a timely and administratively complete application is filed, making the proposed change to N.J.A.C. 7:27-22.3(j) would be redundant.

177. COMMENT: N.J.A.C. 7:27-22.3(j) states that the expiration of a permit will terminate the entire facility's operation, but there may be segments of a plant that do not operate under air emissions constraints, which could be operated even after the permit expires. To correct this, two commenters recommend adding the words "permitted equipment" after the words "right to operate" (33, 34)

RESPONSE: Although the requested changes have not been incorporated into this section, it was NJDEP's intent to terminate a facility's right to operate any significant source operation or insignificant

source operation upon expiration of the operating permit unless an application shield is in effect. NJDEP will repropose N.J.A.C. 7:27-22.3(j) to clarify NJDEP's intent.

178. COMMENT: Concerning N.J.A.C. 7:27-22.3(m), in the event that the alternative limit is more stringent than a Federal limit, the Federal limit should be identified separately and distinguished as "Federally enforceable," and the alternative limit should then be identified as a State enforceable limit. (11)

RESPONSE: As required by Part 70, all limits in any operating permit will be identified as Federally enforceable, State enforceable, or both.

179. COMMENT: An alternative emission limit cannot be established by the State unless it is allowed under the SIP. Therefore, EPA suggests that the first sentence to N.J.A.C. 7:27-22.3(m) be revised as follows: "If the SIP allows a determination of an alternative emission limit to be made at a source subject to this subchapter, the Department may issue an operating...." (27)

RESPONSE: This clarification has been made as suggested.

180. COMMENT: For minor or significant modifications, N.J.A.C. 7:27-22.3(p) requires a Subchapter 8 preconstruction permit in addition to the Subchapter 22 requirements. This causes duplication of information submitted to DEPE, is an unnecessary burden on industry and DEPE, and restricts industry's operating flexibility. DEPE should not subject the regulated community to repetitious public notice and comment. (22, 23, 4, 35, 40)

RESPONSE: NJDEP is not adopting N.J.A.C. 7:27-22.3(p) at this time. Substantial portions of Subchapter 22 and Subchapter 8 will be reproposed in four to eight weeks. The NJDEP will respond to comments received on this subsection of the rule when it is adopted. See the rule introduction above for a discussion of the changes expected in the reproposal.

181. COMMENT: EPA suggests that, at N.J.A.C. 7:27-22.3(r), the phrase "The confidentiality claim as well as the information must be submitted to EPA." should be added at the end of the provision to ensure that EPA receives all information on a subject source. (27)

RESPONSE: The rule has been clarified to indicate that information which is claimed confidential will also be submitted to EPA under a separate confidentiality claim.

182. COMMENT: This commenter recommends that N.J.A.C. 7:27-22.3(r) be removed, and that submitted information be strictly for internal use within the Department. (7)

RESPONSE: The requirement that all permit information be public unless determined by the Department to be confidential is a longstanding one, required by New Jersey's public records laws. Therefore, the rule has not been changed to accommodate this comment.

183. COMMENT: With regard to N.J.A.C. 7:27-22.3(r), these commenters recommend that the phrase "42 USC §7414 and" be added before both citations to N.J.A.C. 7:27-1.8. In addition, the following language should be added: "The DEPE will notify the owner or operator of a facility whenever information in the permit application and related documents is requested by an outside party, including EPA." Several commenters noted that because the Clean Air Act is the sourceof this regulation, the confidentiality rights provided to industry under the Act should be referenced in Subchapter 22. This will preserve the protection that Congress intended with regard to trade secrets and other information in the event the State rule changes. Some commenters suggest that the required information be reported to DEPE in an alphanumeric format similar to SARA reporting. This would improve brevity, facilitate electronic data transfer and provide confidentiality to industry. (5, 6, 29, 30, 31, 32, 33, 34)

RESPONSE: The Department's actions with regard to claims for confidentiality of information submitted pursuant to Subchapter 22 is controlled by N.J.A.C. 7:27-1.6 through 1.30. Those rules are generally consistent with EPA's regulations regarding confidentiality of business information set forth at 40 CFR Part 2. The Department believes that its confidentiality rules honor Congress', and the State's, intent to protect trade secrets and like information from general disclosure where such information qualifies for confidential treatment.

The Department has retained the citation to its confidentiality rules in N.J.A.C. 7:27-22.3(r) which shall control the Department's treatment of information submitted under Subchapter 22 that a person claims is confidential. To clarify, however, that information submitted by a person to EPA must be claimed confidential in accordance with EPA's confidentiality rules, the Department has added language to N.J.A.C. 7:27-22.3(r) that references 40 CFR Part 2. Regarding the suggestion that an alphanumir format be used, the Department is developing a system for electronic submittal of information, and the commenter's suggestion of using an alphanumeric format will be considered.

184. COMMENT: Regarding N.J.A.C. 7:27-22.3(s), according to the proposed N.J.A.C. 7:27-22.23(b), an applicant for a minor modification need not comply with those permit requirements it seeks to modify. Therefore, this commenter recommends that the phrase "Except as otherwise provided in this subchapter, the" be placed at the beginning of this paragraph. (16, 11)

RESPONSE: NJDEP agrees with this commenter and has modified N.J.A.C. 7:27-22.3(s) as suggested.

185. COMMENT: This commenter asserts that N.J.A.C. 7:27-22.3(u) is inappropriate in requiring permittees to incorporate new applicable requirements. This provision undercuts the permit shield provided by N.J.A.C. 7:27-22.17, and would require a permittee to modify its permit even if the permit will expire in less than three years, which is not required by Federal law. (16)

RESPONSE: At this time, NJDEP is reserving and not adopting N.J.A.C. 7:27-22.25, which had included a provision requiring new applicable requirements to be incorporated in the operating permit. This section will be reproposed in four to eight weeks. It is NJDEP's intention to modify this section to be consistent with 40 CFR 70.7 by requiring facilities to incorporate new applicable requirements into operating permits with remaining terms of three or more years.

186. COMMENT: This commenter is pleased that the Department is requiring facilities to incorporate newly applicable requirements in their permits, regardless of the permit expiration date, but is not sure exactly how this will be implemented. (43)

RESPONSE: Please see the response to Comment 185 above.

187. COMMENT: Commenters were confused as to three possible interpretations of N.J.A.C. 7:27-22.3(v): 1) a facility can never leave the operating permit program as long as equipment covered by the operating permit operates; 2) a facility may leave the program if it ceases operation; or 3) a facility may leave the program if it ceases to meet the applicability requirements set forth at N.J.A.C. 7:27-22.2. If a facility must cease operation, this provides a disincentive for the facility to voluntarily lower its emissions to not be subject to the operating permit program. The commenters recommended various clarifications. (25, 7, 30)

RESPONSE: The rule has been clarified to indicate that the Department may terminate a permit if the operating permit applicability criteria set forth in the applicability section at N.J.A.C. 7:27-22.2 no longer applies to the facility.

188. COMMENT: In N.J.A.C. 7:27-22.3(x), this commenter suggests for consistency that "acid deposition control provisions" should be revised to read "affected Title IV facility provisions" because "affected Title IV facility" is the term used in the proposed N.J.A.C. 7:27-22.29 and elsewhere in the proposed rule. (40)

RESPONSE: NJDEP has not made the suggested change at this time, although the name of N.J.A.C. 7:27-22.29 has been changed to "Facilities subject to acid deposition control." This change will clarify the content of that subsection and address the commenter's concerns.

189. COMMENT: Regarding N.J.A.C. 7:27-22.3(y), this commenter believes that if there are situations where operating certificates will be maintained after the operating permit is issued, a provision must be placed here for this. (4)

RESPONSE: Pursuant to N.J.A.C. 7:27-22.3(y), all operating certificates will be superseded by the operating permit upon issuance of the operating permit. Therefore, there will be no situations where the operating certificates will be maintained after issuance of an operating permit.

190. COMMENT: This commenter contends that once an operating permit application is submitted, the applicant should not be required to renew operating certificates. (11)

RESPONSE: NJDEP has not modified N.J.A.C. 7:27-22.3(y) in response to this comment. Until an operating permit is issued, the facility must comply with the administrative requirements of N.J.A.C. 7:27-8, including the requirement to renew, as required, any operating certificates.

N.J.A.C. 7:27-22.4 General application procedures

191. COMMENT: This commenter recommends that a mechanism be established to allow a company to check on the status of an application, for example, a telephone hotline. (15)

RESPONSE: The Department agrees with this comment. Indeed, it already has such a mechanism in place for pre-construction permits. A

company can check on the status of a pre-construction permit application by calling the Department at (609) 633-8226. A similar mechanism will be established for operating permit applications. An appropriate phone number will be provided in the instructions accompanying the Department's operating permit application forms.

192. COMMENT: To ensure national consistency and minimize unnecessary paperwork, the Department should develop application forms that are as similar to EPA's forms as possible. To do otherwise could result in inconsistent compliance requirements and subject New Jersey industry to an additional regulatory burden. (30, 40)

RESPONSE: EPA has not yet published application forms for operating permits, therefore a comparison is not possible. The application forms being developed by the Department will contain the basic elements required by 40 CFR 70, including the citation of all applicable requirements, which will ensure consistent compliance requirements.

193. COMMENT: This commenter supports the Department's proposal that applicants may submit operating permit applications electronically with prior written approval from the Department. This commenter is a proponent of Electronic Data Interchange (EDI), and hopes to work closely with the Department in fostering the use of EDI, which will streamline the permitting process and subsequent compliance demonstrations. (40)

RESPONSE: The Department appreciates the commenter's support.

194. COMMENT: With regard to N.J.A.C. 7:27-22.4(d), these commenters question why the applicant must file with both DEPE and EPA. One commenter stated that the intent of the CAA was to allow the State to administer the law, and thus that the Department should be the one to submit a copy of the application to EPA. Another commenter notes that the requirement to submit an application to EPA is not required by 40 CFR Part 70, which implies that EPA needs only a complete permit application, not any application. (13, 15, 33, 34)

RESPONSE: 40 CFR 70.8(a) provides that "the applicant may be required by the permitting authority to provide a copy of the permit application (including the compliance plan) directly to the [EPA]." To minimize program costs and permit fees, the Department is using this provision of Federal law to require the applicant to provide a copy of the application to the EPA. N.J.A.C. 7:27-22.4(d) has also been revised to clarify that EPA may waive the requirement for notice at 40 CFR 70.8 or determine that an application summary, with any relevant portion of the permit application, may be submitted to EPA in lieu of the complete application.

195. COMMENT: With regard to N.J.A.C. 7:27-22.4(e), these commenters suggest that clarification is needed that the Department will issue a letter detailing any deficiencies in an application within 30 days of receipt of an application, regardless of when the application is submitted. As written, it could be construed that the Department will issue such a letter only if the application is submitted at least 90 days prior to the applicable deadline, which appears to conflict with the proposed N.J.A.C. 7:27-22.10(a). With regard to N.J.A.C. 7:27-22.4(e) and 22.7(b)2, this commenter supports providing applicants with sufficient time to correct application deficiencies. Also, the criteria used to evaluate application completeness should be made available to applicants prior to preparation of the application. The State should publish a "completeness checklist" which, if satisfied, would provide a presumption of completeness. (11, 30, 40, 28)

RESPONSE: The Department agrees that is should issue a "deficiency letter" within 30 days of receipt of an application regardless of when the application is submitted. The last sentence of N.J.A.C. 7:27-22.4(e) has been made into a separate subsection, N.J.A.C. 7:27-22.4(f), and has been revised by deleting the reference to only "such" applications as are received at least 90 days prior to the deadline thereby expanding the requirement to all applications. Also, see N.J.A.C. 7:27-22.10(a) which already includes such a 30 day period. The Department appreciates the commenter's support for its decision to provide diligent applicants with sufficient time to correct any application deficiencies. The Department will include an administrative completeness checklist in the instructions being prepared for the operating permit application forms.

196. COMMENT: N.J.A.C. 7:27-22.4(e) and 22.30(c) are inconsistent, in that N.J.A.C. 7:27-22.4(e) states that an application for renewal of an operating permit must be submitted at least 90 days prior to the deadline, and N.J.A.C. 7:27-22.30(c) states that the application is due 12 months prior to expiration. (25)

RESPONSE: In N.J.A.C. 7:27-22.4(e) applicants are encouraged to submit applications for initial permits, permit renewals, and significant modifications 90 days prior to the regulatory deadlines for these actions in N.J.A.C. 7:27-22.5, 22.30, and 22.24. This allows time for the Department to provide notice of administrative incompleteness, and the applicant to correct any deficiencies, prior to the application deadline. Language in N.J.A.C. 7:27-22.4(e) and 22.7(d) has been revised to clarify this.

N.J.A.C. 7:27-22.5 Application procedures for initial operating permits

197. COMMENT: Subchapter 22 requires that a Level-1 and/or Level-2 Risk Assessment be submitted with an initial operating permit application. It would appear that facilities required to obtain administrative completeness by November 1994 will be unable to comply. (23)

RESPONSE: The Subchapter 22 requirement for risk assessments to be submitted with the initial operating permit application, in N.J.A.C. 7:27-22.8, is not being adopted at this time. The Department expects to repropose N.J.A.C. 7:27-22.8, with risk assessment being made a voluntary option. Also, the deadline for the first round of permit applications has been postponed nine months until August 1995.

198. COMMENT: This commenter believes a provision should be added which allows the DEPE to grant alternative application deadlines. (13)

RESPONSE: The Department's operating permit program submittal to the EPA does not allow for granting alternative application deadlines. In order to obtain a program approval from the EPA, the Department had to establish a definitive schedule for the call in of all initial operating permit applications.

199. COMMENT: The applicability dates of Subchapter 22 should be reconsidered for facilities which have recently received preconstruction permits and certificates to operate. (3, 13)

RESPONSE: N.J.A.C. 7:27-22.5(f) will allow new facilities which have received preconstruction permits, but have not commenced operation as of the applicable deadline in N.J.A.C. 7:27-22.5(c), to submit their initial operating permit application 12 months after commencing operation.

200. COMMENT: DEPE should clarify submittal schedules for those facilities that will submit only general operating permit applications under N.J.A.C. 7:27-22.14. (22)

RESPONSE: The submittal schedule remains the same regardless if a facility is seeking a general permit or not.

201. COMMENT: Concerning N.J.A.C. 7:27-22.5(b), in order to be consistent with 40 CFR 70.5(a)(1)(i), all of the sources covered under New Jersey's interim program should submit their applications during the first year of interim approval. The interim program must cover at least 60 percent of the total Title V affected sources. (27)

RESPONSE: The schedule of initial operating permit deadlines in N.J.A.C. 7:27-22.5(c) is designed to meet this objective.

202. COMMENT: The commenter states that N.J.A.C. 7:27-22.5(c) is ambiguous when applied to facilities that may contain Phase II source operations, Phase I source operations, and non-Title IV source operations. The language could be read to require these facilities to submit an initial permit application prior to January 1, 1996. If so, there would be no uniform time for the submission of applications for all of the Phase II units. The commenter believes that DEPE did not intend to require facilities with Phase II units to submit applications prior to the deadlines established in the Federal Title IV regulations. Therefore, to clarify this provision, the commenter suggests either deleting the word "earliest" or replacing "earliest" with "latest." (23)

RESPONSE: The Department does intend to require Phase II units to submit initial operating permit applications prior to the deadlines established in the Federal regulations promulgated pursuant to Title IV of the Clean Air Act. The application deadlines for the electric utilities are within the first two "waves" of initial operating permit applications due in 1995. In order to obtain interim program approval from EPA, facilities with the greatest emissions (that is, the electric utilities) were given the earliest application deadlines.

203. COMMENT: In N.J.A.C. 7:27-22.5(c), the commenter requests clarification of when initial permit applications are due for Municipal Solid Waste Combustion Units (MWCs) that have not commenced operation prior to the applicable deadline for submitting an administratively complete application. (28)

RESPONSE: According to revisions made to N.J.A.C. 7:27-22.5(f), for new facilities that have not commenced operation as of the applicable deadline in N.J.A.C. 7:27-22.5(c), the deadline for submitting the initial operating permit application is 12 months after commencing operation.

204. COMMENT: Facilities that fall under N.J.A.C. 7:27-22.5(c)1i and ii also fall under SIC 4911 (electric utilities) and have an earlier submission date. Therefore, the January 1, 1996 and January 1, 1998

deadlines referenced in N.J.A.C. 7:27-22.5(c)1i and ii are merely empty requirements, and should be removed from the proposed rule. (40)

RESPONSE: While it is likely that all Phase II facilities will be utilities, these provisions ensure that any facilities which are not will comply with Federal requirements. Note that these provisions have been moved on adoption from N.J.A.C. 7:27-22.5 to N.J.A.C. 7:27-22.29, Affected Title IV facilities. The Department's deadlines for initial operating permit applications for electric utilities (SIC 4911), in N.J.A.C. 7:27-22.5(c)3, are in 1995.

205. COMMENT: Concerning N.J.A.C. 7:27-22.5(c)3, filing operating permit applications by November 15, 1994, is unduly burdensome, considering the effort required to obtain the preconstruction permits and the environmental evaluations needed to receive these permits. This section should allow facilities that have received a certificate to operate within one year of the effective date of the proposed rules to submit the application one year from the date of the certificate. This will allow those newly commenced operating facilities to concentrate on complying with all other requirements associated with the initial startup of a new facility while improving operations. (3, 13)

RESPONSE: N.J.A.C. 7:27-22.5(f) has been revised and will allow new facilities which have received preconstruction permits, but have not commenced operation as of the applicable deadline in N.J.A.C. 7:27-22.5(c), to submit their initial operating permit application 12 months after commencing operation. Also the deadline for the first round of permit applications has been postponed nine months until August 1995 based upon the later date of adoption of this rule.

206. COMMENT: This commenter commends the Department for proposing a phase-in for utility operating permit application submittal. Splitting the application submittal deadlines by county will achieve a more equitable distribution of both the utility industry's and the Department's resources. The commenter wishes to thank the Department for the opportunity to assist in developing this submittal schedule through the utility air permits work group. (40)

RESPONSE: The Department acknowledges and appreciates this comment.

207. COMMENT: Regarding N.J.A.C. 7:27-22.5(c)3, this commenter proposes that all flavor facilities in the SIC 20 series be grouped with the 28 series for application submission on May 15, 1996. The flavor component of the flavor and fragrance industry is typically classified in SIC 2087, while the fragrance portion is typically categorized in SIC 2869. Many facilities operate flavor and fragrance research, warehousing and production at the same site, often using the same raw materials. Some of these combined facilities are in SIC 2087, while others are in SIC 2869. This proposal would result in applications for some facilities due in 1994 with others not due until 1996, based upon whether the facilities have a predominantly flavor or fragrance SIC code. Furthermore, it is unfortunate that flavor facilities would be in the first group of permits, since flavors are typically produced by the complex batch processing procedures that the Department understandably intends to delay permitting until later in the process. As a result, the proposed application deadline schedule, as it relates to the flavor and fragrance industry, fails to meet the standard specified in 25 N.J.R. 3969. (29)

RESPONSE: The Department agrees with this comment. N.J.A.C. 7:27-22.5(c)3 has been changed so that the initial operating permit application deadline for facilities in SIC 2087 is consistent with the deadline for facilities in SIC 2869. The complete application deadline for both is now November 15, 1997.

However, the application deadlines in N.J.A.C. 7:27-22.5(c)3 were developed so that applications would be received from approximately 60 percent of the facilities and 80 percent of the aggregate emissions within the first two years of the program. This must be done to obtain interim program approval from EPA.

In order to balance the change caused by revising the deadline for facilities in SIC 2087, facilities in SIC Codes 2700 through 2799 (the printing and publishing industries) were moved from the fifth wave of applications to the fourth wave of applications.

However, because the deadline for each wave of initial permit applications has been postponed six months due to delays in adopting the operating permit rule, the application deadline for the printing and publishing industries does not change and remains November 15, 1996 as proposed.

208. COMMENT: Since the Department has not yet finalized this rule and it is likely that EPA will not approve this rule until mid-to-late 1994, it is difficult and perhaps impossible for facility operators to prepare and submit applications in November 1994. A facility operator may not know what the final requirements will be, and cannot begin preparing the application, before EPA approves this rule. Another commenter notes that if the effective date of this rule is December 1993, only eleven months are allowed to complete an application pursuant to a program that has not yet been approved by the EPA. This approach runs counter to 40 CFR Part 70, which requires that all affected sources submit permit applications within one year of EPA's approval of the State's program. The commenter recommends that DEPE extend the permit application deadline for MWCs until one year after EPA program approval. One commenter suggested that the Department add six months to all application deadlines. (26, 28)

RESPONSE: Due to delays in adopting the operating permit rule, the Department has added nine months to the first group of the application deadlines listed in N.J.A.C. 7:27-22.5(c)3, and has added six months to the rest of the application deadlines listed in N.J.A.C. 7:27-22.5(c)3. However, the Department cannot extend the permit application deadline for specific facilities until one year after EPA program approval. In order to obtain interim program approval from EPA, the Department developed the phase-in schedule in N.J.A.C. 7:27-22.5(c)3 so that applications would be received from approximately 60 percent of the facilities and 80 percent of the aggregate emissions within the first two years of the program. EPA would not grant interim approval of New Jersey's operating permit program if the rule postponed the initial application deadline for specific facilities until one year after EPA program approval.

209. COMMENT: According to the table provided in N.J.A.C. 7:27-22.5(c)3, office buildings will be among the first applications due. And, if a facility has multiple SIC codes, the site must submit the entire application by the deadline for the earliest applicable SIC code for the site. If both of these criteria are followed, many facilities whose primary activities are in SIC codes with applications due at later dates will be preparing applications on a very rushed time schedule because they have office buildings on site. This section of the rule should be rewritten to prevent office buildings from triggering the application due date if there are multiple SIC codes. EPA suggests that the following language be added after the word "below" to inform facilities with more than one SIC code when to submit their applications: "(as determined by the facility's primary SIC code):" (27, 35)

RESPONSE: The Department agrees with these comments. The phrase "as determined by the facility's primary SIC code" has been added to N.J.A.C. 7:27-22.5(c)3.

210. COMMENT: A single facility with separate production facilities with different SICs should be allowed to segregate the plant by production areas and submit separate Subchapter 22 permit applications. This commenter also requested that clarification on grouping be provided for emission caps, alternative operating scenarios and intra-facility emissions trades within the permit application submittal. For example, DEPE needs to define how existing exclusion emission rates, such as those in N.J.A.C. 7:27-16.6, will be treated when a facility may include 50 different emission sources within an intra-facility emissions trade. (22, 22)

RESPONSE: N.J.A.C. 7:27-22.5 does not allow a single facility to submit separate permit applications for separate production areas with different SIC codes. According to N.J.A.C. 7:27-22.5(c)3, the application deadline for a facility is determined by the facility's primary SIC code. N.J.A.C. 7:27-22.5(i) does however allow a facility with more than 100 source operations to divide the facility into two or more components and submit separate applications for each component. Grouping sources by production areas for emission caps, alternative operating scenarios and intra-facility emissions trades would be allowed within a permit application submittal.

211. COMMENT: This commenter recommends that the application deadlines outlined in N.J.A.C. 7:27-22.5(c)3 be modified to add the 90-day lead time requested by the Department. (7)

RESPONSE: The Department agrees with this comment. N.J.A.C. 7:27-22.5(c)3 has been revised to show both the complete application deadline and the 90-day suggested early submittal date.

212. COMMENT: Regarding N.J.A.C. 7:27-22.5(d) and (e), these commenters recommend that DEPE address the situation in which a facility becomes subject to MACT or Generally Available Control Technology (GACT) after the permitting process has begun, but prior to being issued a permit. (5, 6, 29, 31, 32)

RESPONSE: The Department is reserving and not adopting these two subsections of the rule at this time. Substantial portions of Subchapter 22, including all of N.J.A.C. 7:27-22.26 "MACT and GACT standards," will be reproposed in four to eight weeks. The Department will respond

to comments received on N.J.A.C. 7:27-22.5(d) and (e) when N.J.A.C. 7:27-22.26 and related subsections throughout the rule are ultimately adopted.

213. COMMENT: N.J.A.C. 7:27-22.5(f) should be revised to be consistent with Part 70, which allows a new facility to operate for up to 12 months prior to submitting an application in order to allow an applicant to "debug" a process prior to committing to the operating permit requirements. This commenter is concerned about installation of a new facility which is subject to the PSD regulations, which would qualify as a significant modification under Part 70 and N.J.A.C. 7:27-22.24(b)1iv. Assume that the facility falls under SIC code 4911, that a PSD preconstruction permit was approved in January 1994, and operation is ready to commence in January 1995. The facility would be required to submit an operating permit application by January 1995, which would be 12 months after the preconstruction permit had been approved. Assuming that the application is administratively complete, the Department would not be required to take final action on the application until January 1996. In that event, the facility could not commence operation until a full year after the facility is ready to commence operation. To avoid such delays, the owner or operator must be allowed to complete construction and commence operation under the "permit to construct/certificate to operate" issued in accordance with N.J.A.C. 7:27-8. (11, 40)

Other commenters propose replacing "18 months" with "12 months." These commenters maintain that 18 months is a long lead time, especially if the Department is seeking administratively complete applications. For equipment specifications that do not require long lead times for delivery, there could be changes in the submitted application if the applicant filed 18 months prior to startup, creating unnecessary work for the Department and the applicant. Another commenter proposes revising N.J.A.C. 7:27-22.5(f) because certain facilities that may be scheduled to commence operation in late 1994 or early 1995 could not possibly submit an application 18 months prior to the planned commencement of operation nor receive an operating permit prior to commencing operation. Also, many facilities may be required to submit operating permit applications since their preconstruction permits will be over 12 months old at the time these rules become effective. (11W-AA, 13W-O, 33W-AY, 34W-AV, 40W-BA)

RESPONSE: N.J.A.C. 7:27-22.5(f) has been revised to be consistent with Part 70. It will allow new facilities which have received preconstruction permits, but have not commenced operation as of the applicable deadline in N.J.A.C. 7:27-22.5(c), to submit their initial operating permit application 12 months after commencing operation.

214. COMMENT: The commenter recommends that N.J.A.C. 7:27-22.5(g)2 be revised to be consistent with the Part 70 requirements, which require that a significant modification be processed within nine months of submittal of the permit. (11)

RESPONSE: N.J.A.C. 7:27-22.5(g) defines the application deadline for an existing facility, previously not subject to operating permit requirements, which through a change becomes subject to the operating permit rule. The commenter appears to confuse the requirements of N.J.A.C. 7:27-22.5(g) with Part 70 requirements for existing facilities, already subject to operating permit requirements, which propose to make a change defined as a significant modification. This would be covered by N.J.A.C. 7:27-22.24, Significant modifications, which is being reserved and not adopted by the Department at this time. N.J.A.C. 7:27-22.5(g) is being revised to be consistent with Part 70 requirements. In the original proposal, two separate deadlines were set for facilities not already subject to operating permit requirements but that become subject to the rule through a change to a source operation at the facility. The determining factor was whether the change would be considered a minor modification or a significant modification, if an operating permit had been issued for the facility. For a change that would be a minor modification, if an operating permit had been issued for the facility, the deadline was 12 months after commencing operation. For a change that would be a significant modification, if an operating permit had been issued for the facility, the deadline was 12 months before commencing operation. The Department has determined that the second deadline is not consistent with the Federal operating permit requirements at 40 CFR 70.5. N.J.A.C. 7:27-22.5(g) has been revised so that the deadline for facilities not already subject to operating permit requirements, but that become subject to the rule through a change, is 12 months after commencing operation, regardless of the type of change made to the facility. This revision will have no environmental effect and will allow facilities which become subject the rule because of a significant change sufficient time to prepare their initial application.

215. COMMENT: Regarding N.J.A.C. 7:27-22.5(g)1 and 2, the second "if" in these provisions should be changed to "and." (27)

RESPONSE: The language in N.J.A.C. 7:27-22.5(g) has been revised such that this comment is no longer applicable. See response to Comment 214 above.

216. COMMENT: N.J.A.C. 7:27-22.5(i) should be revised so that a facility that wishes to submit two or more Subchapter 22 permit applications need not supply a schedule to, and obtain approval from, DEPE. The schedule in N.J.A.C. 7:27-22.5 is sufficient for a facility that wishes to submit two or more Subchapter 22 permit applications. This commenter recommends that the rule allow a facility to obtain multiple permits if the facility operates multiple source operations. N.J.A.C. 7:27-22.5(i) allows a facility with over 100 stacks or chimneys to divide the facility into two or more components, but the number of stacks or chimneys is not always a good indicator of how many different types of sources or processes a facility may operate. (11, 22)

RESPONSE: The Department disagrees with the first comment. N.J.A.C. 7:27-22.5(i) requires the owner or operator to propose and obtain the Department's approval for a schedule to submit separate applications for a facility divided into two or more components. This requirement is necessary to allow the Department to efficiently manage its workload of operating permit application reviews. The Department agrees with the second comment. The term "source operation," as defined in N.J.A.C. 7:27-22.1, is a better indicator of how many sources or processes a facility may operate. N.J.A.C. 7:27-22.5(i) has been revised such that the owner or operator of a facility with over 100 source operations may elect to divide the facility into two or more components, and submit separate applications for initial operating permits for each component.

217. COMMENT: Some commenters recommend deleting the second sentence from N.J.A.C. 7:27-22.5(i), which allows an applicant with more than 100 stacks to request approval from the Department for an application schedule for submitting multiple permit applications. Some commenters questioned why the Department must approve such a schedule. One commenter asks the Department to address the situation in which a facility becomes subject to MACT or GACT after the permitting process has begun but prior to being issued a permit. The above revision is necessary to allow for this potential occurrence. Several commenters also requested clarification of whether a facility may trade emissions between portions of a facility not yet covered by the operating permit and portions which are covered by the operating permit? (5, 6, 7, 29, 31, 32)

RESPONSE: As noted in the response to Comment 216 above, the Department must approve such a schedule in order to efficiently manage its workload. N.J.A.C. 7:27-22.26, MACT and GACT standards, is not being adopted at this time, but will be reproposed in four to eight weeks. The Department will respond to comments related to this section of the rule when it is ultimately adopted. A facility may not trade emissions between portions of a facility which are not covered by an operating permit.

218. COMMENT: A number of commenters believe N.J.A.C. 7:27-22.5(j) creates an unnecessary burden on the applicant and suggest that copies to EPA and the states should be provided by the Department as part of the fee paid by the applicant. Several commenters state that the Department is required to provide notice of each draft permit to any affected state pursuant to 40 CFR 70.8(b)(1). Finally, one commenter argues that the service of providing copies should be provided by the Department as part of the fee paid by the applicant. (4, 5, 6, 7, 11, 29, 30, 31, 32, 33, 34, 40)

RESPONSE: Part 70 (40 CFR 70.8) provides that the applicant may be required by the permitting authority to provide a copy of the permit application directly to the EPA. To minimize program costs, and therefore permit fees, the Department is using this provision of Federal law in N.J.A.C. 7:27-22.5(j) to require the applicant to provide a copy of the application to the EPA. Note also that under Part 70, EPA may determine that an application summary, or portions of an application, may be submitted to EPA in lieu of the complete application. As suggested by the commenters, the Department is revising N.J.A.C. 7:27-22.5(j) to delete the requirement that the applicant provide a copy of the application to any affected state.

N.J.A.C. 7:27-22.6 Application contents

219. COMMENT: This commenter requests that the rule state that no enforcement action will occur if the applicant cures any omission or error in the application within a reasonable time of discovery. (11)

RESPONSE: N.J.A.C. 7:27-22.6 cannot include a statement that no enforcement action will occur if an applicant cures any omission or error in the application within a reasonable time of discovery. Such a statement would contradict the provisions of N.J.A.C. 7:27-1.39, Certification of information, and would undermine the provisions of the operating permit rule related to the application shield in N.J.A.C. 7:27-22.7 and completeness reviews in N.J.A.C. 7:27-22.10.

To be consistent with the provisions of 40 CFR 70, an application must be administratively complete by the deadlines provided at N.J.A.C. 7:27-22.5. The Department has emphasized in many places in the rule that applicants are encouraged to submit their applications 90 days prior to the deadline so that the Department can perform a completeness review in sufficient time to allow an applicant to address deficiencies.

220. COMMENT: The list of exempt activities and insignificant sources should be expanded. The list is much too stringent and would include many small sources with very little environmental impact. Many commenters recommend that field maintenance activities be added to the exemption provided at N.J.A.C. 7:27-22.6(c)3ii. (33, 34, 5, 6, 29, 30, 31, 32, 1, 16)

This commenter requests that the following sources be added to the proposed list of exempt activities: 1) dust emissions associated with unpaved roads and construction activities; 2) storage of used oil, oil-contaminated solids, and solid waste; 3) emissions from flanges, instrument seals, valves, fittings, sight glasses, or any other joints; and 4) emissions associated with pumps, compressors, fans or other rotating equipment, packings and/or seals. Some of this equipment is subject to the leak detection and repair provisions of N.J.A.C. 7:27-16. (40)

This commenter proposes that the following activities be added to the exemption at N.J.A.C. 7:27-22.6(c)3ii: 1) production of hot water for on-site personal use, not related to any industrial activity; 2) fuel use related to food preparation by a cafeteria; 3) space heaters fueled by natural gas or propane; 4) routine housekeeping or plant upkeep activities such as paving parking lots; 5) pressurized storage tanks for anhydrous ammonia, liquid petroleum gas, liquid natural gas, and CSM calibration gases; 6) stacks or vents to prevent escape of sewer gases through plumbing traps, not including those at wastewater treatment plants; 7) cleaning operations—alkaline/phosphate cleaners and associated cleaners and burners; 8) emissions from a laboratory; 9) miscellaneous safety devices such as fire extinguishers if associated with a permitted emission source, but not including sources of continuous emissions; 10) fugitive dust emissions from operation of a passenger automobile, station wagon, pickup truck, or van; and 11) blueprint copiers and photographic processes. (28)

In regard to N.J.A.C. 7:27-22.6(c)3iii, this commenter recommends that the on-site fueling operations for these vehicles also be exempted from the permit application. (7)

RESPONSE: The Department agrees that the list of exempt activities should be expanded. However adding a number of new activities not exempt in the proposed rule is considered too substantial to be incorporated upon adoption. The many comments received on this issue will be addressed by the Department in the upcoming reproposal. The exemption for maintenance activities provided at N.J.A.C. 7:27-22.6(c)3ii(5) is being clarified to include maintenance activities performed outdoors. An exemption for laboratory activities was added at N.J.A.C. 7:27-22.6(c)2ii(12) to be consistent with revisions being adopted at N.J.A.C. 7:27-8.2 where such equipment is exempted from preconstruction permit requirements and would thus be exempted from operating permit requirements.

221. COMMENT: In N.J.A.C. 7:27-22.6(a), incorporating operating permit application information by reference into operating permits may allow proprietary information included in the application to be made public, and will make all of the permit application Federally enforceable. Therefore, the following sentence should be added: "The Department will not incorporate by reference into the operating permit any provisions of the operating permit application." (5, 6, 29, 31, 32, 33, 34)

RESPONSE: Please see the response to Comment 307 regarding section 22.16, Operating permit contents, below.

222. COMMENT: N.J.A.C. 7:27-22.6(c) indicates that a source operation shall be included in the facility-wide permit application; however, this should not be the case if it is not subject to preconstruction permit requirements and (Federally enforceable) applicable requirements. They should retain their current regulatory status and not be subject to an emission limit, monitoring, reporting, and/or recordkeeping requirements. (22)

RESPONSE: Consistent with Part 70, source operations at a facility which are not exempt activities under N.J.A.C. 7:27-22.6(c) must be included in the facility's application for an operating permit. However, certain source operations are not exempt activities. Insignificant source operations must be identified in a facility's application for an operating permit, but would not be subject to emission limits, monitoring, or detailed reporting and recordkeeping requirements as they are not subject to any applicable requirement.

223. COMMENT: This commenter expressed support for the list approach to addressing exempt activities. Another commenter expressed support for excluding de minimis sources from permitting. These sources present no threat to the environment, and involve unnecessary paperwork for DEPE as well as their facilities. (18, 28)

RESPONSE: The Department acknowledges and appreciates the comment.

224. COMMENT: The exemption at N.J.A.C. 7:27-22.6(c)3ii should be clarified to exclude ethylene oxide emissions from sterilization units. If ethylene oxide emissions from such units exceed the applicable de minimis level, they should be included in the permit. (21)

RESPONSE: The exemption provided at N.J.A.C. 7:27-22.6(c) for sterilization units applies to very small units at first aide or emergency care facilities. Large scale sterilization units would need a preconstruction permit under N.J.A.C. 7:27-8 and would be considered significant source operations in an operating permit. EPA is scheduled to develop regulations under the Title III provisions of the Clean Air Act to regulate ethylene oxide sterilizers, accordingly, this will be a regulated source category.

225. COMMENT: Insignificant source operations emitting toxics should not be exempted. A major facility could have a number of these insignificant sources which collectively add up to major toxic emissions. (43)

RESPONSE: Insignificant source operations are not exempt activities and must be listed in the operating permit application.

226. COMMENT: Concerning N.J.A.C. 7:27-22.6(e), the four-part criterion for defining an insignificant source is too restrictive. The only criterion for determining whether a source operation is insignificant should be that proposed in N.J.A.C. 7:27-22.6(e)1. Under the four part criterion, many new pieces of equipment will now be considered significant sources that would not need permits under the current regulations. This goes beyond the intent of Part 70 by imposing preconstruction permit requirements on sources that have never been subject to Subchapter 8, without proving the necessity for such additional requirements. (5, 6, 7, 29, 31, 32, 33, 34, 35)

Many commenters noted that, for sources not currently subject to preconstruction permitting which are considered significant sources, a non-substantial component of such sources cannot be replaced as a seven-day notice change, because a seven day notice change requires a preconstruction permit to be in effect for the source. Therefore, any changes to these source operations would have to be handled as minor modifications at best. This is orders of magnitude smaller than anything for which permits are presently required, and does away with flexibility by causing delays. Neighboring states do not require this and DEPE will be contributing to the loss of industry and jobs in this State if this provision is not revised. (5, 6, 29, 31, 32, 33, 34, 4, 7, 35)

RESPONSE: The Department agrees. The provisions at N.J.A.C. 7:27-22.6(e) have been revised to better define which source operations at a facility can be classified as insignificant. Source operations which (1) are not subject to an applicable requirement, and (2) are not listed in N.J.A.C. 7:27-8.2(a) or listed in N.J.A.C. 7:27-8.2(b), and are not an exempt activity per N.J.A.C. 7:27-22.6(c), may be claimed to be insignificant. The Department did not intend to apply the operating permit requirements for significant source operations to minor sources which would not be subject to the Department's preconstruction permit requirements. The four part criterion originally proposed in N.J.A.C. 7:27-22.6(e) has been replaced with the simpler provisions noted above. This revision will not reduce or expand the number of facilities, or the number of source operations at facilities, subject to the operating permit rule. Source operations not subject to preconstruction permit requirements may be claimed to be insignificant, but still must be listed in the application along with their aggregate emissions per N.J.A.C. 7:27-22.6(f)2.

227. COMMENT: Many facilities will claim de minimis emissions and insignificant source operations when the operations do not fall into these categories. Some verification should be required by DEPE. (43)

RESPONSE: N.J.A.C. 7:27-22.6(f)2 requires that an operating permit application list the types of insignificant source operations found at the facility and provide an estimate of the total emissions from all insignificant source operations, listed separately for each criteria pollutant. This information will allow the Department to determine that source operations at a facility are correctly classified as insignificant.

228. COMMENT: These commenters believe the proposed de minimis levels in Tables A and B are too low, although many approve of the concept in general. Several commenters stated that the de minimis levels are not supported by scientific data or proof of any environmental harm. In addition, since determining whether a rate is de minimis is based on "potential to emit" an "air contaminant," there are almost no sources in the State that will not have to be permitted. Also, DEPE should use EPA's de minimis levels, and should add an "other" category within the list of potential insignificant sources. A final commenter recommends that the level of 400 pounds per year for other hazardous air pollutants in Table A be changed to 1000 pounds per year. One commenter suggested that de minimis levels be proportional to the source size, and should vary with the attainment status of the source's location. Another commenter recommended that DEPE use one-half of the risk levels in N.J.A.C. 7:27-22.8. Several commenters noted that present Subchapter 8 thresholds work well environmentally and provide some flexibility for industry, and suggested that these thresholds be incorporated into Subchapter 22. (36, 22, 23, 4, 5, 6, 11, 14, 29, 31, 32, 33, 34, 40) Another commenter stated that it is unreasonable and costly to make industry responsible for estimating and reporting levels of contaminants that cannot be measured by the applicable stack testing method. (14, 23)

RESPONSE: The table A and B thresholds for deminimis emissions have been deleted from N.J.A.C. 7:27-22.6(e). Please see the response to Comment 226 above for further discussion. Stack tests are not required to estimate and report levels of all contaminants. In many cases, emissions can be estimated from established emission factors, material balances and best engineering judgement.

229. COMMENT: The phrase "except for Municipal Solid Waste Combustion units regulated pursuant to Section 129 of the CAA" should be added to N.J.A.C. 7:27-22.6(e)2. The municipal waste combustion process is unique and measuring HAPs at the de minimis levels proposed by DEPE is extremely difficult or impossible, making implementation of this program unworkable. The 1990 CAA recognized this situation and established specific regulations in Section 129(a)(4) for this very purpose. (28)

RESPONSE: N.J.A.C. 7:27-22.6(e)2 has been revised and no longer includes de minimis emissions levels for determining if a source operation may be classified as insignificant.

230. COMMENT: De minimis thresholds should not apply to "air contaminants." De minimis thresholds should apply only to regulated pollutants, which include criteria pollutants, the 189 HAPs, and NESHAPs pollutants. Sources that deal with large quantities of natural gas, for example, would be unnecessarily penalized using the definition of "air contaminant." (36)

RESPONSE: N.J.A.C. 7:27-22.6(e)2 has been revised and no longer includes de minimis emissions levels for determining if a source operation may be classified as insignificant.

231. COMMENT: Concerning Table A, this commenter recommends that the thresholds for de minimis emissions of HAPs be revised to include an hourly value of 0.05 pounds per hour if this is more restrictive than the existing values. Table B's category of "any other contaminants" could simply be made to include HAPs. If this hourly rate is not included, batch or intermittent operations could emit a comparatively large amount of a HAP in a short period of time and never have this emission on record in the permit. (21)

RESPONSE: The table A and B thresholds for deminimis emissions have been deleted from N.J.A.C. 7:27-22.6(e). Please see the response to Comment 226 above for further discussion.

232. COMMENT: These commenters request that the following footnote be added to "Total dioxins and furans" in Table A: "*as defined in EPA/625/3-87/012, Interim Procedures for Estimating Risks Associated with Exposures to Mixtures of chlorinated-p-dioxins and dibenzofurans." Some "furans," such as tetrahydrofuran, are not a public health hazard, but may be considered so by the public. This definition of the term "Total Dioxin and Furans" should be used throughout the proposed Subchapter 22, proposed Subchapter 8, and the draft Technical Manual for Risk Assessment for Operating Permits. Another commenter stated that DEPE needs to clarify its intent regarding this term. One commenter suggested that all references should read: Total TCDD equivalents and polychlorinated tricyclic furan analogs which shall include the following isomers of chlorinated dibenzo-p-dioxin (CDDs) and chlorinated dibenzofurans (CDFs): (text of comment specifies 15 isomers). Another commenter stated that the Department should clarify whether the threshold for dioxins and furans are in toxic equivalents or total weights. If in total weights, it should be stated that only the tetra- through octa-dioxins and furans are included since these are the only groups that have a potential toxic significance. (26, 5, 6, 7, 29, 30, 31, 32)

RESPONSE: The table A and B thresholds for de minimis emissions have been deleted from N.J.A.C. 7:27-22.6(e). A definition for total dioxins and furans has been added as a footnote to Appendix I, Table C, in N.J.A.C. 7:27-8.

233. COMMENT: These commenters noted that Table A gives the threshold in pounds per year, which is inconsistent with Table B, which gives them in pounds per hour. Also, the publication Development of De Minimis Values and Threshold Values for Use in the NJDEPE Preconstruction and Operating Permit Programs develops de minimis thresholds on a pounds per year basis for HAPs specified by the CAA, plus additional HAPs of special concern in New Jersey. The largest value in the publication is 400 pounds per year, which should also be used as the basis for Table B. These commenters also stated that while the approach described in the Preamble for setting the levels in Table B provides a convenient number, the values are too small to be readily verifiable in an air flow of anything but insignificant volume. Since most insignificant source operations will be high flow but negligible concentration, verifying that a source operation meets the criteria of an insignificant source can be done more easily on a pound per year basis. (5, 6, 29, 30, 31, 32, 33, 34) When calculated on a continuous basis, Table B would allow an actual de minimis level of 438 pounds per year. A de minimis level of 400 pounds per year is much easier to verify than 0.05 pounds per hour, which is too small to verify in an air flow of any significant volume. Simply demonstrating that a piece of equipment could not handle more than 400 pounds of an air contaminant per year would be sufficient to show compliance. Therefore, Table B should be deleted and the sentence "Any other air contaminant ... 400.0 (pounds per year)" should be added to the end of Table A. (5, 6, 7, 29, 30, 30, 31, 32, 33, 34)

RESPONSE: The table A and B thresholds for deminimis emissions have been deleted from N.J.A.C. 7:27-22.6(e). Please see the response to Comment 226 above for further discussion.

234. COMMENT: Concerning Table B, do these levels eliminate or supersede current exemptions based on heat input? (13)

RESPONSE: The table A and B thresholds for deminimis emissions have been deleted for N.J.A.C. 7:27-22.6(e). Please see the response to Comment 226 above for further discussion.

235. COMMENT: The second column heading for Table B is contradictory. Annual emissions implies the quantity of contaminants emitted per year, not the pounds emitted per hour. This heading should read: "Hourly Emissions (pounds per hour)." (25)

RESPONSE:The table A and B thresholds for deminimis emissions have been deleted from N.J.A.C. 7:27-22.6(e). Please see the response to Comment 226 above for further discussion.

236. COMMENT: Several commenters believe the 0.05 pound per hour level is too low. Using EPA emission factors, a typical household fireplace has a potential to emit carbon monoxide at a rate 50 times higher than the de minimis level. A new car that meets the 1996 CAA clean vehicle standards would exceed the threshold after seven miles of driving. In addition, many of the insignificant sources emit criteria pollutants at a higher rate. Most of the listed source operations would not meet the proposed de minimis levels. A change to virtually any source will now be subject to full regulation under N.J.A.C. 7:27. This will result in a complete loss of operating flexibility and increased paperwork without achieving any accompanying environmental benefit. This is contrary to EPA's mandate and DEPE's stated intent. Furthermore, the proposed levels were chosen arbitrarily and are below most of the proposed de minimis levels for HAPs. Another commenter believes that reasonable de minimis levels would be the levels listed in DEPE's regulations, prior to any reduction. Although DEPE claims that the 90 percent reduction is consistent with the levels recommended by the de minimis work group, there is no basis for this reduction. Very few sources would be able to use this exemption as proposed. (23, 40) Several

commenters believe the 0.05 threshold is also not practical because it may be below the level of detectability. The threshold should be based on the level of detectability for a given pollutant using practical measurement methods. Using the limit of detectability to estimate emissions from high-volume sources would result in unrealistically high emissions. The normal detectability limit exceeds the de minimis limit, causing the operation to be considered a significant source. One commenter submitted data to demonstrate that the threshold is easily exceeded for low-volume sources. Another commenter submitted data on their facility demonstrating the difficulty in measuring de minimis levels at large-volume sources. Given the expense and complexity of determining the quantity of air emissions from a given source, facilities properly rely on information provided by the manufacturers of the equipment, who generally express emissions in tons per year. Thus, facility owners have no reliable way to estimate emissions from potentially de minimis sources and must resort to more expensive means. It is arbitrary and capricious for DEPE to in effect require such testing by setting thresholds far below levels at which these conventional air pollutants no longer present a public health risk and are also substantially lower than many Federal thresholds on HAPs. (1, 16, 23, 36, 39, 40)

RESPONSE: The Department agrees with these comments, all of which express a concern that the de minimis emission thresholds in tables A and B in N.J.A.C. 7:27-22.6(e) are not practical criteria for determining which source operations may be classified as insignificant. The Department has determined that these thresholds are unnecessary to obtain the emissions information needed for permitting. Therefore, the table A and B thresholds for de minimis emissions have been deleted from N.J.A.C. 7:27-22.6(e). As adopted, this section will still require reporting of emissions information from the same class of facilities and equipment, but will not require extraneous technical information to be reported. Please see the response to Comment 226 above for further discussion.

237. COMMENT: The threshold quantities in Table B should be one pound per hour, consistent with the de minimis levels of Michigan and other states. The threshold should be 10 tons per year since DEPE has clearly underestimated the economic impact of the 0.05 rate on any significant facility. The threshold should be two tons per year for criteria pollutants. This threshold would be simple, straightforward, easy for the regulated community to follow and the Department to administer. Alternatively, DEPE should use the levels being considered by either Connecticut or Pennsylvania. These proposed criteria are low enough to protect air quality without imposing additional substantive requirements. Another commenter recommends that Table B read "the greater of 0.05 pounds per hour or 1 ppm by volume in the stack." Table B should be deleted. (33, 34, 11, 16, 39, 40,)

RESPONSE: The table A and B thresholds for deminimis emissions have been deleted for N.J.A.C. 7:27-22.6(e). Please see the response to Comment 226 above for further discussion.

238. COMMENT: Subchapter 22 should clarify that any source not subject to Subchapter 8 permitting requirements, as long as it is not subject to another applicable requirement, is considered insignificant. (4)

RESPONSE: Please see the response to Comment 226 above.

239. COMMENT: With respect to N.J.A.C. 7:27-22.6(e)4iv, since the definition of "emission" already references both direct and indirect releases, the terms "direct and indirect" are redundant and should be deleted. (11)

RESPONSE: The references to direct and indirect emissions in N.J.A.C. 7:27-22.6(e) have been deleted. The criteria in N.J.A.C. 7:27-22.6(e) for determining if a source operation can be classified as insignificant have been simplified. Please see the response to Comment 226 above for further discussion.

240. COMMENT: These commenters believe N.J.A.C. 7:27-22.6(e)4viii should be revised to read: "Commercial and noncommercial fuel burning equipment. . . ." (33, 34)

RESPONSE: As originally proposed in N.J.A.C. 7:27-22.6(e)4viii, equipment used for the burning of noncommercial fuel oil could not be claimed to be an insignificant source operation. It would be classified as a significant source operation. Provisions at N.J.A.C. 7:27-22.6(e)4viii have been deleted. N.J.A.C. 7:27-22.6(e) has been revised such that source operations that can be considered insignificant are now identified by reference to N.J.A.C. 7:27-8.2(a) and (b) rather than being listed individually in N.J.A.C. 7:27-22.6(e). Equipment used for the burning of noncommercial fuel still would be classified as a significant source operation. To allow equipment used for the burning of noncommercial fuel to be claimed as insignificant source operations would be a substantive change which could not be made on adoption, and would have to be considered in future rulemaking.

241. COMMENT: If a substantial component includes combustion sources with a heat input of greater than or equal to 10 mmBTU per hour, an insignificant source as defined under N.J.A.C. 7:27-22.6(e)4viii should include combustion sources with less than 10 mmBTU per hour heat input basis. (22)

RESPONSE: The definition of substantial component being adopted in N.J.A.C. 7:27-22.1 will not include combustion sources with a heat input greater than or equal to 10mmBTU per hour. As originally proposed in N.J.A.C. 7:27-22.6(e)4viii, commercial fuel burning equipment having a heat input rate less than one mmBTU per hour could be claimed as insignificant source operations. Combustion sources with a heat input greater than one mmBTU per hour would be classified as significant source operations. Provisions at N.J.A.C. 7:27-22.6(e)4viii have been deleted. N.J.A.C. 7:27-22.6(e) has been revised such that source operations that can be considered insignificant are now identified by reference to N.J.A.C. 7:27-8.2(a) and (b) rather than being listed individually in N.J.A.C. 7:27-22.6(e). Commercial fuel burning equipment having a heat input rate of one mmBTU per hour or greater still would be classified as a significant source operation.

242. COMMENT: This commenter believes that refinery fuel gas should be added to the exemptions for commercial fuel oil and natural gas. Refinery fuel gas is cleaner than commercial oil, results in minimal to no production of HAPs when combusted, and has similar characteristics to natural gas in terms of combustion products. Typical components of refinery fuel gas are hydrogen, methane, propane, nitrogen compounds, trace amounts of H_2S (which when added to the combustion process is SO_2), and some organic compounds. Refinery fuel gas is precisely the same, and the rule should not require the calculation of emissions that will have little or no impact. (2)

RESPONSE: Refinery fuel gas is considered noncommercial fuel. Source operations involving equipment refinery fuel gas could not be an exempt activity under N.J.A.C. 7:27-22.6(c). As originally proposed in N.J.A.C. 7:27-22.6(e)4viii, equipment used for the burning of noncommercial fuel could not be claimed to be an insignificant source operation. It would be classified as a significant source operation. Provisions at N.J.A.C. 7:27-22.6(e)4viii have been deleted. N.J.A.C. 7:27-22.6(e) has been revised such that source operations that can be considered insignificant are now identified by reference to N.J.A.C. 7:27-8.22(a) and (b) rather than being listed individually in N.J.A.C. 7:27-22.6(e). Equipment used for the burning of noncommercial fuel still would be classified as a significant source operation. To allow equipment used for the burning of refinery fuel gas to be claimed as insignificant source operations would be a substantive change which could not be made on adoption, and would have to be considered in future rulemaking.

243. COMMENT: In N.J.A.C. 7:27-22.6(e)4xi, the insignificant category should be broadened to include pressure vessels maintained under a pressure greater than one atmosphere, provided that any vent serving the vessel has the sole function of relieving pressure in an emergency. In a petroleum refinery, the majority of process vessels will be in this category but cannot meet the State's definition of a storage tank at N.J.A.C. 7:27-8.1. Since the only emissions from these vessels are fugitive emissions which will be included on a total unit or facility-wide basis, listing and control of these vessels as source operations should not be a permit requirement. (33, 34)

RESPONSE: The provisions at N.J.A.C. 7:27-22.6(e) for claiming source operations to be insignificant have been simplified. Source operations listed in N.J.A.C. 7:27-8.2(b), which are not subject to preconstruction permit requirements, can be classified as insignificant. This would include a storage tank maintained under a pressure greater than one atmosphere, provided that any vent serving such storage tank has the sole function of relieving pressure under emergency conditions.

244. COMMENT: N.J.A.C. 7:27-22.6(f)2 should be deleted. Concerning N.J.A.C. 7:27-22.6(f), these commenters believe that if a source has been determined to be insignificant, it should have no further regulatory requirements. (33, 34)

RESPONSE: The Federal operating permit rule at 40 CFR 70.5 requires that an application for an operating permit must include a list of insignificant activities and may not omit information needed to impose any applicable requirement or evaluate fees. The information required at N.J.A.C. 7:27-22.6(f)2 is consistent with 40 CFR 70.5.

245. COMMENT: This commenter believes the requirement at N.J.A.C. 7:27-22.6(f)2ii is burdensome and could result in DEPE never

receiving all the data on all the potential air contaminants for the insignificant activities in question. The broad definition of "air contaminant" undermines the intent of the insignificant activities concept, which is to make the application process more efficient. This definition is also much broader than the definition of "regulated air pollutant" in sections of Part 70 dealing with the emissions information in the initial permit application. Therefore, the term "air contaminant" should be replaced by the term "regulated air pollutant." This same revision should also be made in N.J.A.C. 7:27-22.6(f)5. (28)

RESPONSE: The provisions at N.J.A.C. 7:27-22.6(f)2ii are being revised to be consistent with Part 70. The Federal operating permit rule at 40 CFR 70.5(c) requires an operating permit application to include sufficient information on insignificant sources for the permitting authority to determine permit fees. N.J.A.C. 7:27-22.6(f)2ii is being revised to require an estimate of total emissions from insignificant source operations for only the criteria pollutants. This will redue the reporting requirements for insignificant sources and streamline the application process, while still requiring the minimum information needed to comply with Part 70. The Department considers the definition of air contaminant and regulated air pollutant to be the same. Please see the response to Comments on N.J.A.C. 7:27-22.1, Definitions, above.

246. COMMENT: Regarding N.J.A.C. 7:27-22.6(f)4iii, the definition of "alternative operating scenario" is so broad that the applicant must place all alternative operating scenarios for products and intermediate products in the application. This is extreme, unreasonable and impossible to comply with. At a facility such as a refinery, there are so many products and intermediate product streams that providing all the alternative operating scenarios for each is not reasonable. For example, heating oil may be one product, while the feed to the unit that produces heating oil is likely to be a combination of four or more intermediate products. Each of these may be the result of other intermediate products. Any deviation from a scenario listed in the application would require at least a seven-day-notice. This is a waste of time, and hinders the financial viability of the regulated community without achieving any environmental benefits. As long as emissions are not increased over the facility's permitted limit, the Department should not regulate industry's daily operations. The Department would find it more useful to request a general description of the process with the understanding that each process can be varied. (33, 34)

RESPONSE: The definition of alternative operating scenario implements the requirements of 40 CFR 70.4(b)(12) so as to provide for operational flexibility. This rule provides the maximum flexibility allowed by EPA's Part 70 rules as they pertain to alternative operating scenarios.

247. COMMENT: In N.J.A.C. 7:27-22.6(f)5, these commenters recommend that the term "air contaminant" be changed to "regulated pollutant" throughout. The revised term provides a finite list of air pollutants that EPA is concerned with. Requiring emissions information for each air contaminant emitted by a facility is beyond the intent of the CAA. Another commenter recommended that the entire section be reserved until it is completely revamped. (33, 34, 5, 6, 29, 31, 32)

RESPONSE: The Department considers the definition of air contaminant and regulated air pollutant to be the same. Please see the response to Comments on N.J.A.C. 7:27-22.1, Definitions, above.

249. COMMENT: For confidentiality purposes, air contaminants should be grouped by category on the operating permit application per Tables A and B at N.J.A.C. 7:27-22.6. For example, N.J.A.C. 7:27-22.6(f)5 should be revised as follows: i. For each significant source operation, each air contaminant, by category, that it may emit ... The rest of the section should be revised in the same way. (25)

RESPONSE: The operating permit application forms being developed by the Department will allow the grouping of some air contaminants, such as volatile organic compounds (VOCs) and total suspended particulates (TSP). However in order to meet the requirements of Title III of the Clean Air Act, the hazardous air pollutants (HAPs) must be listed individually.

250. COMMENT: Concerning N.J.A.C. 7:27-22.6(f)5i, EPA notes that this provision allows a facility not to provide emissions information on an air contaminant with a potential to emit of less than the de minimis level. EPA recommends that the source be required to list the emissions rate for such an air contaminant since this information is needed when the facility totals its aggregate potential to emit for the entire facility pursuant to N.J.A.C. 7:27-22.6(f)5iii. (27)

RESPONSE: The de minimis emission thresholds in Tables C and D in Appendix I of N.J.A.C. 7:27-8 used for reporting emissions are consistent with the Part 70 deminimis emissions concept.

251. COMMENT: A definition of "each air contaminant that it may emit" should be provided for N.J.A.C. 7:27-22.6(f)5i. This definition should not include air contaminants which may be inadvertently generated by fossil fuel combustion. (13)

RESPONSE: The term "air contaminant" is defined in N.J.A.C. 7:27-22.1. It is not clear what the commenter means by "inadvertently generated by fossil fuel combustion." Air contaminants generated by fossil fuel combustion are generally byproducts of combustion or trace elements from the fuel. These air contaminants are required to be listed in the operating permit.

252. COMMENT: Concerning N.J.A.C. 7:27-22.6(f)5i, ii and iii, commenters note that in petroleum storage terminals, fugitive emissions are usually determined using a component count and an emission factor associated with each component. Since components are normally considered to be in service all year, the fugitive emissions and "potential" fugitive emissions are equivalent. This may be the case for most regulated facilities. DEPE should consider removing the requirement for reporting of "potential" fugitive emissions on permit applications, as this would streamline the process with no loss of regulatory authority. (33, 34)

RESPONSE: N.J.A.C. 7:27-22.6(f)5ii has been revised to delete the term "potential to emit." The section now requires a **reasonable estimate** of the facility's fugitive emissions. In certain cases "potential" fugitive emissions could be unlimited, for example, emissions from a leaking flange or emissions from vehicle traffic on unpaved roads during continuous high winds. Reporting such information would not be reasonable or practicable. The Part 70 requirements do not allow state rules to not require the listing of fugitive emissions. See Comment 254 below.

253. COMMENT: Regarding N.J.A.C. 7:27-22.6(f)5ii, EPA states that language should be added to ensure that the exemption for the fugitive emissions does not conflict with any applicable requirements. The term "if not otherwise required by an applicable requirement" should be added to the end of this provision after the word "contaminant." (27)

RESPONSE: The provisions at N.J.A.C. 7:27-22.6(f)5i will ensure that sufficient information, including fugitive emissions, is provided to verify compliance with any applicable requirement.

254. COMMENT: These commenters believe that some clarification is necessary on the "cause" of the fugitive emission and why it is necessary to include this in the operating permit application, especially since it is not asked for in Part 70. (5, 6, 29, 31, 32)

RESPONSE: Part 70 specifically mentions fugitive emissions in the definition of "major source." Furthermore, application contents, 40 CFR 70.5, requires such emissions be included.

255. COMMENT: N.J.A.C. 7:27-22.6(f)5v and vi should be deleted. The type and quantity of fuel and raw materials used is highly variable, and should not be subject to permitting authority. Facilities should have the flexibility to change type and quantity of fuel and raw materials used in a particular operation, if no net increase of emissions results. (33, 34)

RESPONSE: Deleting N.J.A.C. 7:27-22.6(f)v and vi would be inconsistent with the provisions of the Part 70 rules; therefore, these provisions shall remain as is.

256. COMMENT: The information requested at N.J.A.C. 7:27-22.6(f)5vi should only be that information necessary to determine applicable requirements. Another commenter requested that DEPE define how sources with batch, pilot-plant and/or non-reactive policy permits should supply the required processing information, particularly if such data is deemed confidential by the source. (11, 22)

RESPONSE: The Federal operating permit rule at 40 CFR 70.5 requires the permitting authority to obtain all information necessary to implement and enforce applicable requirements and to determine their applicability. The application forms and instructions being developed by the Department will provide guidance on how to submit the required process information.

257. COMMENT: N.J.A.C. 7:27-22.6(f)5ix and 5x are vague and could be used to prolong the permitting process for reasons other than those specified in the regulations. These commenters believe that the burden placed on a facility to ensure the "administrative completeness" of a permit application is substantial enough, and that these provisions should be deleted. (33, 34)

RESPONSE: The Federal operating permit rule at 40 CFR 70.5(c) requires that an operating permit application include all information necessary to implement and enforce applicable requirements, and to determine the applicability of such requirements. The provisions at N.J.A.C. 7:27-22.6(f)5ix and x require this information.

258. COMMENT: The requirement at N.J.A.C. 7:27-22.6(f)5xi for submittal of calculations should be removed, unless the Department has a specific scientific use for the information. These commenters assert that calculations for the purposes of obtaining an operating permit should be retained by the permittee. (33, 34)

RESPONSE: The Federal operating permit rule at 40 CFR 70.5(c) requires that operating permit applications include the calculations on which emissions are based. This requirement is restated at N.J.A.C. 7:27-22.6(f)5xi.

259. COMMENT: Both N.J.A.C. 7:27-22.6(f)6iv and 22.6(m) are critical to the development of a successful permit shield in an operating permit. DEPE should consolidate these requirements and indicate that they form the basis for the permit shield. The commenter suggests that N.J.A.C. 7:27-22.6(f)6iv be consolidated with subsection (m) as follows: "Pursuant to the development of a permit shield, a source must indicate the following in its application: Cite text from Section (f)6iv and immediately thereafter cite text from Section (m)." (28)

RESPONSE: The provisions of N.J.A.C. 7:27-22.6(f)6iv have been moved to N.J.A.C. 7:27-22.6(f)6ii. The Department agrees that these provisions and the provisions at N.J.A.C. 7:27-22.6(m) are critical to development of the permit shield for a facility.

260. COMMENT: Concerning N.J.A.C. 7:27-22.6(f)6v, EPA notes that, when the source proposes a permit condition that is different in form from the applicable requirement, language should be added to require an equivalency demonstration in addition to a mere identification. (27)

RESPONSE: The provisions at N.J.A.C. 7:27-22.6(f)6v require the identification of any difference in form between a proposed permit condition and the applicable requirement upon which the proposed condition is based. As part of the technical review of an operating permit application, the Department will closely examine any proposed permit conditions different in form than the underlying applicable requirement to ensure the conditions are equivalent to, or more stringent than, the applicable requirement.

261. COMMENT: Several commenters believe it should be the Department's responsibility to send the application to EPA and therefore N.J.A.C. 7:27-22.6(f)11 should be deleted. (11, 33, 34, 38)

RESPONSE: Part 70 (40 CFR 70.8) provides that the applicant may be required by the permitting authority to provide a copy of the permit application directly to the EPA. To minimize the Department's costs, and the permittee's permit fees, the Department is using this provision of federal law to require the applicant to provide a copy of the application to the EPA.

262. COMMENT: Concerning N.J.A.C. 7:27-22.6(i), EPA states that the last line of this provision should be changed in the following manner to ensure that the SIP will not be violated: "do not conflict with the SIP or any state or federal regulation." (27)

RESPONSE: The suggested language has been added at N.J.A.C. 7:27-22.6(i).

263. COMMENT: In N.J.A.C. 7:27-22.6(i), applicants who wish to include special limits for startup, shutdown, or maintenance are required to propose such limits. These commenters note that there is no steady-state phenomenon, so at best the Department would receive "educated guesses," which will then be used for enforcement on industry. This will waste time and paperwork, and will be of no benefit to the environment. The first sentence should be revised to read: "Any appicant who seeks an operating permit including different emissions limits that apply to a source operation during startup, shutdown, or necessary equipment maintenance, shall negotiate such limits as part of the permitting process." (33, 34)

RESPONSE: The provisions at N.J.A.C. 7:27-22.6(i) allow an applicant to propose alternate emission limits for source operations during start-up, shutdown, or necessary maintenance. With applicants proposing alternate emission limits and providing a basis for the alternate limits, the Department may expedite the approval of operating permits rather than entering tedious negotiations.

264. COMMENT: With respect to N.J.A.C. 7:27-22.6(j), EPA states that the following language needs to be added at the end of this provision to ensure that the emission calculation method proposed by the applicant does not conflict with any applicable requirement: "The emissions calculation methods proposed by the applicant cannot conflict with the SIP or any state or federal regulation." (27)

RESPONSE: During the technical review of an operating permit application, the Department will review any emissions calculation methods proposed pursuant to N.J.A.C. 7:27-22.6(j) to ensure that the calculations do not conflict with the SIP or any state or federal regulation.

265. COMMENT: Facilities will have difficulty complying with N.J.A.C. 7:27-22.6(k). (Some commenters also suggest deleting the corresponding provision in the permit contents section at N.J.A.C. 7:27-22.16(m).) Since most industrial equipment lasts at least twice as long as the term of an operating permit, it is not possible for a large facility to know which equipment will need to be replaced over the next five years. This is an undue burden not required by Part 70 or other states. This requirement has the potential, in conjunction with the definition of "substantial component," to make every unexpected equipment failure into a minor permit modification. In combination with penalties for proceeding "at risk," facilities will shut down production when a piece of equipment unexpectedly fails. Such a policy does not benefit the environment, and may harm it, as in the case of a malfunctioning storage tank seal. Also, the regulations imply that, even if a piece of equipment is on a planned replacement schedule, if failure occurs prior to the scheduled date, the seven-day-notice provision would not apply. Manufacturing facilities will be forced to shut down production for routine maintenance and will undertake excessive repairing and patching of equipment to avoid the restrictions on direct replacement. Replacement in kind which does not affect/increase emissions should not be restricted in this fashion. Several commenters recommended that this section be deleted. DEPE should confine this provision to the pieces of equipment they are interested in reviewing. Some commenters recommend that this section read: "Any applicant who seeks to include, as a component of the operating permit for the facility, authorization for the replacement of control equipment requiring State of the Art review during the term of the operating permit as a seven-day-notice change. . . ." Another commenter provided the following list of equipment that DEPE might require review for: burners over 10 million BTU per hour, scrubbers operating at less than 90 percent removal efficiency for water soluble hydrocarbons or at less than 95 percent removal efficiency for acid gases, uncontrolled sources with an average VOC emission rate exceeding 0.5 pounds per hour, and any other sources which do not meet RACT guidelines. (5, 6, 29, 31, 32, 33, 34, 7, 22, 30)

RESPONSE: N.J.A.C. 7:27-22.6(k) as well as N.J.A.C. 7:27-22.16(m) are being reserved and not adopted at this time. The sections in Subchapter 22 related to the replacement of equipment will be reproposed in four to eight weeks. The Department will respond to comments related to these sections when they are ultimately adopted. See the rule introduction above for a discussion of the changes expected in the reproposal.

N.J.A.C. 7:27-22.7 Application shield

266. COMMENT: Some provisions on operating permit applications are vague, making it difficult for an applicant to know whether the application is "administratively complete." The rule should afford the application shield to persons who have submitted good faith applications by the relevant deadline, as long as they provide additional information by the Department's deadlines. This is authorized by Federal law (see 40 CFR 70.5,70.7(b)). Other commenters recommend providing the application shield for an application which is substantially administratively incomplete . . ." In addition, one commenter stated that requests for additional information be limited to "relevant" information. (16, 33, 34)

RESPONSE: To assist applicants in obtaining an application shield, N.J.A.C. 7:27-22.4 sets forth a voluntary early submittal process to help assemble an administratively complete application by the appropriate deadline. However, the Department has not added the "good faith" or "substantially complete" provisions suggested, because neither provision would comply with Part 70. The commenter is incorrect in stating that a "good faith" exception to completeness requirements would comply with Federal law. This type of provision was specifically considered and rejected by EPA (see the Preamble to 40 CFR Part 70, in the discussion of 70.5). As to the suggestion that the rule should limit the Department to only obtain relevant information, N.J.A.C. 7:27-22.6 sets forth the application contents consistent with 40 CFR 70.5(c).

267. COMMENT: Two commenters consider the application shield laudable and necessary. However, the facility and the Department may disagree as to the applicability of certain regulatory requirements. If the application deadline expires before the Department requests additional information, or prior to the deadline for submittal of said information, the permittee would lose protection of the application shield. Therefore,

a potential permittee should be covered under the shield if they are within the time allowed for submittal of additional information at the Department's request. (33, 34)

RESPONSE: The Department intends to comply with the requirements of 40 CFR 70.5(a)(2) and 70.(a)(4) by issuing either a completeness determination or an incompleteness determination within 60 days of receipt of an application. Disagreements on applicability of certain regulatory requirements may occur when an applicant hasn't adequately demonstrated non-applicability to those requirements that seem to apply. The applicant is responsible to respond to the Department's request for information to confirm the applicability of the regulatory requirements within the time allotted in the Department's response in order to maintain the application shield.

268. COMMENT: The proposed N.J.A.C. 7:27-22.7(f)2 should be revised to read: "within the deadline reasonably established by the Department." (40)

RESPONSE: The suggested change has been made in the adoption document at N.J.A.C. 7:27-22.10(d), which deals with completeness review, and is referenced in N.J.A.C. 7:27-22.7(f)2.

N.J.A.C. 7:27-22.8 Air quality simulation modeling and risk assessment

The Department is reserving and not adopting this section of the rule at this time. Substantial portions of Subchapter 22 and Subchapter 8 will be reproposed in four to eight weeks. The Department will respond to comments received on this section of the rule when it is ultimately adopted. See the rule introduction above for a discussion of the changes expected in the reproposal.

N.J.A.C. 7:27-22.9 Compliance plans

269. COMMENT: The commenter suggests that DEPE prepare a guidance document for compliance plans required under N.J.A.C. 7:27-22.9. In order to avoid additional paper work, the commenter suggests that the Department provide forms with the certifications requested and a checklist of items necessary to complete the application form. (15, 22)

RESPONSE: The Department plans to provide most of this type of guidance through the operating permit application forms and instructions and the Department will consider preparing a guidance document for this section of the rule. The application forms will contain all needed certifications and are expected to be accompanied by a completeness checklist.

270. COMMENT: N.J.A.C. 7.27-22.9 is more detailed and exhaustive than the minimum Federal requirements in 40 CFR 70.5(c)8. Facilities required to meet the application deadline of November 15, 1994 may not be able to prepare the compliance plan in time. The commenter recommends that the provisions only reflect the minimum Federal requirements. (13, 11)

RESPONSE: The Department disagrees with the commenter's claim that these rule provisions go beyond the requirements of 40 CFR 70.5(c)8. The rule language in this section combines the requirements of 40 CFR 70.5 and 70.6. The resulting New Jersey rule is no more stringent than the Federal Part 70 rules. In addition, because of the delays encountered in adopting New Jersey's operating permit rule, the application deadlines have been moved back. See N.J.A.C. 7:27-22.5, Application procedures for initial operating permit.

271. COMMENT: EPA states that N.J.A.C. 7:27-22.9(c)2i must be revised to require compliance with EPA's enhanced monitoring requirements. The revised provision should read as follows: "All monitoring, analysis procedures, recordkeeping, reporting, or test methods required by any applicable requirement, including any applicable monitoring procedures and methods required under the federal 'Enhanced Monitoring Program' (40 CFR Part 64);". (27)

RESPONSE: The rule language at N.J.A.C. 7:27-22.9(c)2i has been revised as suggested.

272. COMMENT: In regard to N.J.A.C. 7:27-22.9(c)2ii, EPA interprets 40 CFR 70.6(a)(3)(B) to require that compliance certifications be based on data generated by periodic monitoring or testing methods. Such data should also be used as evidence of continuous or intermittent compliance and for direct enforcement purposes. Language correlating compliance with monitoring data should be added. Where the source proposes to use monitoring of operating parameters as periodic monitoring or testing techniques (as opposed to direct emissions monitoring), the source must propose an enforceable limit or range of operation for the parameter monitored or tested and show how this parameter correlates to its emission limit. (27)

RESPONSE: The rule language at N.J.A.C. 7:27-22.9(c)2ii has been revised to include a provision that requires data collection and retention that can be used for enforcement of an applicable requirement.

273. COMMENT: The commenter recommends that N.J.A.C. 7:27-22.9(c)8 be deleted. None of the three programs has anything to do with the operating permit program, and the linkage between these programs and the operating permit program is arbitrary and contrary to Federal law. Because the compliance plan becomes part of the operating permit, any violation of these programs will result in a violation of the operating permit, even when these other violations do not increase emissions or violate any other term of the operating permit. Each of these other programs has, or can be expected to have, its own enforcement provisions and the Department must rely on those enforcement provisions. Other commenters urge that N.J.A.C. 7:27-22.9(c)8i and ii be deleted. Applicants should not have to certify compliance in an operating permit with the Toxic Catastrophe Prevention Act (TCPA) or any Employee Trip Reduction (ETR) rules promulgated by the Department of Transportation (DOT). These rules are not air pollution control requirements. The TCPA rules are separate from Section 112(r) accident prevention provisions because EPA has not yet promulgated the regulations implementing Section 112(r). Compliance with ETR rules should be certified to DOT; the rules pertain only to mobile sources and should not be referenced in programs dealing with stationary sources. (30, 33, 34, 40, 16)

RESPONSE: EPA's Operating Permit rule at 40 CFR 70.5(c)(9)(i) requires compliance with all provisions of the Federal Clean Air Act. EPA asserts that the rules and programs referred to in the comment are all applicable requirements. The Department agrees with EPA's assertion.

274. COMMENT: The commenter suggests removing N.J.A.C. 7:27-22.9(c)8iii from the proposed rule. The Department has provided no rational basis for requiring applicants to separately certify the compliance of any architectural coatings used at a facility with N.J.A.C. 7:27-23. N.J.A.C. 7:27-23 should be evaluated as other provisions of N.J.A.C. 7:27 are in assessing potentially applicable requirements; no separate certification statement should be required. Such a statement is not required by Part 70. (40)

RESPONSE: An applicant, as required by 40 CFR 70.5(c)(9)(i), must certify compliance with all applicable requirements. The rule at N.J.A.C. 7:27-23, Volatile Organic Substance in Consumer Products, like any rule, once approved by EPA and incorporated into the State Implementation Plan, becomes an applicable requirement.

275. COMMENT: EPA suggests that N.J.A.C. 7:27-22.9(c)8i be revised as follows in order to require that the source certifies its compliance with 112(r) of the CAA: "The permittee will ensure and certify the compliance of the facility with the accidental release provisions from Section 112(r) of the Clean Air Act;". (27)

RESPONSE: The Department has revised the rule text consistent with the commenter's recommendations by adding the appropriate Clean Air Act citation. See N.J.A.C. 7:27-22.9(c)6i.

276. COMMENT: The commenter suggests adding the following phrase to the end of N.J.A.C. 7:27-22.9(e): "... if the source does not follow the requirements of the compliance plan." (38)

RESPONSE: Language has been added at N.J.A.C. 7:27-22.9(e) to address the commenter's concern. However, the commenter's language can not be added as suggested because the provisions of N.J.A.C. 7:27-22.9(e) go beyond compliance with a facility's compliance plan. To address any non-compliant situation at a facility, the Department recommends an applicant seek an administrative consent order.

N.J.A.C. 7:27-22.10 Completeness review

277. COMMENT: With regard to N.J.A.C. 7:27-22.10(a) and (b), this commenter suggests that both references should be either 30 days or 60 days. (38)

RESPONSE: The two time limits serve two different purposes. Pursuant to 40 C.F.R. 70.7(a)(4), an application is automatically deemed complete if a permitting authority (that is, the Department) fails to notify the applicant of any deficiencies in the permit application within 60 days of receipt of the application. N.J.A.C. 7:27-22.10(b)1 incorporates this provision into Subchapter 22. The Department's goal, however, is to review all applications for administrative completeness within 30 days. Therefore, N.J.A.C. 7:27-22.10(a) provides that the Department will respond to the applicant within 30 days, even though the application will not automatically be deemed complete until 60 days have passed.

N.J.A.C. 7:27-22.10(a) reflects the Department's commitment to respond to applications within a shorter time frame than that required by Part 70.

278. COMMENT: With regard to N.J.A.C. 7:27-22.10(b)3, the commenter states that there is often a time lag between the dates on letters from the Department, the date of mailing, and the date on which such letters are received. Therefore, a permittee should not have to wait until they actually receive a completeness determination for the application shield to take effect. Instead, the completeness determination should start from the date that the Department determines that an application is complete. (40)

RESPONSE: As stated at N.J.A.C. 7:27-22.7(c), an application shield becomes effective upon the date that the application is due to the Department. Thus, if the application deadline is May 1, the application is submitted April 20, and the Department determines that it is administratively complete on May 20, the application shield is in effect as of May 1. This effective date is unaffected by the date upon which the applicant receives notice from the Department of the administrative completeness of the application. Also, in response to this comment, N.J.A.C. 7:27-22.10(b)3 has been revised to read "the date that the Department determines that the application is administratively complete."

279. COMMENT: This commenter recommends that, at N.J.A.C. 7:27-22.10(d), the word "reasonable" should be added before the word "date" in the first sentence, and that the Department provide a minimum of 30 days for the applicant to respond. (33, 34, 40)

RESPONSE: N.J.A.C. 7:27-22.10(d) has been revised to read "the Department shall establish a reasonable date by which the information is due to the Department." A minimum response time was not specified in the rule to accommodate the complexity of additional information which may be requested by the Department, and the time needed for response. This section also allows an applicant to request additional time for the submittal of additional information if needed.

280. COMMENT: With regard to N.J.A.C. 7:27-22.10(e) and (f), this commenter suggests that a refund of 50 percent be issued to an applicant if the permit is denied. (38)

RESPONSE: If an operating permit is denied due to the applicant's failure to provide a timely response to the Department's request for additional information, the Department will not refund the application fee.

N.J.A.C. 7:27-22.11 Public comment

281. COMMENT: Two commenters recommend that the notice and availability of documents for public review be consistent with the Part 70 requirements. Another commenter requested that minor modifications be excluded from public comment. (12, 11)

RESPONSE: These provisions as proposed are consistent with Part 70, including the provision in Part 70 which does not require public comment for minor modifications. N.J.A.C. 7:27-22.11(a)1 through 4 list the actions upon which public comment will be solicited. Minor modifications are not among them.

282. COMMENT: This commenter requests that a permittee be allowed to review the draft operating permit prior to the public comment period. (11)

RESPONSE: The Department agrees with this comment and intends to have the process of writing an operating permit be an interactive one between the Department and the applicant.

283. COMMENT: With regard to N.J.A.C. 7:27-22.11(a), this commenter supports the DEPE's proposal to use one public comment period for both the preconstruction permit and operating permit for a given facility. This will alleviate unnecessary effort on behalf of the public, the regulated community, and DEPE. (12)

RESPONSE: The Department appreciates this comment in support of its efforts to provide a streamlined permitting process.

284. COMMENT: Several commenters believe that the phrase "significant degree of public interest," found at N.J.A.C. 7:27-22.11(e), is vague and ambiguous and should be defined, perhaps as a percentage of the population that lives within proximity to the facility. Some commenters recommend that a committee, with members from the Department, environmental groups, and industry, review comments and determine whether sufficient public interest exists for a hearing to be held. Commenters stated that the Department's position that one to two hearing requests constitutes a "significant degree of public interest" could be costly, and could jeopardize the permitting process and prolong it needlessly. Several commenters recommended that the public comment period be limited to issues directly related to whether the permit is consistent with applicable requirements, or limited to Clean Air Act issues. (33, 34, 6, 30, 35, 9, 25, 5, 7, 29, 31, 32, 11, 15, 24, 30)

RESPONSE: The rule has been clarified at N.J.A.C. 7:27-22.11(e) to indicate that the Department will not consider hearing requests unless the issues raised in the request are relevant to the draft operating permit under review by the Department. The Department will not, however, convene a committee to review hearing requests as suggested by the commenter. Such a committee would add further delays in the process without significantly improving determinations of what issues are or are not relevant to the permitting process.

285. COMMENT: (1) Will the applicant be allowed to be present and speak at the hearing?; (2) How will the Department determine if the commenter represents an affected party?; (3) If an organized group decides to target a company or industry, how will the Department maintain equal treatment to the regulated community?; (4) How does a company avoid being subjected to unfair scrutiny by a competitor?; and (5) How will the Department maintain confidential information in a public hearing? (15)

RESPONSE: (1) Any person, including the applicant, may attend and speak at a public hearing. The Department may set reasonable limits on the length of time each person may speak, if necessary to allow all who wish to a chance to speak. (2) There is no need for a determination that a person is an affected party. Any person who raises relevant issues may request a public hearing, and any person may speak at such a hearing. (3) The Department intends to provide equal treatment by allowing any person who raises relevant issues to speak and by limiting the time each person is allowed to speak. (4 and 5) A competitor as well as any other person may inspect the public record of each permit action. Please refer to N.J.A.C. 7:27-1.4 for an understanding of what is public versus what is confidential. Any information claimed as confidential at the time of its submittal to the Department will be reviewed under the Department's standards for confidentiality at N.J.A.C. 7:27-1.4. If it is determined to be confidential, it will be omitted from the draft operating permit which is released to the public, and will not be disclosed by the Department at the public hearing.

286. COMMENT: With regard to N.J.A.C. 7:27-22.11(h), this commenter is not in favor of "group" public hearings, because of the possibility of "guilt by association," simply by being included in the same hearing with companies which are not in compliance. (6)

RESPONSE: The provisions of N.J.A.C. 7:27-22.11 do not require the Department to hold "group" public hearings. As part of its operating permit program submittal to EPA, the Department prepared a workload analysis showing streamlined permitting procedures. By consolidating permits that are geographically close to one another and holding a common hearing, the Department seeks to maximize public participation while minimizing its operating costs and thus permit application fees. In conducting its group hearings, the Department will keep the commenter's concern in mind and will make every effort to conduct the hearing so that each draft operating permit is reviewed on its own merits.

287. COMMENT: This commenter recommends that N.J.A.C. 7:27-22.11(i) require that comments on draft operating permits be maintained for the entire permit term. (11)

RESPONSE: The Department intends to maintain the record of public comment for an operating permit until the permit is renewed.

288. COMMENT: At N.J.A.C. 7:27-22.11(j), the Department states that it will give notice of draft operating permits to affected states. The manner in which DEPE will determine the impact of a project on an affected state and provide notice to the relevant community is not specified. (43)

RESPONSE: The Federal rule, 40 CFR 70.8(b), requires the Department to provide notice of each draft operating permit to any affected state. N.J.A.C. 7:27-22.11(j) contains this same provision. The manner in which DEPE will determine the impact of a project on an affected state is prescribed by the applicable requirements that are relevant to that facility (that is, PSD, etc.).

289. COMMENT: The Department should provide a copy of the draft operating permit to the County Environmental Health Act (C.E.H.A.) lead agency in the county in which the facility operates. Such agencies may also make the draft permit available for review by interested parties. (21)

RESPONSE: While the comment is appreciated for its concern that public access to these documents be provided, the Department will not be providing copies of the draft operating permits to the County Environmental Health Act (CEHA) agencies. The draft permits will be

extensive documents, in most cases numbering hundreds of pages, containing legal certifications and permit conditions with regulatory citations and compliance assurance methods for every significant source operation at affected facilities. Copies of the draft operating permits will be provided to the Department's Regional Enforcement Offices with jurisdiction over the location in which each facility operates. The Department believes its public participation procedures will ensure that the documents are accessible for review by interested parties in locales affected by the facilities without the need for depositing additional copies of the draft permits with county CEHA agencies.

N.J.A.C. 7:27-22.12 EPA comment

290. COMMENT: In regard to N.J.A.C. 7:27-22.12(a), the commenter requests that the applicant also receive a copy of the proposed permit at the same time as the submittal to EPA. (11)

RESPONSE: This is already provided for in N.J.A.C. 7:27-22.12(a).

291. COMMENT: EPA states that Part 70 requires the state to incorporate in the proposed permit any significant comments received during the comment period before submitting it to EPA for a 45-day review. Therefore, the phrase "the applicant, and other interested persons," should be deleted from N.J.A.C. 7:27-22.12(e). (27)

RESPONSE: This phrase has been deleted as suggested because only EPA is entitled to comment on the "proposed" permit (as compared to the "draft" permit). In addition, the phrase "after consideration of any comments submitted by EPA" has also been deleted. This was done because N.J.A.C. 7:27-22.12(e) becomes operative only when EPA has not commented on the version of the permit that is to be finalized, that is, there will be no EPA comments to consider.

292. COMMENT: In N.J.A.C. 7:27-22.12(h), the applicant should be able to respond to EPA's intended revisions before the permit is finalized since proposed changes may be technically infeasible or impractical to implement. (11)

RESPONSE: This provision deals with the situation where EPA itself changes the permit after the Department has issued it, and it therefore is governed by 40 CFR 70.8(d) and 70.7(g). Those provisions of Federal law set forth procedures for commenting upon and seeking review of EPA action.

N.J.A.C. 7:27-22.13 Final action on an application

293. COMMENT: EPA suggests that the second paragraph of the Preamble language concerning N.J.A.C. 7:27-22.13 be revised to read as follows: "Final action will be taken by the Department within 18 months after receipt of an administratively complete permit application. The exceptions to this are: 1) For affected facilities under EPA's acid deposition control program, the program schedule will be consistent with EPA's rules in response to Title IV of the CAA and 2) For initial operating permits, the schedule will be consistent with that specified in the transition plan as approved by EPA as part of the program." Further, EPA states that N.J.A.C. 7:27-22.13(a)1 should be revised to separate initial permits into those that will be issued during the first three years after program approval and those that will be issued within 18 months of complete applications thereafter. (27)

RESPONSE: Because the rule Summary to which EPA refers is published only in a proposal of the rule, no revisions can occur. The rule text at N.J.A.C. 7:27-22.13(a)1 has not been revised in response to the comment, because the Department intends to take final action on all applications within 18 months after receipt of an administratively complete application.

294. COMMENT: EPA states that N.J.A.C. 7:27-22.13(a)1 should be revised to indicate that EPA's objection does not stop the 18-month permit issuance clock. (27)

RESPONSE: The rule has been revised to reflect that EPA's objection will not stay the 18 month clock.

295. COMMENT: In regard to the time frames allowed for Department review of applications at N.J.A.C. 7:27-22.13(a)2, the commenter suggests that the Department replace "within 12 months" with "within six months." Further, the Department should amend paragraph (a) to "three months" and paragraph (a) to "six months," since an applicant cannot begin construction on a significant modification without prior approval. Finally, the commenter suggests that a time frame for submission of renewals be included. (38)

RESPONSE: The commenter requests to further shorten these review periods without recommendation on how the Department will meet such requirements. The Department again reviewed the permit process and determined that shorter review times are not achievable at this time. However, the Department intends to revisit the permit review process to further streamline the process after it gains experience in issuing these new federal operating permits.

296. COMMENT: In regard to N.J.A.C. 7:27-22.13(b)1, EPA states that final agency action does not occur until the Commissioner's options to intervene are exhausted. In the case of New Jersey, although the appeals are sent to a general office of administrative hearings, the Commissioner does retain final authority to adopt or to veto any decision. Therefore, the 18-month time limit would apply to the appeal process. EPA suggests that the provision be revised to read as follows: "Issuance of the final operating permit, modification, or amendment after the administrative appeal process has been exhausted;" (27)

RESPONSE: The administrative appeals process can exceed 18 months in some circumstances in order to provide for due process. The Department as well as other states are conducting discussions with EPA on how to accommodate EPA's comment. Therefore, the rule language has not been revised to include this provision.

N.J.A.C. 7:27-22.14 General operating permits

297. COMMENT: DEPE should develop general operating permits for a number of different source operations, including research and development and pilot plant facilities, petroleum product storage tank farms, industrial/commercial boilers, gas-fired turbines, commercial bakeries, and surface coating operations. (22)

RESPONSE: Although no general operating permits have been developed at this time, it is NJDEP's intent to develop general operating permits for numerous source categories. The Department appreciates receiving the recommendation of which source categories are good candidates to consider.

298. COMMENT: The commenter asks whether a facility that submits both a facility-wide operating permit application and a general permit application would receive two separate permits, or whether the general permit source(s) would be included within the facility-wide operating permit. (22)

RESPONSE: N.J.A.C. 7:27-22.14(b) states that a general permit would be a component of the facility wide operating permit. Therefore, only one operating permit will be issued.

299. COMMENT: The intent of allowing general permits is to eliminate the burden on both the facility and the Department of case-by-case review of common source operations. The commenter therefore recommends that a streamlined review schedule be developed for general operating permits, and that general permits should be issued within six months. (11)

RESPONSE: The Department agrees that less time will be needed when the general permit covers the entire facility. However, a review schedule has not yet been prepared because implementation of a general permit program will require additional rulemaking. A review schedule will be developed during this rulemaking process.

N.J.A.C. 7:27-22.15 Temporary facility operating permits

300. COMMENT: In regard to N.J.A.C. 7:27-22.15, EPA states that no Title IV facilities shall be allowed to apply for a temporary permit in lieu of a regular operating permit. EPA therefore recommends adding a new subsection (e) to clarify this issue. (27)

RESPONSE: Although this is already stated at N.J.A.C. 7:27-22.29(g), the Department has inserted this prohibition again at N.J.A.C. 7:27-22.15(e) as suggested to avoid any possible confusion.

301. COMMENT: This commenter suggests amending N.J.A.C. 7:27-22.15(b)3 to include the County Environmental Health Act (C.E.H.A) lead agency for the affected county as a designated local agency. (21)

RESPONSE: This addition has been made at N.J.A.C. 7:27-22.15(b)3iii, to require a permittee to provide written notice of a change in location to such agency.

N.J.A.C. 7:27-22.16 Operating permit contents

302. COMMENT: These commenters believe that, except for N.J.A.C. 7:27-22.16(f), this section in its entirety imposes a significant burden and an impossible task on the regulated community. (33, 34) This commenter also notes that the rule regulates such normal operating parameters as temperatures and volumes of a process, as well as changes in the weight percent of raw materials. As long as industry is operating within permitted limits, DEPE should not be attempting to regulate daily operations. (33)

RESPONSE: The requirements of N.J.A.C. 7:27-22.16 are based on the Federal operating permit rule, specifically 40 CFR 70.6.

303. COMMENT: EPA requests that a new subsection (t) be added to this section to clearly specify that facilities affected by Title IV are prohibited from exceeding any allowances held under Title IV. The new provision should read: "For facilities subject to EPA's acid deposition control program, a permit condition prohibiting emissions from exceeding any allowances that the source lawfully holds under Title IV of the CAA or the regulations promulgated thereunder." (27)

RESPONSE: The suggested language has been added at N.J.A.C. 7:27-22.16(t).

304. COMMENT: Regarding N.J.A.C. 7:27-22.16(b)1, operating permits should differentiate between permit terms and conditions that are Federally enforceable and those that are not (40 C.F.R. 70.6(b)(2)). Concerning N.J.A.C. 7:27- 22.16(b)2, another commenter suggests adding a second sentence stating: "Identify those requirements which are not Federally enforceable." Another commenter recommends revising N.J.A.C. 7:27-22.16(e) to read: "The Department shall, for the purposes of establishing State enforceable permit requirements, incorporate. . . ." (30, 38, 16)

RESPONSE: The Department has added language at N.J.A.C. 7:27-22.16(b)5 to indicate that the operating permit shall specifically designate as not being Federal enforceable any permit condition based on an applicable State requirement which is not based on an applicable federal requirement. Under N.J.A.C. 7:27-22.16(e), the Department will incorporate into the operating permit the provisions of any existing preconstruction permits and operating certificates issued for the facility.

305. COMMENT: Regarding N.J.A.C. 7:27-22.16(b)4, these commenters propose substituting "compliance assurance method" for "test method." Although 70.5(c)(4)(ii) employs the term "test method," this term is too general. Part 70 also provides for a facility to voluntarily restrict its hours of operation to maintain compliance, which is clearly not a "test method." Another commenter suggests that the term "test method" in the section seems to indicate that an analytical test method is an absolute requirement for each source. Enhanced or parametric monitoring can also be used effectively as a means of determining compliance with permit conditions. (5, 6, 7, 29, 30, 31, 32, 33, 34)

RESPONSE: As suggested, "compliance assurance method" has been substituted for "test method" in N.J.A.C. 7:27-22.16(b)4.

306. COMMENT: In N.J.A.C. 7:27-22.16(d), EPA notes that an alternative emission limit is allowed only if it is provided for in the approved SIP. Therefore the following text should be added at the end of this provision's introductory sentence: ". . . allowed in the approved SIP and if:" (27)

RESPONSE: Language similar to that suggested has been added to N.J.A.C. 7:27-22.16(d).

307. COMMENT: Concerning N.J.A.C. 7:27-22.16(e), these commenters recommend adding the following text at the end of the introductory sentence: "The Department will not incorporate by reference into the operating permit any provisions of any preconstruction permits." Prohibiting incorporation of Subchapter 8 preconstruction permits by reference into operating permits will avoid making all of the elements Federally enforceable, and will prevent inadvertent disclosure of proprietary information. (5, 6, 29, 31, 32, 33, 34)

RESPONSE: The Department will not simply incorporate by reference into the operating permit all the provisions of existing preconstruction permits. N.J.A.C. 7:27-22.16(a) requires the operating permit to specify each applicable requirement along with the legal authority which establishes the requirement. Proprietary information contained in an operating permit will be given the same safeguards as such information contained in a preconstruction permit.

308. COMMENT: With regard to N.J.A.C. 7:27-22.16(f), these commenters commend the Department for including this language in the regulation. This provision will inevitably result in substantial time savings. (33, 34)

RESPONSE: The Department acknowledges and appreciates this comment in support of its efforts to streamline the permitting program.

309. COMMENT: Regarding N.J.A.C. 7:27-22.16(g), the commenter advises DEPE to incorporate EPA's language regarding emissions trading (40 CFR 70.6(a)(8)) as a statement in the operating permit, as is being done in Connecticut. (37)

RESPONSE: EPA's language regarding emissions trading are listed in N.J.A.C. 7:27-22.28.

310. COMMENT: EPA states that compliance with the approved compliance plan should be a condition of the permit. Therefore the first sentence of N.J.A.C. 7:27-22.16(g)1 should be revised as follows: "The permittee shall comply with all conditions of the operating permit and the approved compliance plan." (27)

RESPONSE: Language similar to that suggested has been added to N.J.A.C. 7:27-22.16(g)1.

311. COMMENT: N.J.A.C. 7:27-22.16(g)1 should be revised to reflect that all permit conditions are not Federally enforceable. Only violations of Federally enforceable permit conditions would be a violation of both the New Jersey Air Pollution Control Act and the CAA. Violation of "state only" permit conditions would violate the New Jersey Act only. The commenter suggested language to clarify this. (16)

RESPONSE: N.J.A.C. 7:27-22.16(g)1 has been revised to indicate that noncompliance with a permit condition associated with an applicable state requirement constitutes a violation of the New Jersey Air Pollution Control Act, not the Federal Clean Air Act.

312. COMMENT: The commenter suggests deleting the word "reopening" from 7:27-22.16(g)1. (38)

RESPONSE: As suggested, the word "reopening" has been deleted from N.J.A.C. 7:27-22.16(g)1. This was done because noncompliance is not a reason for reopening an operating permit under N.J.A.C. 7:27-22.25, Department initiated operating permit modifications.

313. COMMENT: N.J.A.C. 7:27-22.16(g)3 should be modified to require that the Department may only revoke or reopen and modify a permit "for cause." The language should therefore be revised as follows: ". . . and revoked or reopened and modified for cause by the Department . . ." (11)

RESPONSE: This clarification has been made as suggested.

314. COMMENT: Regarding N.J.A.C. 7:27-22.16(g)3, EPA notes that the correct citation for EPA's permit reopening process is 40 CFR 70.7(g) since EPA's action is governed by Federal regulations. (27)

RESPONSE: As suggested, N.J.A.C. 7:27-22.16(g)3 has been revised to cite the federal operating permit rule at 40 CFR 70.7(g).

315. COMMENT: A commenter suggests adding the following phrase to N.J.A.C. 7:27-22.16(g)5: "except that, while waiting for approval of an application for a minor permit modification, the source need not comply with the existing permit terms and conditions the application seeks to modify." (38)

RESPONSE: The provisions at N.J.A.C. 7:27-22.16(g)5 are per the Federal operating rule at 40 CFR 70.6(a)(6)(iii). The additional language suggested by the commenter is contained in N.J.A.C. 7:27-22.23, Minor modifications. However the Department is reserving and not adopting section N.J.A.C. 7:27-22.23 at this time. This comment will be responded to when N.J.A.C. 7:27-22.23 is ultimately adopted.

316. COMMENT: Ten commenters recommend deleting N.J.A.C. 7:27-22.16(g)8. One commenter suggests that, in effect, this provision is an emission limitation. The inclusion of this provision as a standard permit condition would undercut the permit shield, and allow the Department to impose substantive standards, without the statutory and rulemaking processes that yield an applicable requirement. Another commenter suggests that this nuisance provision is overly broad and vague. The remaining commenters state that this provision conflicts with the definition provided by the Department for "Federally enforceable." If N.J.A.C. 7:27-22.16(g)8 is not deleted, the phrase "or which could unreasonably interfere with the enjoyment of life or property" should be deleted from the final rule. N.J.A.C. 7:27-22.16(g)8 should specifically be identified as non-Federally enforceable. (11, 5, 6, 7, 16, 23, 29, 31, 32, 33, 34)

RESPONSE: N.J.A.C. 7:27-22.16(g)8 is an applicable State requirement, based on the provisions of N.J.A.C. 7:27-5, Prohibition of Air Pollution. It therefore is not a new substantive standard imposed without the statutory and rulemaking process that yield an applicable requirement. The provision in N.J.A.C. 7:27-22.26(g)8 is not an emission limit in the usual sense in that it does not subject a source operation to the requirements in N.J.A.C. 7:27-22.18 for source emissions testing and monitoring or the requirements in N.J.A.C. 7:27-22.1i9 for recordkeeping and reporting. The language in N.J.A.C. 7:27-22.16(g) has been revised to indicate that permit conditions relative to nuisance situations, including odors, are not considered Federally enforceable.

317. COMMENT: This commenter is pleased with the restated statutory provision at N.J.A.C. 7:27-22.16(g)8 and encourages the Department to continue to enforce this language in its permits and all enforcement actions. This commenter also notes that a previous New Jersey Superior Court Appellate Division ruling (June 6, 1990) instructed the Department to enforce the statutory language rather than the more restrictive regulatory language concerning odors. (29)

RESPONSE: The Department acknowledges and appreciates the comment.

318. COMMENT: A commenter recommends including the citation for permit fees in N.J.A.C. 7:27-22.16(g)10, to clarify that it is the fees under Subchapter 22 that a subject source must pay. (27)

RESPONSE: N.J.A.C. 7:27-22.16(g)10 provides that the permittee shall pay fees to the Department pursuant to "this chapter" (that is, not just Subchapter 22. Therefore, the clarification requested by the commenter is not appropriate.

319. COMMENT: These commenters maintain that N.J.A.C. 7:27-22.16(h)2 does not make sense because the alternative scenario should enable a facility to make a change which causes different emissions, which may exceed those established for the base operating scenario. As written, this provision removes the ability of a facility to implement alternative operating scenarios. Several commenters suggest revising the provision to read: "The Department has evaluated each operating scenario independently and found that no applicable federal requirements are violated." (5, 6, 7, 31, 32, 33, 34)

RESPONSE: N.J.A.C. 7:27-22.16(h)2 has been revised such that each source operation included in the alternative operating scenario must not exceed the maximum allowable emission limit established in the operating permit for each air contaminant and must meet all applicable requirements.

320. COMMENT: This commenter recommends that emissions be grouped by categories as defined at N.J.A.C. 7:27-22.6, Tables A and B. Therefore, the word "category" should be added to N.J.A.C. 7:27-22.16(h)2 following the term "any new air contaminant". (25)

RESPONSE: N.J.A.C. 7:27-22.16(h)2 has been revised to delete the reference to Tables A and B in section N.J.A.C. 7:27-22.6. These tables are being deleted from section N.J.A.C. 7:27-22.6. The provisions at N.J.A.C. 7:27-22.16(h)2 are being revised to clarify that each source operation included in the alternative operating scenario must not exceed the maximum allowable emission limit established in the operating permit for each air contaminant, and must comply with all applicable requirements. An increase in emissions over the maximum allowable limit in the permit, or the addition of a new contaminant not in the permit, would require a permit revision.

321. COMMENT: N.J.A.C. 7:27-22.16(i)1, although required by Part 70, is unnecessarily burdensome and likely to be infeasible for a batch facility of any size. However, if the switch to an alternate operating scenario could be recorded on the batch process sheets maintained at the facility, and the Department could be notified quarterly of which scenario had been run via the emissions reporting provisions of Subchapter 22, the spirit of Part 70 could be maintained without creating havoc at New Jersey manufacturing facilities. These commenters suggest deletion of the phrases "maintain a log at the facility and" and "in the log." One commenter defines "log" as "any means of recording production records associated with the batch in question, either manually or electronically, including but not limited to: batch sheets, production sheets and process records". Other commenters recommend defining "log' as "production records associated with the change in operating scenario." (5, 6, 7, 29, 32, 33, 34)

RESPONSE: The requirement in N.J.A.C. 7:27-22.16 (i) for contemporaneous recordkeeping of changes in operating scenarios is mandated by Part 70. The Department has revised the language in this section to allow permittees more latitude in maintaining the necessary records.

322. COMMENT: Regarding N.J.A.C. 7:27-22.16(i) and (k), this commenter recommends adding the word "applicable" before the last "requirements" in paragraph (i)2 and (k)2. (11)

RESPONSE: The provisions at N.J.A.C. 7:27-22.16(i) and (k) already include the defined term "applicable requirement." To do as the commenter suggests would use the defined term "applicable requirement" inappropriately.

323. COMMENT: A daily emissions trading log, as required under N.J.A.C. 7:27-22.16(k)1, is unnecessarily burdensome. Part 70 does not require emissions trading to be recorded in a log book on a daily basis, and recording should only be required in a facility's semi-annual compliance statement, or at most on a quarterly basis, to coincide with existing requirements for excess emission reporting. A final commenter suggests amending the provision as follows: "... permittee shall record on a contemporaneous basis the emissions trading that has occurred." (38, 5, 6, 29, 30, 31, 32, 33, 34)

RESPONSE: The Department has revised the language in N.J.A.C. 7:27-22.16(k)1 to allow permittees more latitude in maintaining the necessary records, while still requiring the basic information needed to demonstrate compliance with the terms and conditions of the permit.

324. COMMENT: N.J.A.C. 7:27-22.16(l) should be clarified to indicate the specific circumstances during which the two different types of affirmative defense provisions can be claimed. One of the defenses is based on recently enacted amendments to the New Jersey Air Pollution Control Act and the other is from Part 70. The language for each type of affirmative defense differs slightly, and the State provisions make no mention of the pre-existing Federal affirmative defense provisions. This confusion could lead to inconsistent assertions of the defenses, as well as arbitrary granting or rejection of such defenses by the Department. Another commenter questions why there is no provision for an affirmative defense other than for emergencies, if EPA intended to allow this. The commenter requests EPA confirm that this is acceptable under the Title V program. (40, 43)

RESPONSE: The Department agrees that there are differences in the State and Federal affirmative defense provisions. However one is a State law and the other a Federal law and any inconsistencies between them cannot be resolved in N.J.A.C. 7:27-22.16(l).

325. COMMENT: EPA states that N.J.A.C. 7:27-22.16(o) should be revised as follows to incorporate the requirements of 40 CFR 70.6(a)(3) into the operating permit: "Each operating permit shall containing the following provisions with respect to monitoring, recordkeeping and reporting:

1. Each operating permit shall include provisions to implement the testing and monitoring requirements of N.J.A.C. 7:27-22.18, the recordkeeping and reporting requirements of N.J.A.C. 7:27-22.19, and all emissions monitoring and analysis procedures or test methods required under the applicable requirements, including any procedures and methods promulgated pursuant to 40 CFR 64.

2. Where the applicable requirement does not require periodic testing or instrumental or noninstrumental monitoring, each operating permit shall include provisions for periodic monitoring sufficient to yield reliable data from the relevant time period that are representative of the source's compliance with the permit. Such monitoring requirements shall assure use of terms, test methods, units, averaging periods, and other statistical conventions consistent with the applicable requirement." (27)

RESPONSE: N.J.A.C. 7:27-22.16(o) has been revised to contain the suggested language consistent with the requirements of 40 CFR 70.6(a)(3).

N.J.A.C. 7:27-22.17 Permit shield

326. COMMENT: In regard to N.J.A.C. 7:27-22.17(a), EPA states that a permit shield does not shield a source from new requirements that are promulgated after permit issuance if the permit has a remaining term of three or more years. Therefore, the words "that are in existence on the date of permit issuance" should be added following the term "specific applicable requirements." (27)

RESPONSE: This clarification has been made.

327. COMMENT: In regard to N.J.A.C. 7:27-22.17(a), DEPE should include a permit shield in any case where the permittee requests a shield and is willing to draft this portion of the application. The shield would have a checklist format and would be submitted to the Department along with the permit application. (28)

RESPONSE: This change is unnecessary as N.J.A.C. 7:27-22.17(a) already provides that each operating permit will contain a permit shield.

328. COMMENT: Concerning N.J.A.C. 7:27-22.17(c), the commenter requests that the permit shield be extended to include administrative amendments and insignificant source operations. (38)

RESPONSE: There were two types of operating permit actions which were allowed by Part 70 to be covered by the permit shield, but were not covered in the original operating permit rule proposal but could have been. These were: 1) administrative amendments incorporating preconstruction permit provisions (as long as the preconstruction permit was issued after a public comment process); and 2) emissions trading within a federally enforceable emissions cap. The Department has included both of these within the coverage of the permit shield in this rule adoption to be consistent with Part 70. See N.J.A.C. 7:27-22.17(c)1iv and N.J.A.C. 7:27-22.28(k).

N.J.A.C. 7:27-22.18 Source emissions testing and monitoring

329. COMMENT: The commenter requests clarification of which, if any, of the procedures outlined in 40 CFR 60 Appendix A have been validated for Municipal Waste Combustion units. (28)

RESPONSE: The Department is unaware of which Reference Methods (RM) listed in 40 CFR Part 60—Appendix A are currently validated for MWC units. These reference methods (RM) are applicable to most stationary sources, especially those specified in the New Source Performance Standards (NSPS). When the MWC standards are included in the NSPS, the Compliance Methods listed in Appendix A will be specified. As part of the NSPS standard promulgation, the validation of the reference methods on determining compliance with those standards is completed.

330. COMMENT: The commenter suggests that N.J.A.C. 7:27-22.18 be revised to be consistent with, but not more stringent than, EPA's Enhanced Monitoring Program rule proposal at 40 CFR 64 when it is finalized. EPA applies enhanced monitoring to any emissions unit that has the potential to emit 30 percent or more of the emissions required for the source to be classified as a major source. This will mean that any emissions unit emitting more than 7.5 tons of VOC or NO_x per year, three tons of any single HAP per year, 7.5 tons per year of any combination of HAPs, or 30 tons of any other air contaminant, will require enhanced monitoring under Subchapter 22 as proposed. EPA stated in the Preamble to Part 64 that the Federal regulations would apply only to "emissions units at sources of the most significant concern," but provides no guidance on what sources this includes. Unless EPA and the Department can determine what sources would be deemed "of the most significant concern," small businesses will be drawn into the enhanced monitoring program and forced to shoulder the burden of increased monitoring, reporting, and recordkeeping, contrary to the expressed intent of Congress. (19, 5, 6, 19, 29, 31, 32, 33, 34, 40)

RESPONSE: The Department agrees with the commenter and has revised the rule at N.J.A.C. 7:27-22.18(a) to be no more stringent than EPA's rules.

331. COMMENT: N.J.A.C. 7:27-22.18 requires stack testing and installation of CEMs if required by the operating permit. The proposed rule provides no guidance to the State Administrator as to what facilities would fall under these requirements, and leaves it to the discretion of the Administrator when to require certain testing procedures. This is likely to result in inconsistency and confusion. The regulation should provide a definition for facilities that would be required to perform stack testing or install CEMs. (19)

RESPONSE: The Department intends to use EPA's enhanced monitoring rule (40 CFR Part 64) to establish thresholds when EPA's rule becomes final through adoption. The rule has been revised at N.J.A.C. 7:27-22.18(a) to be no more stringent than EPA's rules.

332. COMMENT: This commenter urges DEPE to extend the time to submit a test protocol, obtain approval, schedule testing, and conduct testing. Some commenters recommended allowing a facility with greater than three planned monitoring systems to elect to submit either the protocol or a schedule of protocol submittal within 90 days. The alternative to extending these deadlines is to sufficiently staff the DEPE Technical Services Group, which is currently overloaded and will only be busier after promulgation of this Rule and other pending regulations. One commenter suggested that the permittee be given 180 days after the Department's approval of the protocol to schedule source emissions testing. Considering the amount of data in a test report, the need for coordination between laboratories, and necessary calculations for CEMs and/or stack testing, N.J.A.C. 7:27-22.18(e)3 should not impose a 30-day deadline for submittal of a test report. The deadline should be extended to a minimum of 60 days after completion of the task. For the same reasons, another commenter requested that the deadline for submitting source emissions results as outlined in N.J.A.C. 7:27-22.18(g)5 be extended from 30 days to 60 days. Another commenter recommends that the permittee should have the ability to negotiate with the Department a submittal date consistent with N.J.A.C. 7:27-22.18(e)3 and N.J.A.C. 7:27-22.19(d)1 for source emissions test reports. (11, 7, 23, 30, 23, 7, 5, 6, 29, 31 32, 33, 34)

RESPONSE: To address the commenter's concerns regarding extending the time to submit a test protocol, obtain approval, schedule testing, conduct testing and submit test reports, language has been added at N.J.A.C. 7:27-22.18(a) which allows for any deadline in this rule section to be extended through written approval by the Department. This language is consistent with the Department's current practice of writing case-by-case permit conditions for applicants. The Department understands that special circumstances exist for each facility and these can be addressed with no detrimental impact on the environment.

333. COMMENT: The requirements and time frames specified in N.J.A.C. 7:27-22.18(b) conflict with those already included in a facility's existing PSD permit as well as with the Summary language for N.J.A.C. 7:27-22.18. Existing PSD permit requirements should be rolled into the operating permit program. Also, some existing PSD permits allow source test reports to be submitted within 90 days due to the complexity of the testing requirements. This should not be limited. Moreover, in the third sentence of the third paragraph of the Summary, it appears that the Department intended to exclude existing permit requirements from the time frames and requirements specified. Therefore, the Department should clearly state in its regulations that facilities which already have conditions in their permits designed to demonstrate compliance with source emissions testing and monitoring will not be required to adhere to the rules. (28)

RESPONSE: The testing and CEMS compliance dates which will be specified in the operating permits will conform to the requirements outlined in the enhanced monitoring program (40 CFR Part 64) and the PSD permits.

334. COMMENT: In regard to N.J.A.C. 7:27-22.18(c), these commenters note that if a Department technical manual is to be referenced as a part of the regulation, it must be proposed and opened to the public for comment before it is intoduced and before any modifications. Therefore, the commenters recommend that the Department issue the Technical manual for public comment. (33, 34)

RESPONSE: The technical manuals for stack testing and continuous monitoring, which are published in accordance with the "Doria legislation," N.J.S.A. 13:1D-101 et seq., are provided by the Department to assist a facility which has a permit(s) with these conditions. These manuals are not rules. They are guidance documents which are intended to assist individuals by providing information which the Department utilizes in evaluating each monitoring and testing submittal.

335. COMMENT: N.J.A.C. 7:27-22.18(d) does not provide the Department with a deadline in which to approve the submitted testing protocol. The commenter recommends that the Department be required to review the protocol within 30 days. (11)

RESPONSE: The Department's goal is to complete the initial review and approval of each protocol document within 30 days of receipt.

336. COMMENT: Concerning N.J.A.C. 7:27-22.18(g)4, these commenters note that in many cases, a third party contractor performs both the compliance test and the stack test using the same test equipment and protocols. Separating these tests can cause increased costs that are unreasonable. Subchapter 22 should be made consistent with the recently published CEMs guidance by allowing the facility to request a waiver. N.J.A.C. 7:27-22.18(g) should read: "If the operating permit requires monitoring using a Continuous Monitoring System (CMS), the permittee shall perform the following initial procedures:

4. Perform the performance specification test prior to any required source emissions testing and within 90 days after the latter of the following events:

i. Installation of the CMS.

ii. The commencement of operation of the equipment being monitored.

iii. A facility may request a waiver of the PST/stack test timing restrictions.

Another commenter suggested using the same language and adding a different item iii: "iii. Following Departmental approval of the testing protocol. (7, 5, 6, 29, 31, 32, 33, 34)

RESPONSE: The Department has revised the rule language at N.J.A.C. 7:27-22.18(a) and 22.18(g)4, consistent with the intent of these commenter's suggestions.

N.J.A.C. 7:27-22.19 Recordkeeping and reporting

337. COMMENT: This section should be deleted. All of the recordkeeping requirements described in this section are already covered under the seven-day-notice, minor modification, and significant modification provisions of the operating permit. (30)

RESPONSE: N.J.A.C. 7:27-22.19(a) explains that the permittee must maintain records from emission testing or monitoring. The section then continues on to explain the procedures the permittee must follow to present the records to the Department. This detail is not provided in other sections of the rule.

338. COMMENT: This commenter believes that the recordkeeping and reporting requirements should be relaxed to reduce the burden on the regulated community. (23) Another commenter notes that the reporting and recording requirements in this rule could result in high maintenance and operating costs for recordkeeping and not afford any environmental benefit. (1)

RESPONSE: The requirements of Part 70, as they relate to recordkeeping and reporting, as well as the requirements of the federal enhanced monitoring rule, set forth at 40 CFR Part 64, will increase the recordkeeping and reporting requirements beyond which permittees in New Jersey are currently accustomed. The rule language in this section specifies the minimum requirements set forth in Part 70.

339. COMMENT: This commenter suggests that N.J.A.C. 7:27-22.19(a) be expanded so that records may be maintained off-site at an accessible location. Certain facilities may operate their administrative functions at a nearby location other than the actual site of the source. (11)

RESPONSE: This suggestion has been implemented in the adoption at N.J.A.C. 7:27-22.19(i) to accommodate industry's concern while still satisfying the Department's inspection needs.

340. COMMENT: In N.J.A.C. 7:27-22.19(b), the Department should qualify what constitutes a continuous record of compliance. Experience with existing CEMs and compliance recordkeeping as required by N.J.A.C. 7:27-16 shows that maintaining records of compliance on a minute-by-minute basis can consume large volumes of computer memory. In addition, some companies maintain both a strip chart and a computer record to assure that problems such as torn chart paper or computer outages do not trigger noncompliance periods. (5, 6, 7, 29, 31, 32, 33, 34)

RESPONSE: The adopted rule has been revised at N.J.A.C. 7:27-22.19(b)6 to explain that the data which must be recorded, on a continuous basis, will be specified in the operating permit. Also, the rule explains that alternative types of records or recordkeeping can be approved in the operating permit.

341. COMMENT: These commenters recommend that the period for which records must be retained should be three years, which would be congruous with the Department's CEM Guidelines for Stationary Sources. (5, 6, 29, 31, 32)

RESPONSE: As required by 40 CFR 70.6(a)(3)(ii)(B), the retention of records must be for a period of at least five years. Therefore, the rule language cannot be changed as the commenters suggested.

342. COMMENT: N.J.A.C. 7:27-22.19(b)6 should be deleted because the information and the operating conditions existing at the time of measurement, are, in the case of CEMs or CMS, the continuous record required under N.J.A.C. 7:27-22.19(b)7. (5, 6, 29, 31, 32)

RESPONSE: The Department agrees that there is some redundancy in these two rule provisions in the case of CEMs or CMS. However, N.J.A.C. 7:27-22.19(b)7 requires the data readings for calibration and the maintenance records for the continuous monitoring instrumentation while N.J.A.C. 7:27-22.19(b)6 requires the real-time data from the process.

343. COMMENT: N.J.A.C. 7:27-22.19(b)7 should be modified to read ". . . monitoring instrumentation, condensed as per the Department's CEM Guidelines for Stationary Sources;". These commenters urge the Department to make its minimum required recordkeeping requirements similar to those in the CEMs Guidelines for Stationary Sources. Where a continuous record (one data point per minute) is required, the five-year record can be condensed into one hour averages after submission of periodic excess emissions reports. Similarly, the commenters also suggested that N.J.A.C. 7:27-22.19(a) should be modified to read "Each permittee shall maintain records condensed to one hour averages as per the Department's CEM Guidelines for Stationary Sources . . ." Several commenters also believe that only records of compliance with emissions limits should be required. Records of operating parameters maintained for five years where a CEM or CMS indicates no excess emission occurred is not productive. (5, 6, 7, 31, 32, 33, 34, 29)

RESPONSE: The Department agrees with the commenter's concerns and revised the rule text at N.J.A.C. 7:27-22.19(b). The rule text allows for alternative types of records and alternative types of recordkeeping that could both be approved in the operating permit. This rule provision would allow the permittee to condense data as per the Department's CEM Guideline for Stationary Sources.

344. COMMENT: N.J.A.C. 7:27-22.19(c) contains a six-month reporting of monitoring and source emissions testing which appears to conflict with other portions of the operating permits rule. One commenter states that since N.J.A.C. 7:27-22.18(e)3 and 22.19(d) allow the permittee to complete the test within a time period negotiated with the Department, it is possible that the initial test may not be performed within 180 days of permit issuance, making it impossible for the source emissions test reports to be submitted within six-months of issuance of the permit. Therefore, the commenter recommends that the following language be added to this section "every six months from the completion of the first test." (11, 23)

RESPONSE: The rule language has been revised at N.J.A.C. 7:27-22.19(c) and (d) to address the commenter's concern. N.J.A.C. 7:27-22.19(c) has been clarified by moving the requirement for reporting every six months from subsection (c) into paragraph (d)3. In addition, subsection (d) has now standardized the time frames for submittal, so that, rather than submitting any time within six months after performing the test, the submittal is now required within fixed six month periods.

345. COMMENT: With regard to N.J.A.C. 7:27-22.19(d)2, this commenter questions the need to submit CMS data every quarter, and requests that DEPE modify this requirement to the frequency negotiated by the permittee in the operating permit. (23)

RESPONSE: Quarterly reporting is consistent with the Department's current practice under Subchapter 8 preconstruction permitting. Because the two programs, Operating Permits and Preconstruction Permits, are being merged, it makes sense to have one due date for the reports in question. Therefore, no rule changes were made with this adoption.

346. COMMENT: These commenters recommend that the Department revise N.J.A.C. 7:27-22.19(f)1i as follows: "(i) In compliance with the applicable requirement, and, if so, whether in continuous or intermittent compliance;". 40 CFR 70.6(c)(5) and 114(a)(3) of the CAA require a compliance certification to include a requirement that the certification state whether compliance was continuous or intermittent. Since the regulated community will be required to certify whether their compliance is continuous or intermittent, the Department should define both these words. (5, 6, 29, 31, 32, 33, 34)

RESPONSE: The Department agrees with the commenters and has added the suggested rule language at N.J.A.C. 7:27-22.19(f)1i. As noted in the adopted rule text, the definition of "continuous" and "intermittent" will be found at 40 CFR Part 64.

347. COMMENT: No permittee should be held to the type of standard in N.J.A.C. 7:27-22.19(g)1 and 2. First, the term "deviation" is inappropriate; only violations of an operating permit should give rise to a reporting obligation, and such deviations are currently satisfactorily reported quarterly through excess emission reports. The provision is excessive over-regulation, which puts the Department in the business of monitoring (not regulating) daily facility operations, does nothing for environmental protection, and wastes time. Second, it is impossible to predict what type of violation may give rise to a citizen complaint, and a permittee should not be held to a reporting standard which varies with the tolerance of its neighbors. The commenter urges the Department to revise this provision by replacing "deviation from" with "violation of," and by deleting the references to citizen complaints. Another commenter states that this section makes any exceedance enforceable, along with the mandatory reporting of every minor operating variation. Another commenter believes tat compliance with this section would require an ongoing health-based risk asessment in order to establish the "potential threat to public health," making this requirement overly burdensome and impractical. Therefore, the Department should better define a potential threat and no reporting should be required unless there is a potential threat. Some commenters recommend that this section be deleted and argue that this provision presents an unreasonable paperwok burden on both the Department and the regulated community. (30, 34, 7, 16, 11)

RESPONSE: The changes the commenters desire can not be made upon this adoption. First, the term "deviation" is used consistently with Part 70. Second, the requirements of N.J.A.C. 7:27-22.19(g)1 are requirements from the New Jersey Air Pollution Control Act, N.J.S.A. 26:2C. The Department will be proposing revisions to this rule section in four to six weeks and will consider the suggestions regarding N.J.A.C. 7:27-22.19(g)2 at that time. There will also be an opportunity for public comment at that time.

348. COMMENT: This commenter recommends that the time frame for these complaints should be changed to two business days after knowledge of the deviation. (11)

RESPONSE: The reporting period for releases which pose a threat to public health, welfare or the environment is specified in the New Jersey Air Pollution Control Act, N.J.S.A. 26:2C; thus, the timing cannot be changed as the commenter requested.

349. COMMENT: With regard to N.J.A.C. 7:27-22.19(i), these commenters suggest replacing the word "readily" with "reasonably" available. It is not possible to maintain all the required documents in one location to make them "readily" available for inspection. A facility will keep information associated with subsection (a) through (d) and paragraph

(i)1 in their environmental department, but the other information is kept by other departments at the facility, and some reasonable amount of time will be required to find and access the information. To maintain all this information in one place is simply not possible for a facility of any size. Section 70.6(c) of the Federal rule uses the term "reasonable" in referring to having access to, and copies of, any records that must be kept under the conditions of the permit. Another commenter requests that this provision allow records to be maintained off-site at an accessible location, since certain facilities may operate their administrative functions at a nearby location other than the actual site of the source. (5, 6, 7, 11, 29, 31, 32, 33, 34)

RESPONSE: Regarding the option to house records at an off site location, please see the response to Comment 339 above. Regarding the comment about maintaining all the required documents in one location at the facility, the Department is not requiring that. The permittee has the responsibility to know where the records are and to present them to the Department when requested. If the permittee chooses to store records in different departments (near the equipment) at the same facility, he may do so. However, the permittee must be able to retrieve the records with sufficient ease and efficiency so that they are readily available to the Department.

350. COMMENT: With regard to N.J.A.C. 7:27-22.19(i), this commenter objects to the fact that facility and records inspections can occur "at any time" and "at all times." The Department lacks the constitutional authority to mandate warrantless searches on an operating permit, and should rely exclusively on its statutory authority. The Department should constrict its inspections to any reasonable time at which a facility is in operation. This will give the Department the reasonable inspection authority it requires, while minimizing the harassment potential of these rules. (16)

RESPONSE: The authority for this rule provision is from the New Jersey Air Pollution Control Act at N.J.S.A. 26:2C-9(d). There is no intent to "harass" in this rule provision. Rather, the intent is to be sure that facilities are being operated in accordance with the requirements of this chapter and to protect public health, welfare and the environmental of this State.

351. COMMENT: The diagram required at N.J.A.C. 22.19(i)2 is totally unworkable for a large facility, and would require several thousand person-hours of work and several hundred square feet to display. This diagram is also unnecessary, as the required information is already included in the existing Subchapter 8 permits. It would be far easier for an inspector visiting the site to walk to the equipment in question than to locate the equipment on a huge, confusing site diagram. Also, any modifications to the facility will be processed through Subchapter 8 preconstruction approval, so that this information will be kept up to date without the need for a facility-inclusive diagram. These commenters recommend that this provision be deleted. (5, 6, 7, 29, 30, 31, 32, 33, 34)

RESPONSE: The Department disagrees with the commenters' request to delete this rule provision. These diagrams are needed by the Department to conduct inspections. However, the Department does agree that the diagrams included in the Subchapter 8 permits may be acceptable and that one site diagram might be confusing. Therefore, the rule language has been revised at N.J.A.C. 7:27-22.19(i)2 to specify that several diagrams can be maintained for the facility.

352. COMMENT: N.J.A.C. 22.19(i)3 through 6 should be deleted. Information required at N.J.A.C. 7:27-22.19(i)3 often does not exist for older equipment, or is not up to date due to changes made by the facility itself. Air contaminants emitted, rates of production, and hours of operation are already submitted in the operating permit application. Operating procedures should be available at the facility Unless used for emission trading, no additional recordkeeping should be required. Some commenters recommend deleting N.J.A.C. 7:27-22.19(i)4 through 6 because the recordkeeping in this provision is already covered under the seven-day-notice change, minor modification and significant modification provisions of the operating permits. (5, 6, 7, 29, 31, 32, 33, 34, 30)

RESPONSE: In response to this comment, the Department has revised the rule language at N.J.A.C. 7:27-22.19(i)3 and (i)5 to clarify that the information required would be part of the operating permit and for the term of the operating permit. Events or activities which occurred before the term of the operating permit are not included in the rule provision. As to the commenter's claim that the recordkeeping in this provision is already covered elsewhere in the rule, see the response to comment 337 above.

353. COMMENT: With regard to N.J.A.C. 7:27-22.19(i)5, this commenter suggests the Department add "if known." (38)

RESPONSE: Rather than add the suggested language, the rule has been clarified to indicate that the date of commencement of operation of the equipment or control apparatus need only be recorded if it occurred during the term of the operating permit.

N.J.A.C. 7:27-22.20 Administrative amendments

The Department is reserving and not adopting this section at this time. Substantial portions of Subchapter 22 and Subchapter 8 will be reproposed in four to eight weeks. The Department will respond to comments received on this section of the rule when it is ultimately adopted. See the rule introduction above for a discussion of the changes expected in the reproposal.

N.J.A.C. 7:27-7:27-22.21 Changes to insignificant source operations

The Department is reserving and not adopting this section at this time. Substantial portions of Subchapter 22 and Subchapter 8 will be reproposed in four to eight weeks. The Department will respond to comments received on this section of the rule when it is ultimately adopted. See the rule introduction above for a discussion of the changes expected in the reproposal.

N.J.A.C. 7:27-22.22 Seven-day-notice changes

The Department is reserving and not adopting this section at this time. Substantial portions of Subchapter 22 and Subchapter 8 will be reproposed in four to eight weeks. The Department will respond to comments received on this section of the rule when it is ultimately adopted. See the rule introduction above for a discussion of the changes expected in the reproposal.

N.J.A.C. 7:27-22.23 Minor modifications

The Department is reserving and not adopting this section at this time. Substantial portions of Subchapter 22 and Subchapter 8 will be reproposed in four to eight weeks. The Department will respond to comments received on this section of the rule when it is ultimately adopted. See the rule introduction above for a discussion of the changes expected in the reproposal.

N.J.A.C. 7:27-22.24 Significant modifications

The Department is reserving and not adopting this section at this time. Substantial portions of Subchapter 22 and Subchapter 8 will be reproposed in four to eight weeks. The Department will respond to comments received on this section of the rule when it is ultimately adopted. See the rule introduction above for a discussion of the changes expected in the reproposal.

N.J.A.C. 7:27-22.25 Department initiated operating permit modifications

The Department is reserving and not adopting this section at this time. Substantial portions of Subchapter 22 and Subchapter 8 will be reproposed in four to eight weeks. The Department will respond to comments received on this section of the rule when it is ultimately adopted. See the rule introduction above for a discussion of the changes expected in the reproposal.

N.J.A.C. 7:27-22.26 MACT and GACT standards

The Department is reserving and not adopting this section of the rule at this time. Substantial portions of Subchapter 22 and Subchapter 8 will be reproposed in four to eight weeks. The Department will respond to comments received on this section of the rule when it is ultimately adopted. See the rule introduction above for a discussion of the changes expected in the reproposal.

N.J.A.C. 7:27-22.27 Alternative operating scenarios

354. COMMENT: DEPE has not gone far enough to ensure operating flexibility in this rule and, in fact, may have actually made it more restrictive than current regulations. For the pharmaceutical industry, alternative operating scenarios are useful for some drugs currently being developed. However, when research and development makes a breakthrough, production will be accelerated for a particular drug, and an operating permit modification will be needed. This procedure will add several months to the time it would otherwise take to gear up for production of a drug. If a company has several facilities, some located in states which have a less cumbersome operating permit program, the manufacturing location would be based on where production can start the earliest, and New Jersey will lose jobs. (5)

RESPONSE: Although the sections of N.J.A.C. 7:27-22 relating to changes to operating permits have not been adopted at this time, NJDEP is intending to allow as much operating flexibility as EPA's Part 70 allows which is as much flexibility as any other state can offer. As a result, NJDEP believes that the timeframes needed to implement alternative operating scenarios provided in the rule, especially when treated as a seven-day-notice change, are consistent with Part 70 and similar to other state's operating permit regulations.

It is important to note that facilities may switch between different operating scenarios without notifying NJDEP if those scenarios have been approved in the operating permit. The purpose of this section is to specify the procedures for allowing facilities to operate under alternative operating scenarios; that is, scenarios not listed in the operating permit.

355. COMMENT: N.J.A.C. 7:27-22.27(a) should be revised to allow for more than one alternative operating scenario in a permit by pluralizing the term "alternative operating scenario." (11)

RESPONSE: It was NJDEP's intent to allow as many alternative operating scenarios as required by the facility. N.J.A.C. 7:27-22.27 has been clarified to pluralize the term "alternative operating scenario."

356. COMMENT: EPA recommends that N.J.A.C. 7:27-22.27(a)2 be deleted since a seven-day-notice change cannot revise or incorporate anything into an operating permit. Incorporation of an alternative scenario would require at least a minor modification. (27)

RESPONSE: Pursuant to 40 CFR 70.4(b)(12)(i), alternative operating scenarios can be treated as seven-day-notice changes if that scenario does not increase emissions. Although seven-day-notice changes are not incorporated into the operating permit, such changes can be authorized. NJDEP has modified N.J.A.C. 7:27-22.27(a), (a)1, and (a)2 so that the effect an alternative operating scenario would have on an operating permit if it was treated as a minor modification, significant modification, or seven-day-notice can be differentiated.

357. COMMENT: N.J.A.C. 7:27-22.27(b) creates a requirement which may be impossible to meet if a facility uses different chemicals in each alternative operating scenario. For example, a plant may propose to use different alcohols, propanol and butanol, in alternative operating scenarios. If the total VOC emission rate for both process alternatives is one pound per hour, but the emission rate for propanol for the first scenario is 0.5 pounds per hour and is 0.75 pounds per hour for butanol in the second scenario, it is unclear whether such a change can be made following the seven-day-notice procedure. (22)

RESPONSE: The commenter's example would not require a seven-day-notice since both the propanol and butanol scenarios are included in the operating permit.

358. COMMENT: Several commenters consider N.J.A.C. 7:27-22.27(c), although required by Part 70, unnecessarily burdensome and likely to be infeasible for a facility of any size. However, if the switch to an alternate operating scenario could be "recorded" on the batch process sheets maintained at the facility, and the Department could be notified quarterly of which scenario had been run via the emissions reporting provisions of Subchapter 22, the spirit of Part 70 could be maintained without creating havoc at New Jersey manufacturing facilities. These commenters suggest deletion of the phrases "maintain a log at the facility and" and "in the log." One commenter defines "log" as "any means of recording production records associated with the batch in question, either manually or electronically, including but not limited to: batch sheets, production sheets and process records". Other commenters recommend defining "log" as "production records associated with the change in operating scenario." (5, 6, 7, 29, 31, 32, 33, 34)

RESPONSE: NJDEP has modified N.J.A.C. 7:27-22.27(b) in response to this comment. A separate log will not be required to keep records of switching between various operating scenarios. Rather, facilities would be allowed to propose appropriate means of recording information in the operating permit application.

359. COMMENT: In N.J.A.C. 7:27-22.27(e), this commenter suggests that DEPE clarify what constitutes a valid alternative operating scenario. Does switching the type of fuel used constitute an alternative operating scenario? Also, this commenter questions its ability to comply with permit conditions not affected by the operation of air preheaters, or lack thereof. Does taking the air preheaters in and out of service constitute an alternative operating scenario? (28)

RESPONSE: Switching the type of fuel used could constitute an alternative operating scenario. Taking air preheaters in and out of service could also constitute an alternative operating scenario. NJDEP encourages applicants to propose as many operating scenarios as possible for inclusion in the operating permit so that switching between different operating scenarios can be made without notifying NJDEP.

360. COMMENT: With regard to N.J.A.C. 7:27-22.27(e), EPA recommends adding "including information on emission changes" after the word "scenario." Information on emission changes needs to be provided when a source seeks an alternative operating scenario. (27)

RESPONSE: N.J.A.C. 7:27-22.27(d)1 has been revised and adopted to incorporate the requested changes.

361. COMMENT: The requirement in N.J.A.C. 7:27-22.27(e)3 will not be possible in many plants where a central power plant or boiler house is used. In these cases, power/steam is supplied to all areas of the plant. Trying to determine exactly what portion of the overall energy consumption is due to a particular operating scenario and then to back-calculate the fuel used would be virtually impossible. In addition, the maximum quantity of fuel to be used is based on product mix and meteorological conditions. Since, in most cases, this centralized power/steam source will be covered under the operating permit, information of this type will already be available to the Department. Some commenters recommended the provision be deleted. Others recommended that "if applicable" be added after "the following information:". (5, 6, 29, 31, 32, 33, 34, 7)

RESPONSE: NJDEP intended this section to apply only to alternative operating scenarios that directly involve fuel burning equipment. N.J.A.C. 7:27-22.27(d)3 has been clarified and adopted to state that such information is required only if the alternative operating scenarios involves equipment that combusts fuel.

362. COMMENT: The requirement in N.J.A.C. 7:27-22.27(e)5 will result in redundant information. Quarterly emission reports are required under the operating permit, so a production schedule is not needed. In many industries production is order driven and a projected schedule would be conjecture at best. If a production schedule were included in the permit, the schedule may become public knowledge. It would also become Federally enforceable, and a company would be subject to civil and criminal penalties if it were to deviate from that schedule. One commenter recommended deleted the provision. Several others recommended that "if applicable" be added after "the following information:". (5, 6, 29, 31, 32, 33, 34, 7)

RESPONSE: In response to these comments, the proposed provision at N.J.A.C. 7:27-22.27(d)5 has been deleted and a new provision added to require all persons proposing alternative operating scenarios to include proposed ranges or limits for operating parameters that relate to air contaminant emissions (operating parameters that do not affect emissions need not be included in the proposal). The new provision was originally proposed at N.J.A.C. 7:27-22.27(f)2 to require this information only for persons requesting authorization of alternative operating scenarios through the seven-day-notice process. The new provision will also require this information if the alternative operating scenario is included in an application for an initial operating permit, significant modification, or minor modification.

363. COMMENT: N.J.A.C. 7:27-22.27(f)1i further diminishes a facility's operational flexibility. Each alternative operating scenario will undergo the modeling and risk assessment procedure; if no hazard is presented, the scenario should be treated like any other. Therefore, these commenters recommend that "and" be added after "in Tables A and B at N.J.A.C. 7:27-22.6;". (5, 6, 29, 31, 32, 33, 34)

RESPONSE: The proposed modeling and risk assessment requirement in N.J.A.C. 7:27-22.8 will not be adopted at this time and the provision in N.J.A.C. 7:27-22.27(e)1 relating to Tables A and B have been deleted as discussed in the introduction. The word "and" has not been included at the end of N.J.A.C. 7:27-22.27(e)1i, as the "and" after N.J.A.C. 7:27-22.27(e)1ii already signifies that each of the conditions listed in N.J.A.C. 7:27-22.27(e)1 must be met.

364. COMMENT: Flexibility gained by Subchapter 8 batch and pilot plant permitting policies should not be lost with operating permits. Producing a new product per the batch permit should not be considered an alternative operating scenario. Therefore, a new subsection (g) should be added: "Changes in product manufacture per the batch permit policy pursuant to 7:27-8 shall not be subject to the notification or modification requirements of 7:27-27." (25)

RESPONSE: The proposed language has not been included because changes in product manufacture will not require the permittee to notify NJDEP if such change was authorized in the operating permit. Permit-

tees are required to follow the alternative operating scenario procedure only if they propose to produce a product that is not covered by the operating permit.

N.J.A.C. 7:27-22.28 Intra-facility emissions trading

365. COMMENT: Two commenters applauded DEPE's efforts to make intra-facility trading workable, and believe it is one of the best ways to encourage early emissions reduction in a cost-effective manner. (40, 37)

RESPONSE: The Department appreciates this comment in support of the rule.

366. COMMENT: This commenter requests the Department clarify at N.J.A.C. 7:27-22.28 that emission limits established for source operations in an emissions trading program supersede emission limits established by preconstruction permits. Otherwise, preconstruction permit emission limits on these source operations would preclude any emissions trading. (40)

RESPONSE: No change has been made to N.J.A.C. 7:27-22.28 in response to this comment because emission limits specified in a preconstruction permit cannot be exceeded in an emission trading program (see N.J.A.C. 7:27-22.3(w)). The various types of emissions trading allowed under New Jersey's regulations, such as that authorized pursuant to N.J.A.C. 7:27-9, 18, and 19, do not allow source operations to exceed emission limits in the preconstruction permit, nor can they be exceeded when emission trades occur for the purposes of complying with a facilitywide emission cap established within the operating permit.

367. COMMENT: This commenter feels that New Jersey's rules on incorporating results of emissions trades into permits are not written broadly enough, and that 40 CFR Part 70 requires that these provisions be broadened. Substantive provisions governing emissions trading and procedural rules for the permit program are inextricably linked. Operating permits will be the implementation vehicle for emissions trading, as well as for other market-based and command-and-control air quality rules. (37)

RESPONSE: The Department believes that this section is consistent with EPA's Part 70 rule for emissions trading. However, the Department is considering separately proposing additional emissions trading rules in the future to broaden the opportunities for emissions trading.

368. COMMENT: This commenter recommends that emissions trading include a permit shield. Although EPA does not require that a state's Title V Program include the permit shield, DEPE has authorized the permit shield in permits subject to public notice and comment. It is unclear from the proposed rules whether DEPE is extending the permit shield to cover emissions trading programs. (23)

RESPONSE: Permit shield coverage will be extended to any trading program incorporated into an operating permit through an initial operating permit application, significant modification, or renewal. However, any trading program authorized through a minor modification or a seven-day-notice change would not be covered by the permit shield pursuant to N.J.A.C. 7:27-22.17(c)2. A new subsection, N.J.A.C. 7:27-22.28(k), has been added to clarify that a permit shield can only apply when a trading program is incorporated into an operating permit through issuance of an initial operating permit, operating permit renewal, or significant modification.

369. COMMENT: What will be the impact on the modeling and risk assessments when, because a facility trades emissions between source operations, the distance from the fence line to an air contaminant's discharge point changes? (Assuming that aggregate maximum allowable emission from the source operations do not increase.) (5, 6, 29, 31, 32) One commenter expressed concern over the ability to use offsets for intra-facility air toxics trading. (12)

There are significant problems with toxics trading within a facility. First, fugitive emissions substituted for stack emissions are likely to have a higher impact on workers at the facility and thus from a public health standpoint are unacceptable. Secondly, how can equivalence for toxics be established unless the toxic substance is the same? Trading in VOCs necessitates learning more about the nature of the chemical constituents involved to assure that toxic emissions are not in fact being increased. This issue is not addressed in the rule. (43)

RESPONSE: The emission limits specified in the preconstruction permit are based on worst-case conditions which cannot be exceeded during an emissions trade pursuant to N.J.A.C. 7:27-22.28(j). Since the preconstruction permit program bases air quality modeling analyses and health risk assessments on worst-case conditions, there will be no effect to the results of the modeling analysis or health risk assessment if the source operation was originally permitted under the preconstruction permit program. N.J.A.C. 7:27-22.8 will be reproposed at a later date to include provisions governing the use of these studies in this situation.

Emission offsets are an example of inter-facility, not intra-facility, emissions trading. The purpose of New Jersey's emission offset rule, N.J.A.C. 7:27-18, is to ensure that industrial growth and development may occur even in areas where the ambient air quality does not meet Federal or State ambient air quality standards established to protect human health. N.J.A.C. 7:27-18.5(g) states that emission offsets must be qualitatively equivalent in their effects on public health and welfare to the effects attributable to a proposed emission increase. For example, increases in benzene emissions cannot be offset with decreases in methanol emissions. Air toxics emission limits specified in preconstruction permits will not be allowed to be exceeded in an intra-facility emissions trading program as stated in the response to Comment 366 above. The Federal HON (Hazardous Organic National Emission Standards for Hazardous Air Pollutants) rule at 40 CFR 63 provides for intra-facility emissions averaging of HAPs (Hazardous Air Pollutants). NJDEP is currently reviewing the HON rule to determine how to implement such a program in New Jersey.

370. COMMENT: These commenters believe that the Department should revise the proposed regulation to allow inter-facility emissions trading and to specifically provide for a facility's ability to comply with emissions limits through inter-facility trading. As the rule is now written, it will limit the scope and effectiveness of the NO_x RACT rule. (28, 23, 40, 5, 6, 7, 31, 32, 40)

RESPONSE: Although N.J.A.C. 7:27-22.28 has been adopted with the phrase "intra-facility," it was always NJDEP's intent to allow inter-facility trading through such vehicles as the emissions averaging provisions of N.J.A.C. 7:27-19. To address this discrepancy, NJDEP will be reproposing N.J.A.C. 7:27-22 to delete the phrase "intra-facility from the term "intra-facility emissions trading throughout the rule.

371. COMMENT: This commenter believes that there should be a way to generate emissions caps within Subchapter 22. Most of the references to intra-facility emissions trading has to do with how it relates to other subchapters, such as Subchapter 19 and Subchapter 9, and a broad reference to any other subchapter which explicitly allows for averaging. (4)

RESPONSE: In general, permit applicants must provide proposed replicable procedures and permit terms that ensure that emissions trades conducted within an emission cap are quantifiable and enforceable. Any emissions cap can be proposed by the applicant and would be required to contain these elements to be approved. Any method of creating an emissions cap would be acceptable as long as it meets the criteria of N.J.A.C. 7:27-22.28.

372. COMMENT: An authorization for intra-facility trading cannot be established through a seven-day-notice change process. Therefore, EPA suggests four changes: 1) the words "or is established through a notice of a seven-day-notice change pursuant to N.J.A.C. 7:27-22.22(c)10" need to be deleted from N.J.A.C. 7:27-22.28(a)1; 2) N.J.A.C. 7:27-22.28(c) should be revised to delete the language allowing sources to obtain authorization for intra-facility trading through anything less than a minor modification. EPA recommends that this provision read: "Any owner or operator may seek authorization for intra-facility emissions trading in an application for an initial operating permit, a significant modification, a renewal, or a minor modification"; 3) N.J.A.C. 7:27-22.28(e) should be deleted; and 4) N.J.A.C. 7:27-22.28(h)1 should be deleted. (27)

RESPONSE: The Department believes 740 CFR 0.4(b)12 allows trading through a seven-day-notice change, provided the trading program is incorporated in the SIP or provides for intra-facility emissions trading under a cap; therefore the change requested will not be implemented.

373. COMMENT: According to this commenter, if a facility uses different chemicals in each trade, meeting a criteria pollutant emissions cap is achievable, but on a chemical-specific basis, the emission rates may vary by trade. For example, a plant may propose to include two processes that use different alcohols, propanol and butanol, in a seven-day notice intra-facility emissions trade change. If the total VOC emissions cap for both process alternatives is 22 tons per year, but the maximum emission rate for the first process is 10 tons per year for propanol and for the second process is 15 tons per year for butanol, this commenter questions whether changing processes can be made following the seven-day notice procedure. (22)

RESPONSE: An emissions trade such as that proposed by the commenter could be made as a seven-day-notice change.

374. COMMENT: This commenter requests a clarification of the term "aggregate maximum allowable emission" as used in N.J.A.C. 7:27-22.28(h)3. The commenter assumes that aggregate maximum refers to the sum of the maximum allowable emission rates for the source equipment involved in the trading program. (40)

RESPONSE: The commenter's interpretation of "aggregate maximum allowable emission" is correct. NJDEP believes that further clarification of this term is not necessary.

N.J.A.C. 7:27-22.29 Affected Title IV facilities

375. COMMENT: EPA states that New Jersey should re-visit an August 1993 EPA memo for language on incorporating the Acid Rain program by reference or for demonstrating a commitment to revise its regulations by January 1, 1995. (27)

RESPONSE: The Department conformed with the Federal acid deposition control provisions by stating in N.J.A.C. 7:27-22.29(a) that applications for operating permits for affected Title IV facilities are to be processed in accordance with Title IV of the CAA and 40 CFR 72. The Department has revised N.J.A.C. 7:27-22.29(a) to address a comment from EPA by incorporating 40 CFR 72 by reference in accordance with EPA guidance issued on August 9, 1993.

376. COMMENT: EPA suggests deleting N.J.A.C. 7:27-22.29(b) if New Jersey intends to revise its regulations by January 1, 1995, to accommodate Federal Acid Rain requirements. This would provide New Jersey with additional time to assess its options for meeting the permit application form requirements. EPA also states that New Jersey may use the finalized version of the Federal acid rain permit application forms if New Jersey incorporates the Federal acid rain program by reference. However, in order to use the Federal forms, New Jersey must have the authority to enforce the provisions in these forms. New Jersey must develop its own State acid rain forms if it adopts a State Acid Rain rule and does not have the authority to enforce the provisions in the Federal forms. New Jersey may wish to use the EPA forms as a model. EPA will be distributing an electronic version of the Federal forms in the near future. (27)

RESPONSE: NJDEP intends to use the Federal acid rain permit forms since N.J.A.C. 7:27-22.29(a) has incorporated the federal acid rain program by reference.

N.J.A.C. 7:27-22.30 Renewals

The Department is reserving and not adopting this section at this time. Substantial portions of Subchapter 22 and Subchapter 8 will be reproposed in four to eight weeks. The Department will respond to comments received on this section of the rule when it is ultimately adopted. See the rule introduction above for a discussion of the changes expected in the reproposal.

N.J.A.C. 7:27-22.31 Fees

The Department is reserving and not adopting this section at this time. Substantial portions of Subchapter 22 and Subchapter 8 will be reproposed in four to eight weeks. The Department will respond to comments received on this section of the rule when it is ultimately adopted. See the rule introduction above for a discussion of the changes expected in the reproposal.

Summary of Agency Initiated Changes:

Subchapter 8. Permits and Certificates

N.J.A.C. 7:27-8.1 Definitions

The proposed definition of "administrative amendment" will not be adopted at this time and is deleted.

The present definition of "alteration" which was to be deleted, will remain.

The new proposed definition of "alteration" will not be adopted at this time and is deleted.

The proposed definition of "alternative operating scenario" will not be adopted at this time and is deleted.

The new proposed definitions of "applicable Federal requirement," "applicable requirement," and "applicable State requirement" will not be adopted.

The words "and Energy" were deleted from the definition of "Department." This was done in all locations in the document where "and Energy" appears.

The proposed definition of "seven-day-notice change" will not be adopted and is deleted.

In the definition of "substantial component," a burner of 10 million BTU per hour or greater was deleted.

N.J.A.C. 7:27-8.2 Applicability

N.J.A.C. 7:27-8.2(a)18 was clarified by changing the reference to N.J.A.C. 7:27 to N.J.A.C. 7:27-16, as only that subchapter relates to control apparatus. In N.J.A.C. 7:27-8.2(a)20, the date for filing permits for newspaper printing equipment was changed from September 1, 1994 to September 1, 1995.

In N.J.A.C. 7:27-8.2, subsection (c) was added, allowing a facility to obtain a permit voluntarily.

N.J.A.C. 7:27-8.3 General provisions

The proposal to make the current N.J.A.C. 7:27-8.3(c) a part of N.J.A.C. 7:27-8.14, Administrative amendments, not adopted and subsection (c) remains its current location.

The proposed new N.J.A.C. 7:27-8.3(c) has been deleted because the Department is not adopting N.J.A.C. 7:27-8.14, 8.15, and 8.16 which were referenced in the proposed new subsection (c).

The proposal to make the current N.J.A.C. 7:27-8.3(k) a part of N.J.A.C. 7:27-8.14, Administrative amendments, is not adopted and subsection 8.3(k) remains in its current location.

N.J.A.C. 7:27-8.4 Applications for preconstruction permits and certificates

All references to the proposed new N.J.A.C. 7:27-8.15, Seven-day-notice changes, were deleted from N.J.A.C. 7:27-8.4 because N.J.A.C. 7:27-8.15 was not adopted.

Proposed N.J.A.C. 7:27-8.4(n) will not be adopted and is deleted because it is redundant.

N.J.A.C. 7:27-8.9 Reporting requirements

Since the Department is not adopting N.J.A.C. 7:27-8.14, Admininistrative amendments, and 8.15, Seven-day-notice changes, all references to those sections were removed from this section and the wording in the section returned to its former state.

N.J.A.C. 7:27-8.10 Revocation

Since the Department is not adopting N.J.A.C. 7:27-8.14, Administrative amendments, and 8.15, Seven-day-notice change, all references to those sections were removed from this section and the wording in the section returned to its former state.

N.J.A.C. 7:27-8.11 Service fees

Under the proposal, fees for operating certificates and periodic compliance inspections were to stop on July 1, 1994 if a facility was subject to operating permits. Since that date has passed, the Department realized that it cannot forcast with certainty the date at which these fees should stop and operating permit fees begin. Therefore, N.J.A.C. 7:27-8.11(e) is not adopted at this time and will be reproposed at the appropriate time.

Since the Department is not adopting section N.J.A.C. 7:27-8.14, Administrative amentments, and 8.15, Seven-day-notice changes, all references to those sections are removed from this section.

N.J.A.C. 7:27-8.14 Administrative amendments

The Department will not be adopting this section at this time. See the discussion in the introduction above for more detail.

N.J.A.C. 7:27-8.15 Seven-day-notice changes

The Department will not be adopting this section at this time. See the discussion in the introduction above for more detail.

N.J.A.C. 7:27-8.16 Alterations

The Department will not be adopting this section at this time. See the discussion in the introduction above for more detail.

N.J.A.C. 7:27-8.17 Exemption for facilities subject to the Pollution Prevention Act

Language at N.J.A.C. 7:27-8.27 was proposed to be recodified at N.J.A.C. 7:27-8.17 with revisions involving some wording from proposed N.J.A.C. 7:27-8.14, 8.15, and 8.16. Since these sections are not being adopted at this time, N.J.A.C. 7:27-8.27 will remain at its present location.

Appendix I

Minor changes were made in the tables in Appendix I, such as adding CAS numbers to Table C to more precisely identify the air contanimants.

The heading "chemical" was changed to "air contaminant" in Tables A and B to provide consistency with the headings in Tables C and D.

Subchapter 22 Operative Permits

Various subsections in the rules are being reserved, because they specifically relate to seven sections which are being reserved and not adopted at this time. These sections are N.J.A.C. 7:27-22.8, 22.20 through 22.24, and 22.26.

N.J.A.C. 7:27-22.1 Definitions

In the definition "affected Title IV facility," language has been added to clarify that the acid deposition control requirements found in Title IV of the Clean Air Act are commonly known as "acid rain" provisions.

In the definition of "affected Title IV unit," language changes have been made so that the definition reads better and to clarify that the terms shall have the same meanings as the term "affected unit" in the EPA's regulations for the acid deposition control program.

In the definition of "alternative operating scenario," language has been added to clarify the methods under Subchapter 22 by which alternative operating scenarios may be made part of an operating permit.

In the definition of "applicable Federal requirement," language has been added at paragraph 12 to clarify that the reference to 42 USC §7661c(e) refers to the provisions for temporary facilities in the Clean Air Act. Also, language has been added to subparagraph 12ii to clarify that the adopted citation refers to PSD provisions.

In the definition of "applicable requirement," language has been added to clarify that an applicable requirement could be an applicable State requirement, an applicable Federal requirement or both" since in reality, both types of requirements are covered in the definition and may both apply to a source.

The phrase "in a continuing basis" was deleted (from the definition of "continuous opacity monitor" to avoid redundancy.

The definition of "de minimis" was changed to "de minimis emission threshold" to distinguish it from the EPA term "de minimis."

The definition of "emissions" has been restructured to more accurately reflect that emissions are discharged as opposed to released and that both air contaminants or categories of air contaminants are included in the definition.

In the definition of "MACT standard", the word "major" was deleted because the term can apply to non-major facilities.

The definition of "Phase I" was corrected to comply with the Clean Air Act (CAA) which establishes January 1, 1995 as the start of Phase I requirements. See 42 U.S.C. §7651e.

The definition of "PSD" has been restructured so that the full term "Prevention of significant deterioration" proceeds the acronym "PSD" for clarity and better form.

In "substantial component," the requirement to include a burner of 10 million BTU per hour or greater is not being adopted either in Subchapter 22 or at N.J.A.C. 7:27-8.1, Definitions.

Minor changes to improve grammar and clarity were made to the definition of "volatile organic compound."

N.J.A.C. 7:27-22.2 Applicability

At N.J.A.C. 7:27-22.2(a)1, a citation as been added clarifying that the term "fugitive emissions" is defined at N.J.A.C. 7:27-22.1. Similarly, that same reference has been added to N.J.A.C. 7:27-22.2(a)2 to define "Title IV facility".

At N.J.A.C. 7:27-22.2(a)3 (proposed as N.J.A.C. 7:27-22.2(a)4), the word "source" has been added prior to the word "category" so as to use the proper term. In addition, the subparagraph has been restructured and language added to explain that EPA is the authority which designates which source categories are subject to operating permit requirements.

N.J.A.C. 7:27-22.2(c) was restructured for clarity, with no change in the substance or meaning of the provision.

At N.J.A.C. 7:27-22.2(c) (formerly codified (b)), paragraph (c)3 has been moved from its former location of N.J.A.C. 7:27-22.2(a)2.

Text was added at N.J.A.C. 7:27-22.2(d) to clarify what portions of a facility can be treated as research and development, consistent with EPA guidance.

N.J.A.C. 7:27-22.3 General provisions

At N.J.A.C. 7:27-22.3(b), the words "equipment, control apparatus, or" have been deleted from the phrase "equipment, control apparatus, or source operation" to eliminate redundancy since "source operation" includes equipment and control apparatus.

N.J.A.C. 7:27-22.3(c)1 has been incorporated into N.J.A.C. 7:27-22.3(c) to maintain stylistic consistency in how lists are given.

At N.J.A.C. 7:27-22.3(g), the word "source" has been replaced with the word "document" to clarify the intent of this section.

At N.J.A.C. 7:27-22.3(m), the word "including" has been replaced with the words "that includes" in order to correct grammar. Also, the example of an alternative emission limit in N.J.A.C. 7:27-22.3(m) was changed upon adoption to more closely reflect the intent of this section.

N.J.A.C. 7:27-22.3(o) has been reserved upon adoption.

At N.J.A.C. 7:27-22.3(r), the Department has corrected the citation of the requirements for persons claiming information submitted to the Department as confidential.

N.J.A.C. 7:27-22.3(s), has been clarified by adding text which makes clear that the submittal of any information or application by a permittee shall not stay any operating permit requirement nor relieve a permittee from all applicable requirements except as other sections of N.J.A.C. 7:27-22 might provide.

N.J.A.C. 7:27-22.3(t) has been clarified by adding that application forms for modifications to operating permits may be obtained from the Department.

N.J.A.C. 7:27-22.3(z) is not being adopted as only those portions of the rule being adopted in this package shall become operative on October 31, 1994.

N.J.A.C. 7:27-22.4 General application procedures

The rule text at N.J.A.C. 7:27-22.4(c) was revised to indicate that the Department's Technical Manual on Electronic Transfer of Information is not currently available.

The rule text at N.J.A.C. 7:27-22.4(e) was revised to add cross references to the sections on initial operating permits, renewals, and significant modifications. In addition, the term "advised" was replaced with "encouraged" to emphasize the voluntary, though highly recommended, nature of the provision.

N.J.A.C. 7:27-22.5 Application procedures for initial operating permits

Rule text was added at N.J.A.C. 7:27-22.5(b) to emphasize that initial applications should be submitted to the Department no less than 90 days prior to the applicable deadline. This would allow the Department to note any deficiencies in respect to completeness, and the applicant to correct them, prior to the deadline.

The rule text at N.J.A.C. 7:27-22.5(c) was revised to clarify that "applicable deadline below" refers to the applicable deadline at N.J.A.C. 7:27-22.5(c)3.

Most of the rule text at N.J.A.C. 7:27-22.5(c)1 related to Phase II acid deposition control program was moved to N.J.A.C. 7:27-22.29, Facilities subject to acid deposition control, with a cross reference to N.J.A.C. 7:27-22.29 inserted for clarity.

The rule text at N.J.A.C. 7:27-22.5(c)2 was restructured to be consistent with N.J.A.C. 7:27-22.5(c)1 and 3.

The application deadlines in the table at N.J.A.C. 7:27-22.5(c)3 were extended to allow for delays in the rule adoption.

Language was added to N.J.A.C. 7:27-22.5(g) to clarify that the application deadline for incorporating changes to a facility as a whole is the same as that for changes to a source operation at the facility.

The rule text at N.J.A.C. 7:27-22.5(h) was revised to indicate that a facility could become subject to Subchapter 22 through the "creation of a new applicable requirement."

Rule text was added at N.J.A.C. 7:27-22.5(j) to indicate that, pursuant to 40 CFR 70.8, EPA may determine that "an application summary, with any relevant portion of the permit application, may be provided to EPA in lieu of the complete application."

N.J.A.C. 7:27-22.6 Application contents

The rule text at N.J.A.C. 7:27-22.6(c)1 was deleted as the phrase "not subject to preconstruction permit requirements pursuant to N.J.A.C. 7:27-8" was meant to apply to insignificant source operations in N.J.A.C. 7:27-22.6(e), not exempt activities in N.J.A.C. 7:27-22.6(c). The remaining items under N.J.A.C. 7:27-22.6(c) were recodified to account for this change.

The rule text at N.J.A.C. 7:27-22.6(c)2ii(5) was revised to delete the redundant clause "this does not include any such activities which are subject to preconstruction permit requirements pursuant to N.J.A.C. 7:27-8." Any activity subject to the preconstruction permit requirements of Subchapter 8 is subject to an applicable requirement and could not

be an exempt activity according to N.J.A.C. 7:27-22.6(c)1. Since N.J.A.C. 7:27-22.6(c) lists only exempt activities, the language deleted is unnecessary.

Rule text was added at N.J.A.C. 7:27-22.6(c)2ii(12) to include an exemption for laboratory activities consistent with revisions being adopted at N.J.A.C. 7:27-8.2 which deleted the requirement that all control apparatus obtain a permit and certificate under Subchapter 8.

The rule text at N.J.A.C. 7:27-22.6(d) was revised for clarity.

The rule text at N.J.A.C. 7:27-22.6(e) was clarified to better define which source operations at a facility can be classified as insignificant. The detailed provisions at N.J.A.C. 7:27-22.6(e)4i to xii, including Tables A and B, have been deleted and replaced with the simpler provisions at N.J.A.C. 7:27-22.6(e)1 and 2, with change in the substance or meaning of the provision.

The rule text at N.J.A.C. 7:27-22.6(f)2 was revised to delete the reference to N.J.A.C. 7:27-22.6(d), which is not necessary to classify source operations as insignificant.

The rule text at N.J.A.C. 7:27-22.6(f)2i was revised so that, consistent with 40 CFR 70.5(c), a "listing" of the types of insignificant source operations found at a facility must be included in the operating permit application.

The rule text at N.J.A.C. 7:27-22.6(f)4 and N.J.A.C. 7:27-22.6(f)4iii was revised to clarify that only a "general" description of a facility's production processes and operating scenarios must be included in the operating permit application.

The rule text at N.J.A.C. 7:27-22.6(f)5i was revised to provide "pounds per hour" as an example of other "units" required to verify compliance with any applicable requirement. The reference to Table "A or B above" was corrected to Table "C or D of N.J.A.C. 7:27-8, Appendix I." The rule text was also revised to delete the requirement that, for an air contaminant released in a de minimis amount, the applicant must state this.

The rule text at N.J.A.C. 7:27-22.6(f)5ii was revised to correct the reference to Table "A or B above" Table "C or D of N.J.A.C. 7:27-8, Appendix I."

The phrase "and the emissions estimated for insignificant sources operations, as specified pursuant to N.J.A.C. 7:27-22.6(e)" was deleted from the rule text at N.J.A.C. 7:27-22.6(f)5iii because these emissions were already included at N.J.A.C. 7:27-22.6(f)2ii.

The rule text at N.J.A.C. 7:27-22.6(f)5xii was revised to clarify that the operating permit application must indicate the holder of any banked emission reductions of criteria pollutants.

The rule text at N.J.A.C. 7:27-22.6(f)6i was revised to clarify that a "description of" each applicable requirement must be provided for each significant source operation at the facility.

The rule text at N.J.A.C. 7:27-22.6(f)6iv was moved to N.J.A.C. 7:27-22.6(f)6ii and the subsequent subparagraphs recodified.

Rule text was added to N.J.A.C. 7:27-22.6(f)6vi such that, consistent with 40 CFR 70, a demonstration is provided that "the alternative emissions limit is allowed in the SIP." The remaining subparagraphs were recodified.

The rule text at N.J.A.C. 7:27-22.6(f)9 was revised to clarify that "a listing of" any preconstruction permits issued by the Department must be included in the application.

The rule text at N.J.A.C. 7:27-22.6(f)10 was deleted. The text referred to modeling and risk assessment required pursuant to N.J.A.C. 7:27-22.8. N.J.A.C. 7:27-22.8 is being reserved and not adopted at this time. The remaining paragraphs were recodified.

The rule text at N.J.A.C. 7:27-22.6(f)11, recodified as N.J.A.C. 7:27-22.6(f)10, was revised to be consistent with N.J.A.C. 7:27-22.5(j). Applicants are not required to send copies or summaries of their applications to "affected states."

The rule text at N.J.A.C. 7:27-22.6(g) was revised grammatically.

The rule text at N.J.A.C. 7:27-22.6(l) was revised to specify that "general operating permit" application requirements are set forth at N.J.A.C. 7:27-22.14.

The rule text at N.J.A.C. 7:27-22.6(m) was revised, consistent with 40 CFR 70, to require an applicant to "explain" why a potentially applicable requirement does not apply.

N.J.A.C. 7:27-22.9 Compliance plans

Language was added at N.J.A.C. 7:27-22.9(a) to clarify that the certification requirements of N.J.A.C. 7:27-1.39 apply to the compliance plan as that plan is part of the initial application.

Text was added at N.J.A.C. 7:27-22.9(c)2iv to require monitoring parameters in compliance plans. This language was requested by EPA for compliance with 40 CFR Part 70.

Clarifications were made at N.J.A.C. 7:27-22.9(c)5iii (formerly N.J.A.C. 7:27-22.9(c)7iii) to remove redundancy and to reference the appropriate certification provision, with no change in the substance or meaning of the provision.

N.J.A.C. 7:27-22.9(c)3 and (c)4 were deleted to eliminate the redundancy caused by restating the same requirements contained in N.J.A.C. 7:27-22.18 and 22.19.

An addition was made at N.J.A.C. 7:27-22.9(c)7 (formerly N.J.A.C. 7:27-22.9(c)9) to clarify that the schedule for submission of compliance certifications will be specified in the operating permit.

N.J.A.C. 7:27-22.9(c)7iv was deleted to eliminate the redundancy caused by restating the same requirements stated elsewhere in the rule.

N.J.A.C. 7:27-22.9(d) was revised to correct the Department's address and name.

N.J.A.C. 7:27-22.10 Completeness review

The rule text at N.J.A.C. 7:27-22.10(e) was revised such that the voiding of an application shield pursuant to N.J.A.C. 7:27-22.7(f) would be "effective the day following the due date" for information requested by the Department, not "as of the due date."

The rule text at N.J.A.C. 7:27-22.10(f) was revised to change "requisite fee" to "fee requirement."

N.J.A.C. 7:27-22.11 Public comment

The rule text at N.J.A.C. 7:27-22.11(g) was revised to specify that the public notice of a hearing may set a date later than the day following the hearing for the close of the comment period. The text was also revised to delete the term "further" in the last sentence as it is redundant.

N.J.A.C. 7:27-22.12 EPA comment

The rule text at N.J.A.C. 7:27-22.12(b)1 was revised to add "the" before "applicant" where it was inadvertently omitted from the rule proposal.

The rule text at N.J.A.C. 7:27-22.12(d) and (h) was revised to delete the redundant term "itself."

N.J.A.C. 7:27-22.13 Final action on an application

Clarifications were made at N.J.A.C. 7:27-22.13(b)1,2 and 3 to clarify the Department's procedures for permit issuance or denial, and to explain that the Department will provide reasons for any permit denial.

Rule text was added at N.J.A.C. 7:27-22.13(d) to clarify that the Department will provide certain copies to EPA in compliance with 40 CFR part 70.

N.J.A.C. 7:27-22.14 General operating permits

N.J.A.C. 7:27-22.14(a) has been reconstructed for clarity.

At N.J.A.C. 7:27-22.14(a)3, the Department has corrected the rule citation for EPA comment procedures.

N.J.A.C. 7:27-22.16 Operating permit contents

The rule text at N.J.A.C. 7:27-22.16(b) was revised to change the "facility as a whole" to the "entire facility" which is a more accurate term.

The rule text at N.J.A.C. 7:27-22.16(g)1 was revised to include "termination" and "reissuance" as possible actions attendant on a permittee's noncompliance with a permit.

The rule text at N.J.A.C. 7:27-22.16(g)2 was revised to correct "this" to "its."

The rule text at N.J.A.C. 7:27-22.16(g)9 was revised to narrow the reference to N.J.A.C. 7:27-1 to 7:27-1.31.

The rule text at N.J.A.C. 7:27-22.16(h)2 was revised to clarify that the Department must be satisfied that "each source operation" included in the alternative operating scenario meets the criteria in N.J.A.C. 7:27-22.16(h)2i and ii.

The rule text at N.J.A.C. 7:27-22.16(i)2 was revised to change "meets" to "complies with."

The rule text at N.J.A.C. 7:27-22.16(p) was revised to delete the redundant phrase "the provisions of."

The rule text at N.J.A.C. 7:27-22.16(r) was revised to change "each" to "any."

N.J.A.C. 7:27-22.17 Permit shield

The language at N.J.A.C. 7:27-22.17(g) was restructured for clarity, with no change in the substance or meaning of the provision.

N.J.A.C. 7:27-22.18 Source emissions testing and monitoring

Language was added at N.J.A.C. 7:27-22.18(b) to clarify that the deadline for submittal of a testing protocol may be a deadline included in the operating permit, rather than 90 days after permit issuance. There is no significant environmental impact from this rule change. The submission of the protocol may not be necessary in 90 days. The permit itself may state a deadline but will not alter any compliance dates.

N.J.A.C. 7:27-22.19 Recordkeeping and reporting

The language at N.J.A.C. 7:27-22.19(a) was revised for clarity.

Language was added to N.J.A.C. 7:27-22.19(b)6 to clarify that operating conditions not governed by the operating permit need not be reported to the Department in a testing or monitoring report. Additionally, language was added to clarify how operating conditions "at the time of sampling or measurement" are to be described in cases where the sampling or measurement was performed via a continuous monitoring system (CMS). This language clarifies how this scenario should be described and is not a new requirement.

N.J.A.C. 7:27-22.19(f) was revised to clarify where the compliance reports should be sent.

N.J.A.C. 7:27-22.19(f)1ii was revised to reference the relevant section of the rule to provide clarity for this rule provision.

N.J.A.C. 7:27-22.19(j) was added to clarify that the requirements of this section must conform with 40 CFR Part 64, as required by Part 70.

N.J.A.C. 7:27-22.27 Alternative operating scenarios

N.J.A.C. 7:27.27(e) was modified to clarify that a seven-day-notice change is the only type of change listed at N.J.A.C. 7:27-22.27(d) that can be added to an operating permit (changes made through the minor or significant modification procedure are incorporated into the permit, not added).

N.J.A.C. 7:27-22.27(e)1iii was revised to improve grammar by eliminating the use of a double negative and to maintain stylistic consistency in how lists are given.

N.J.A.C. 7:27-22.28 Intra-facility emissions trading

At N.J.A.C. 7:27-22.28, the word "emissions," "trading," or "program" has been added in a number of locations throughout the section in order to provide for consistent use of the complete phrase "emissions trading program."

At N.J.A.C. 7:27-22.28, an article such as "the" or "an" has been added or a new article has been substituted for the originally proposed article in a number of locations throughout the section in order to improve the readability of the section.

At N.J.A.C. 7:27-22.28(a), the phrase "providing for trading" has been added to clarify that the trading must be conducted within a cap, as is required in the Federal operating permit regulations at 40 CFR 70.4(b)12.

At N.J.A.C. 7:27-22.28(a)1, the text has been reformatted to include two subparagraphs in order to improve the readability of the section.

At N.J.A.C. 7:27-22.28(a)1, the phrase "or a minor modification" has been added to make this section consistent with N.J.A.C. 7:27-22.28(c).

At N.J.A.C. 7:27-22.28(a)2, a citation has been added to refer to the economic incentive program rules which were issued by the Federal government subsequent to the State's proposal of these rules.

At N.J.A.C. 7:27-22.28(b), clarification has been added that the emissions trading program may be either "incorporated in or attached to" the operating permit. These alternatives are specified in the Federal operating permit regulations at 40 CFR 70.4(b)12.

At N.J.A.C. 7:27-22.28(c), to convey the meaning of these provisions more precisely, use of the word "alternatively" is substituted for "additionally," as in any (given case the owner or operator will elect to seek authorization through one of the specified means or the other, not through both.

At N.J.A.C. 7:27-22.28(c), in the second sentence of this subsection the verb tense has been changed from passive ("may be established") to active ("the owner or operator may obtain") to make explicit who may obtain the authority. Also, the word "through" has been deleted as it is redundant with the phrase "pursuant to" used above. The phrase "incorporated into" has been replaced with "attached to," as the Federal operating permit regulations at 40 CFR 70.4(b)12 specify that seven-day-notice changes are to be attached to the operating permit. The phrase "pursuant to N.J.A.C. 7:27-22.28(c)10" is deleted because it is redundant with the identical phrase set forth at N.J.A.C. 7:27-22.28(a)1.

At N.J.A.C. 7:27-22.28(d), to avoid confusion, clarification that the listed items are required for seven-day-notice submittal been added.

At N.J.A.C. 7:27-22.28(d)2, clarification is added specifying that what is being sought is authorization.

At N.J.A.C. 7:27-22.28(d)6, clarification is added that the air contaminants of concern are those "identified pursuant to (d)5 above."

At N.J.A.C. 7:27-22.28(e), reference to N.J.A.C. 7:27-22.28(c)9 has been deleted as these provisions serve no purpose other than referring the reader back to N.J.A.C. 7:27-22.28. At N.J.A.C. 7:27-22.28(e)1, the reference to N.J.A.C. 7:27-22.28(c)9 is replaced with the statement that the eligibility must derive from the underlying provisions of the chapter.

At N.J.A.C. 7:27-22.28(e)1, a superfluous "also" is deleted.

At N.J.A.C. 7:27-22.28(f), clarification is added specifying that "the incorporation" is that which is being approved.

At N.J.A.C. 7:27-22.28(h)1, the superfluous phrase "allowing such emissions trading" has been deleted.

At N.J.A.C. 7:27-22.28(h)1ii, the word "proposed" has been deleted as N.J.A.C. 7:27-19, setting forth the emissions averaging rules, has been adopted by the Department since proposal of these rules. The adoption of Subchapter 19 was published in the December 20, 1993 New Jersey Register at 25 N.J.R. 5957(a).

At N.J.A.C. 7:27-22.28(h)1iii, the superfluous phrase "emissions average" has been deleted. Also, the word "averaging" is replaced with"emissions trading program." Averaging is a type of emissions trading program, but in this context the more generic term should be used, to ensure consistent use of terms throughout this section.

At N.J.A.C. 7:27-22.28(h)2, the superfluous phrase "as appropriate" has been deleted.

At N.J.A.C. 7:27-22.28(i)2i, clarification has been added, providing further guidance as to the units of time on which recordkeeping is to be based.

At N.J.A.C. 7:27-22.28(i)2ii, the word "collectively" has been added to prevent confusion as to what is meant by the phrase "total emissions."

At N.J.A.C. 7:27-22.28(i)2ii, the word "per" is replaced with the phrase "the unit of time used for this record shall be" to make the linguistic structure of this paragraph parallel to that at N.J.A.C. 7:27-22.28(i)2i.

At N.J.A.C. 7:27-22.28(j), the superfluous phrase "including operation" has been deleted.

A new subsection has been added at N.J.A.C. 7:27-22.28(k) which clarifies and reminds permittees and applicants for intra-facility emissions trading programs that a "permit shield shall only apply to an intra-facility emissions trading program through issuance of an initial operating permit, an operating permit renewal or a significant modification". This language is fully consistent with the permit shield provisions at N.J.A.C. 7:27-22.17.

N.J.A.C. 7:27-22.29 Facilities subject to acid deposition control

A new subsection, N.J.A.C. 7:27-22.29(b) has been added. This section was initially proposed at N.J.A.C. 7:27-22.5(c)1, but has been moved to this section on adoption for clarity.

N.J.A.C. 7:27-22.29(f) has been revised to conform with the terms used in 40 CFR Part 72.

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, have the following meanings, unless the context clearly indicates otherwise.

...

"Preconstruction permit" means a "Permit to Construct, Install or Alter Control Apparatus or Equipment" issued by the Department pursuant to the Air Pollution Control Act of 1954, and in particular N.J.S.A. 26:2C-9.2.

...

"Responsible official" means one of the following:

1. For a corporation:

i. A president, secretary, treasurer, or vice-president of the corporation, who is in charge of a principal business function;

ii. Any other person who performs similar policy or decision-making functions for the corporation; or

iii. A duly authorized representative of the person in 1i or ii above, if the representative is responsible for the overall operation of one

or more manufacturing, production, or operating facilities applying for or subject to a preconstruction permit or certificate, or an operating permit, and either:

(1) The facilities for which the representative is responsible employ more than 250 persons or have gross annual sales or expenditures exceeding $25 million (in second quarter 1980 dollars); or

(2) The delegation of authority to the representative is approved in writing in advance by the Department;

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 subchapter, a principal executive officer of a Federal agency includes the chief executive officer having responsibility for the overall operations of a principal geographic unit of the agency (for example, a Regional Administrator of EPA); or

4. For affected facilities 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 Title IV representative for any other purposes under 40 CFR Part 70.

7:27-1.31 Right to enter

(a) The Department and its representatives shall have the right to enter and inspect at any time, any facility or building, or portion thereof, including all documents and equipment on the premises, in order to ascertain compliance or noncompliance with this chapter or with any preconstruction permit, certificate, operating permit, order, authorization or other legal document issued pursuant thereto, or to verify any information submitted to the Department. This right is absolute and shall not be conditioned upon any action by the Department, except the presentation of appropriate credentials as requested, and compliance with appropriate safety standards. This right includes, but is not limited to, the right to:

1. Enter upon the premises of the facility;

2. Sketch or photograph any portion of the facility;

3. Enter upon the premises of a facility where records are maintained under the conditions of the preconstruction permit, certificate or operating permit;

4. Review any records that must be kept under the conditions of the preconstruction permit, certificate or operating permit;

5. Copy or photograph any records that must be kept under the conditions of the preconstruction permit, certificate or operating permit;

6. Inspect any part of the facility, including any equipment (including any equipment used for monitoring and any air pollution control apparatus), practices, or operations, regulated or required under the preconstruction permit, certificate or operating permit;

7. Interview any employee or representative of the owner or operator; and

8. Test or sample any substance or material.

(b) No person shall obstruct, hinder or delay the Department or its representatives in its exercise of its rights under (a) above.

(c) An owner or operator of a facility, and any ***appropriate*** employee or representative of any owner or operator, shall, upon request, assist the Department and its representatives in the performance of any inspection. Such assistance shall include, but shall not be limited to, making available sampling equipment and facilities necessary to conduct sampling *[and]* to determine the nature and quantity of any air contaminant emitted by the facility.

(d) During any sampling or testing conducted by the Department, any equipment, and all components connected to, attached to, or serving the equipment, shall be operated under normal operating conditions, or under conditions set forth in any preconstruction permit, certificate, operating permit, order or other State or Federal authorization covering the equipment.

7:27-1.39 Certification of information

(a) Except pursuant to (c) below, any person who submits an application, report or other document to the Department shall include, as an integral part of the application, report or other document, 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 certified document. The certification shall state:

"I certify under penalty of law that I believe the information provided in this document 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."

2. A certification signed by a responsible official, as defined at N.J.A.C. 7:27-1.4, which states:

"I certify under penalty of law that I have personnally examined and am familiar with the information submitted in this document 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."

(b) The certification at (a)2 above shall not be required if the individual required to sign the certification in (a)1 above is the same individual required to sign the certification in *[(c)]* ***(a)2*** above.

(c) For the purposes of emissions statements requirements pursuant to N.J.A.C. 7:27-21, the specific certification required by N.J.A.C. 7:27-21 shall be used.

7:27-8.1 Definitions

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

...

["Administrative amendment" means a revision of information in a preconstruction permit or a certificate pursuant to the procedures for administrative amendments at N.J.A.C. 7:27-8.14.]

...

***"Alteration" means any change made to equipment or control apparatus or the use thereof, except for change reported to the Department pursuant to N.J.A.C. 7:27-8.3(c) as an amendment of the permit in effect and repair or maintenance. Alteration includes, but is not limited to:**

1. Change in the location of the point of discharge of any air contaminant from equipment or control apparatus into the outdoor atmosphere, unless the change is authorized in the permit or certificate in effect;

2. Replacement of equipment or control apparatus or of any substantial component thereof if:

i. The replacement equipment or control apparatus is not the same kind as that which is being replaced;

ii. The replacement equipment or control apparatus is not equivalent to, or better than, for the purpose of air pollution control, that which is being replaced;

iii. The data of approval of the permit authorizing the installation of the equipment or control apparatus being replaced is more than five years prior to the date of installation of the replacement equipment or control apparatus; or

iv. No permit is in effect for the equipment or control apparatus;

3. The introduction of any new raw material to equipment or control apparatus for which no certificate is in effect, including the change of contents of a storage tank for which no certificate is in effect;

4. Any reconfiguration to an alternate configuration not authorized in the permit in effect;

5. Any of the following changes to equipment or control apparatus, or to the use thereof, if the change may increase the concentration or rate of any air contaminant emission:

i. Addition, replacement, or removal of auxiliary devices or appurtenances;

ii. Change in the relative use, expressed in percent by weight, of any raw material in the operation of equipment or control apparatus

or in the process, including the introduction of a raw material not authorized in the permit or certificate in effect; or

iii. Change in the process in which the equipment or control apparatus is used;

6. Increase in the concentration or rate of emission of any air contaminant above that authorized by the permit and certificate in effect;

7. Emission of any air contaminant not authorized by the permit and certificate in effect;

8. Any change to a stack or chimney or the use thereof, including any change to a stack dispersion parameter including, but not limited to, temperature, velocity, direction, or volumetric flow rate, if:

i. The change is not in compliance with the stack height regulations promulgated at 40 CFR 51;

ii. The change may result in an increase in the ambient concentration of any air contaminant; or

iii. No permit is in effect for the equipment or control apparatus;

9. Any change in the concentration of any air contaminant in the influent to existing control apparatus above that authorized in the permit or certificate;

10. Any increase in the total hours of operation per time period or the rate of production above that authorized in the permit or certificate; and

11. Any change to equipment or control apparatus, or to the use thereof, if the change will result in a contravention of any State or Federal ambient air quality standard, any provision of N.J.A.C. 7:27, or any condition or approval of any permit or certificate in effect.*

*["Alteration" means any change made to equipment or control apparatus or the use thereof set forth as an alternation at N.J.A.C. 7:27-8.16. In respect to a facility for which an operating permit has been issued pursuant to N.J.A.C. 7:27-22, this term shall include any change which would constitute a significant modification or a minor modification of the operating permit.

"Alternative operating scenario" means a plan for operating a facility or a portion thereof using methods or processes, which are different from other methods or processes approved for use at the same facility, or the same portion thereof, at different times. For example, using a vessel to make product A on Tuesdays and product B on Wednesdays.]*

...

"Amendment" means any revision of information in a permit or operating certificate in effect which does not reflect a change in the quality, nature, or quantity of emissions to the outdoor atmosphere or a change in the effect of the emissions on ambient air quality. The term does not include the modification of information in a permit or certificate to reflect alteration of equipment or control apparatus.

...

*["Applicable Federal requirement" means any of the following standards, provisions or requirements as they apply to any source operation in a facility which is subject to this subchapter. Applicable requirements include requirements that have been promulgated or approved by EPA through rulemaking, but have future-effective compliance dates:

1. Any standard or other requirement provided for in New Jersey's approved SIP (or FIP, if applicable), including any approved revisions;

2. Any provision or condition of any preconstruction permit issued pursuant to N.J.A.C. 7:27-8;

3. Any NSPS or other standard or requirement under 42 U.S.C. §7411 including 42 U.S.C. §7411(d);

4. Any standard or other requirement concerning HAPs under 42 U.S.C. §7412, including any requirement concerning accident prevention under 42 U.S.C. §7412(r)(7);

5. Any standard or other requirement of the acid deposition control program under Title IV of the CAA or the regulations promulgated thereunder;

6. Any requirement established pursuant to the provisions for monitoring in Title V of the CAA at 42 U.S.C. §7661c(b) or pursuant to the monitoring requirements at 42 U.S.C. §7414(a)(3);

7. Any standard or other requirement governing solid waste incineration under 42 U.S.C. §7429;

8. Any standard or other requirement for consumer and commercial products under 42 U.S.C. §7511b(e);

9. Any standard or other requirement for marine tank vessels under 42 U.S.C. §7511b(f);

10. Any standard or other requirement of the program to prevent or control the emission of air contaminants from outer continental shelf sources under 42 U.S.C. §7627;

11. Any standard or other requirement of the regulations promulgated to protect stratospheric ozone under Title VI of the CAA, unless EPA has determined that such a requirement need not be contained in an operating permit;

12. Any of the following, but only as it would apply to temporary facilities permitted pursuant to 42 U.S.C. §7661c(e);

i. A NAAQS; or

ii. An increment under 42 U.S.C. §7473; or

iii. A visibility requirement under 42 U.S.C. §7491 or 7492.

"Applicable requirement" means any applicable State requirement or applicable Federal requirement.

"Applicable State requirement" means any provision, standard or requirement in any statute or rule, as it applies to a facility or source operation which is subject to this subchapter, but is not an applicable Federal requirement. This term includes requirements that have been promulgated by the Department and submitted to EPA as SIP revisions but have not yet been approved by EPA. An example of an applicable State requirement is N.J.A.C. 7:27-8.8(f), as it relates to the control of nuisance odor.]*

...

"Architectural coating" means a surface coating formulation applied and dried at ambient conditions, and used to coat all or parts of stationary structures and their appurtenances, such as buildings, bridges, the interior or exterior of houses, and other items such as signs, curbs, and pavements.

...

"Banking" means the reservation of creditable emission reductions, pursuant to N.J.A.C. 7:27-18, for future use as emission offsets.

...

"Category I" means the class of applications for preconstruction permits or certificates for the following types of equipment:

1.-8. (No change.)

9. Any paint spray operation or other surface coating operation that has particulate control apparatus and that uses less than one half gallon of paint per hour and the particulate control apparatus serving the spray booth; this does not include any paint spray operation or surface coating operation which emits any TXS;

10. Any *[applicable]* laboratory hoods, ducts, vents, or similar devices ***as specified in N.J.A.C. 7:27-8.2(a)*** used as conduits for exhausting fumes from laboratory operations;

11. Any *[applicable]* enclosed sandblasting equipment ***as specified in N.J.A.C. 7:27-8.2(a)*** that has a control apparatus that achieves a minimum particulate control efficiency of 99 percent;

12. Any *[applicable]* plastics grinding equipment ***as specified in N.J.A.C. 7:27-8.2(a)***; and

13. Any *[applicable]* open top surface cleaner ***as specified in N.J.A.C. 7:27-8.2(a)*** which is equipped with a cover and free-board chiller. This does not include any surface cleaner which uses a HAP.

"Category II" means the class of application for a preconstruction permit or certificate for any type of new or altered equipment, except those types which are defined above as belonging to Category I.

...

"Clean Air Act" or "CAA" means the Federal Clean Air Act (42 U.S.C. 7401 et seq.) which consists of Public Law 159 (July 14, 1955; Stat. 322) and all subsequent amendments thereto.

...

"Delivery vessel" *[means any mobile storage tank including, but not limited to, tank trucks, railroad tank cars, or marine tank vessels]* ***means any vehicle designed and constructed or converted***

to be capable of transporting liquid VOC cargo such as gasoline or fuel oil. This term includes, but is not limited to, tank trucks, tank trailers, railroad tank cars, and marine tank vessels.*

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

...

"Environmental improvement pilot test" means a sampling and analytical program using prototype equipment or processes on a temporary basis for the purpose of collecting data necessary for the design of a full scale process to achieve an environmental improvement, or for the purpose of determining the feasibility of using the equipment or process for a particular environmental improvement.

...

"Freeboard chiller" means a set of condensing coils which are located peripherally along the free board and which condense the solvent vapor before they escape from the surface cleaner.

...

"Graphic arts operation" means the application of one or more surface coating formulations non-uniformly across a surface, using one or more printing units, together with any associated drying or curing areas. A single graphic arts operation ends after drying or curing and before other surface coating formulations are applied. For any web line, this term means an entire application system, including any associated drying ovens or areas between the supply roll and take-up roll or folder. This term does not include any surface coating operation.

"Hazardous air pollutant" or "HAP" means an air contaminant listed by EPA as a HAP, pursuant to 42 U.S.C. 7412(b). That list is incorporated by reference herein, together with all amendments and supplements. A copy of the list is available from the Department at the address set forth at N.J.A.C. 7:27-8.4(a).

...

"Install" means to carry out final setup activities necessary to provide the equipment or control apparatus with the capacity for use or service. This term includes, but is not limited to, the connection of the equipment and control apparatus, associated utilities, piping, ductwork and conveyor systems. This term does not include the term "construct," as defined above, nor the reconfiguration of equipment and control apparatus to an alternate configuration specified in the preconstruction or operating permit application and approved by the Department.

...

"Operating permit" means a permit issued pursuant to N.J.A.C. 7:27-22 by the Department to authorize the use of one or more source operations from which air contaminants may be emitted.

...

"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, without limitation, all political subdivisions of this State or any agencies or instrumentalities thereof.

"Plastics grinding equipment" means any type of machinery which is used to chop, grind or cut any plastic material for reintroduction of the material into the manufacturing process. This includes any conveying and product collection equipment associated with the grinding machinery.

...

"Potable water" means any water used or intended to be used for drinking or culinary purposes.

...

"Preconstruction permit" means a "Permit to Construct, Install or Alter Control Apparatus or Equipment" issued by the Department pursuant to the New Jersey Air Pollution Control Act and in particular N.J.S.A. 26:2C-9.2.

...

"Reconfiguration" means a change in the setup of equipment or control apparatus, or both, to an alternate configuration. This term also includes reorientation or reconnection into an alternate pattern of equipment or control apparatus, or both. This term does not include a change in the location of equipment or control apparatus from that specified in the preconstruction permit.

...

["Seven-day-notice change" means a change made pursuant to the procedures at N.J.A.C. 7:27-8.15.]

...

"Stationary storage tank" means any immobile storage tank. This term also includes any delivery vessel, excluding a railroad tank car, used for storing VOC ***remaining on site*** at a facility for more than one month.

...

"Substantial component" means, in respect to replacement, *[any]* ***the entire piece of*** equipment or control apparatus, or any component of equipment or control apparatus, if:

1. The total fixed capital cost ***of the replacement*** exceeds:

i. (No change.)

ii. For Category II sources, 50 percent of the total fixed capital cost of replacement or $20,000 as calculated ***in*** 1989 dollars, whichever is greater; ***or***

2. The equipment or control apparatus, or the component is designated in the conditions of approval of the preconstruction permit ***or operating permit*** in effect as a substantial component*[; or]***.***

[3. The component is a burner having a rated heat input of 10 million BTU per hour or greater.]

...

"Surface coating operation" means the application of one or more surface coating formulations uniformly across a surface, using one or more coating applicators, together with any associated drying or curing areas. A single surface coating operation ends after drying or curing and before other surface coating formulations are applied. For any web coating line, this term means an entire coating application system, including any associated drying ovens or areas between the supply roll and take-up roll, that is used to apply surface coating formulations onto a continuous strip or web. This term does not include any graphic arts operation.

...

"Temporary facility" means a facility which, by design, is intended to be operated at more than one location and which is relocated more than once in five years.

...

7:27-8.2 Applicability

(a) New or altered equipment and control apparatus for which a preconstruction permit and an operating certificate are required, pursuant to the provisions of N.J.A.C. 7:27-8.3, include:

1. Any equipment used in a commercial or industrial paint spray operation, except for equipment used in architectural coating operations;

2. Equipment used in a manufacturing process involving a surface coating operation or graphic arts operation including, but not limited to, spray and dip painting, roller coating, electrostatic depositing, surface stripping or spray cleaning, from which direct or indirect emissions of air contaminants occur and in which the quantity of coating or cleaning material used in any source operation is equal to or greater than one half gallon in any one hour;

3.-14. (No change.)

15. Any waste or water treatment equipment which may emit air contaminants including, but not limited to, air stripping equipment, aeration basins, surface impoundments, lagoons, sludge tanks, dewatering equipment, soil cleaning equipment, conveying equipment, digesters, thickeners, flocculators, driers, fixation equipment, composting equipment, pelletizing equipment and grit classifying equipment; except for aeration basins, lagoons, and settling basins at publicly owned treatment works or domestic treatment works; if the concentration in the water of each TXS equals or exceeds 100 parts per billion by weight or the total concentration in the water of VOC equals or exceeds 3,500 parts per billion by weight;

16. Equipment used for the purpose of venting a closed or operating dump, sanitary landfill, hazardous waste landfill, or other solid waste facility, directly or indirectly into the outdoor atmosphere including, but not limited to, any transfer station, recycling facility, or municipal solid waste composting facility;

17. Any source operation which has the potential to emit any TXS at a rate greater than 0.1 pounds per hour (45.4 grams per hour);

18. Any equipment required to have air pollution control apparatus pursuant to any applicable provisions of N.J.A.C. 7:27***-16***;

19. Any control apparatus serving equipment for which a permit is required pursuant to this section; ***or***

20. Newspaper printing equipment subject to N.J.A.C. 7:27-8.2(a)2. For newspaper printing equipment in operation on or before *[(operative date of this adoption)]* ***October 31, 1994***, applications must be filed in accordance with this subchapter by *[September 1, 1994; or]* ***September 1, 1995.***

*[21. Any equipment not specified in (a)1 through (a)20 above but which has the potential to emit;

i. Total dioxin and furans, in quantities greater than 0.001 pounds per year;

ii. Benzidine or bis (chloromethyl) ether, in quantities greater than 0.6 pounds per year;

iii. n-Nitrosodimethylmine, in quantities greater than 2.0 pounds per year;

iv. Hexavalent chromium compounds, in quantities greater than 4.0 pounds per year;

v. Hydrazine, in quantities greater than 8.0 pounds per year;

vi. Arsenic and arsenic compounds or 2-nitropropane, in quantities greater than 10.0 pounds per year;

vii. Any HAP listed in table A in Appendix I of this subchapter in quantities greater than 20 pounds per year;

viii. Any HAP listed in table B in Appendix I of this subchapter in quantities greater than 200 pounds per year; or

ix. Any HAP not listed in i(a)21 through viii above in quantities greater than 2,000 pounds per year.]*

(b) New or altered equipment and control apparatus for which a preconstruction permit and an operating certificate are not required, notwithstanding the provisions of (a) above, include:

1. A storage tank maintained under a pressure greater than one atmosphere provided that any vent serving such storage tank has the sole function of relieving pressure under emergency conditions;

2. Storage tanks, reservoirs, containers, or bins used on any farm for the storage of agricultural commodities produced by or consumed in the farm's own operations. This exemption does not include storage tanks, reservoirs, containers or bins used by distributors of agricultural commodities or by research facilities which develop products for use in agricultural production;

3. Potable water treatment equipment, except air stripping equipment with a capacity greater than 100,000 gallons per day;

4. Aeration basins, lagoons and settling basins at publicly owned treatment works or domestic treatment works; ***and***

5. Equipment which is used for the sole purpose of woodworking by sanding, drilling, cutting or planing, unpainted wood or wood products, and which vents into a room*[; and]**.*

[6. Control apparatus used solely to purify intake air fed into a source operation.]

(c) This subchapter shall not preclude a facility from voluntarily obtaining a preconstruction permit and operating certificate for a source not otherwise required to obtain a permit.

7:27-8.3 General provisions

(a) No person shall construct, install, or alter any equipment or control apparatus without first having obtained a preconstruction permit, except as provided at N.J.A.C. 7:27-***8.2 and*** 8.17.

(b) No person shall use or cause to be used:

1. Any new or altered equipment or control apparatus without first having obtained an operating certificate, a temporary operating certificate, *[or an operating permit,]* except as provided at N.J.A.C. 7:27-***8.2 and*** 8.17; or

2. (No change.)

***(c) Any person holding a permit or certificate shall keep the information in the permit or certificate up to date. Such person shall report any of the following changes to the Department within 120 days after the occurrence of the change, as an amendment of the permit or certificate, provided that the change does not constitute an alteration as defined in N.J.A.C. 7:27-8.1;**

1. Change in business name, division name, or plant name; mailing address; company stack designation; telephone number; or name of plant contact;

2. Transfer of ownership of the equipment or control apparatus for which a permit or certificate is in effect;

3. Change in the contents of a storage tank for which a permit is in effect, provided such change does not involve the use or storage of any TXS;

4. The introduction of a raw material not authorized in the permit or certificate in effect;

5. Replacement of equipment or control apparatus or of any substantial component thereof, provided that the date of installation of the replacement equipment or control apparatus is less than five years after the date of approval of the permit authorizing the installation of the replaced equipment or control apparatus; or

6. Any of the following changes to a stack or chimney or the use thereof, provided that the change is in compliance with the stack height regulations promulgated at 40 CFR 51:

i. Change in the number of stacks or chimneys serving the equipment or control apparatus, provided that the change does not result in any discharge height less than that of the tallest stack or chimney existing prior to the change;

ii. Decrease in the diameter of a stack or chimney, provided that the exhaust is vented upward;

iii. Replacement of an existing stack or chimney with a taller stack or chimney, provided that this results in an effective stack height which is no less than that existing before the change; or

iv. Increase in the exit temperatures or volume of gas emitted from a stack or chimney.*

[(c) A permittee shall make a change to equipment or control apparatus, or to the use, thereof, which is an administrative amendment, seven-day-notice change, or an alteration in accordance with the procedures set forth at N.J.A.C. 7:27-8.14, 8.15, or 8.16, respectively.]

(d) Any person holding a preconstruction permit or certificate shall make said preconstruction permit or certificate, together with any *[administrative]* amendments, *[seven-day-notice changes, or alterations reflecting changes]* thereto, readily available for inspection on the operating premises.

(e) No person shall use or cause to be used any equipment or control apparatus unless all components connected or attached to, or serving the equipment or control apparatus, are functioning properly and are in use in accordance with the preconstruction permit and certificate and all conditions and provisions thereto.

(f) A preconstruction permit or certificate shall not be transferable either from the location authorized in the preconstruction permit or certificate in effect to another or from any one piece of control apparatus or equipment to another.

(g) (Reserved.)

(h) Preconstruction permits and certificates issued under this subchapter are based on the potential for emission of air contaminants only and do not in any way relieve the applicant from the obligation to obtain necessary permits from other governmental agencies and to comply with all other applicable Federal, State, and local rules and regulations.

(i) (No change.)

(j) No person holding any preconstruction permit or certificate shall suffer, allow, or permit any air contaminant, including an air contaminant detectable by the sense of smell, to be present in the outdoor atmosphere in such quantity and duration which is, or tends to be, injurious to human health or welfare, animal or plant life or property, or would unreasonably interfere with the enjoyment of life or property. This shall not include an air contaminant which occurs only in areas over which the owner or operator has exclusive use or occupancy.

***(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. 7:27-8.1:**

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.*

*[(k)]**(l)* For a person seeking approval for an environmental improvement pilot test, as defined at N.J.A.C. 7:27-8.1, of air pollution control equipment or other environmental clean-up equipment, the Department will take final action on the application for the preconstruction permit or certificate within 30 days of its receipt of an administratively complete application. The approval will be effective for 90 days, and may be renewed by application to the Department. The fee for an environmental improvement pilot test is set forth at N.J.A.C. 7:27-8.11.

*[(l)]**(m)* Notwithstanding (b) above, no certificate is required for equipment or control apparatus at a facility for which:

1. An operating permit issued by the Department is in effect; or

2. A facility-wide permit issued by the Department pursuant to N.J.S.A. 13:1D-35 et seq. is in effect.

*[(m)]**(n)* There shall be an affirmative defense to liability for penalties for a violation of a preconstruction permit or certificate, occurring as a result of an equipment malfunction, an equipment startup, an equipment shutdown, or during the performance of necessary equipment maintenance. The affirmative defense shall be asserted and established as required by P.L. 1993. c.89 (adding N.J.S.A. 26:2C-19.1 through 2C-19.5) and any rules that the Department promulgates thereunder, and shall meet all of the requirements thereof. There shall also be an affirmative defense to liability for penalties or other sanctions for noncompliance with any technology based emission limitation in the preconstruction permit or certificate, if the noncompliance was due to an emergency as defined at N.J.A.C. 7:27-22.1, provided that the affirmative defense is asserted and established in compliance with 40 CFR 70.6(g) and meets all the requirements thereof.

7:27-8.4 Applications for preconstruction permits and certificates

(a) Applications for a preconstruction permit or a certificate, *[for an administrative amendment, for an alteration,]* or for a renewal ***thereof*** *[of a certificate, and notices of seven-day-notice changes]* shall be submitted to the Department on forms obtained from the Department. Application *[and notice]* forms and information pertinent to applications *[and notices,]* 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.

(c) Before an operating certificate, or any renewal thereof, is approved, the Department may require the applicant to conduct such testing as is necessary, at the discretion of the Department, to verify that the kind and amount of air contaminants emitted from the equipment or control apparatus are in compliance with the limits established in the preconstruction permit and certificate and that only the air contaminants approved in the preconstruction permit are being emitted. If such testing is required, the applicant shall:

1. Submit a source-specific testing protocol to the Department at least 60 days prior to the anticipated date of the testing, if such a protocol is required in the conditions of approval of the preconstruction permit or certificate;

2.-3. (No change.)

4. Give the Department at least seven days advance notice of the date and time of the start of any testing conducted pursuant to a source-specific testing protocol, except in cases where the Department has specified in the conditions of approval of the preconstruction permit or certificate other time requirements for notice;

5.-6. (No change.)

(d) A single application for a preconstruction permit or certificate may pertain to all equipment and control apparatus from which all of the air contaminants are vented through a single stack or chimney or through a single stack equivalent.

(e) Any person who is applying for a preconstruction permit shall submit as part of the application, an NSPS and NESHAP applicability and compliance demonstration, if the proposed equipment or the intended use of the proposed equipment is within any source category to which any NSPS or NESHAP is applicable.

(f) Upon request of the Department, and in accordance with a protocol approved in advance by the Department, the applicant for a preconstruction 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 preconstruction permit application may cause:

1.-4. (No change.)

(g) (No change.)

(h) Any person submitting any application to the Department pursuant to this subchapter shall include, as an integral part of the application, certifications complying with N.J.A.C. 7:27-1.39.

(i) (No change.)

(j) An applicant for a preconstruction permit shall conduct an air quality impact analysis in accordance with (k) below if:

1.-2. (No change.)

(k) (No change.)

(l) (Reserved)

(m) An applicant for a preconstruction permit or a certificate shall list in the application all air contaminants which may be emitted from the source operation which meet the following conditions:

1. The source operation's potential to emit the air contaminant is equal to or higher than the applicable de minimis emission threshold set forth in Table C or Table D in Appendix I; or

2. The source operation may emit the given air contaminant in an amount which could reasonably be expected to be detectable by the sense of smell outside of the facility's property boundary.

[(n) If a source operation will not have the potential to emit any air contaminant in an amount such that it must be listed on the application pursuant to (m)1 or 2 above, the application shall state that no air contaminant will be emitted in a quantity greater than the applicable de minimis emission threshold set forth in Table C or Table D of Appendix 1, and there will be no air contaminant emitted in an amount which could reasonably be expected to be detectable by the sense of smell at the facility's property boundary.]

7:27-8.5 Public comment

(a) (No change.)

(b) The Department may seek comments from the public whenever it finds a significant degree of public interest in a preconstruction permit application or whenever the Department determines such comments might clarify one or more issues involved in the decision on the preconstruction permit application.

7:27-8.6 Denials

(a) The Department shall deny an application for a preconstruction permit or certificate, or a renewal thereof, if construction, alteration, or use of control apparatus or equipment pursuant to the application would result in:

1.-7. (No change.)

(b) The Department shall deny an application for a preconstruction permit unless the applicant shows, to the satisfaction of the Department, that the equipment incorporates advances in the art of air pollution control developed for the kind and amount of air contaminant emitted by the applicant's equipment.

(c) The Department may deny an application for a preconstruction permit or certificate if the applicant fails to provide all information requested by the Department within 30 days after the request, or within a longer response period if approved in writing by the Department.

(d) The Department may deny an application for a certificate, or a renewal thereof, if the applicant has failed to:

1. (No change.)

2. Reimburse the Department within 60 days of receipt of an invoice for any of the following charges incurred by the Department:

i. The charges billed by any telephone company for the maintenance of a dedicated telephone line required by the conditions of approval of a preconstruction permit or certificate for the electronic transmission of data; or

ii. The charges billed by any laboratory for performing the analysis of audit samples collected pursuant to testing or monitoring required by the conditions of approval of a preconstruction permit or certificate.

(e) The Department shall deny an application for a preconstruction permit for a paint spray operation, unless at a minimum the operation is served by particulate control apparatus.

7:27-8.7 Approvals

(a) No person may construct, install, or alter equipment or control apparatus for which a preconstruction permit is required pursuant to this subchapter other than as described and authorized in an approved preconstruction permit. Full responsibility for adequate design and construction shall be with the person to whom the Department has issued the preconstruction permit.

(b) No person may operate equipment or control apparatus for which a certificate is required pursuant to this subchapter other than as prescribed and authorized in an approved certificate. Full responsibility for use in accordance with the provisions of the certificate shall be with the person to whom the Department has issued the certificate.

(c) No air contaminant, or category of air contaminant where accepted by the Department, shall be emitted other than those approved in the preconstruction permit. Any information contained in an approved application and any condition of approval thereof are subject to enforcement. This includes the following application information, which shall constitute maximum allowable limits, unless the Department establishes other limits in the conditions of approval:

1.-3. (No change.)

(d) The Department may establish conditions of approval of any preconstruction permit or certificate application. In the event that a discrepancy exists between the information in an application for a preconstruction permit or certificate and the conditions of its approval, the conditions of approval shall prevail.

(e) The Department may withdraw its approval of a preconstruction permit if the person to whom the Department has issued the preconstruction permit:

1. Does not begin construction, installation, or alteration within one year from the date of approval of the preconstruction permit; or

2. (No change.)

(f) (No change.)

(g) Any person to whom the Department has issued a preconstruction permit or certificate shall comply with all terms and conditions of any order related to the preconstruction permit or certificate.

7:27-8.8 Conditions of approval

(a) Upon request of the Department, any person to whom the Department has issued a preconstruction permit or certificate shall submit to the Department information relevant to the operation of equipment and control apparatus including, but not limited to:

1. A diagram of the facility indicating the location of any equipment and control apparatus, its applicable preconstruction permit and certificate number, any stack designation assigned by the Department, and any stack designation assigned by the person;

2.-3. (No change.)

(b) The Department may include, as a condition of approval, the requirement that a person to whom the Department has issued a certificate provide verification that the equipment or control apparatus is being used in compliance with the provisions and conditions of its preconstruction permit and certificate. Such verification may include:

1. Periodic testing of any process materials or source emissions, or measurement of the ambient concentration of any air contaminant. The testing or measurement shall be conducted in accordance with a standard testing procedure acceptable to the Department or a source-specific testing protocol approved in advance by the Department if such a protocol is required in the conditions of approval of the preconstruction permit or certificate;

2.-3. (No change.)

4. Reporting to the Department such information as analysis and monitoring results, data derived from measurement of air contaminant emissions and operating parameters, and other information relevant to verifying that the operation of the equipment and control apparatus is in compliance with the provisions of the operating certificate and its conditions. Such information shall, pursuant to the conditions of the preconstruction permit or certificate, be reported periodically, in conformance with a schedule, or within a specified number of days of the occurrence of a violation or other event.

(c) (No change.)

(d) No person to whom the Department has issued a preconstruction permit or certificate shall carry out, or allow to be carried out, any alteration of equipment or control apparatus unless the altered equipment or control apparatus incorporates current advances in the art of air pollution control developed for the kind and amount of air contaminant emitted.

(e) If the conditions of a preconstruction permit or certificate require the Department to incur any of the following charges, the person to whom the Department has issued the preconstruction permit or certificate shall reimburse the Department for the full amount of these charges:

1. The charges billed by any telephone company for the maintenance of a dedicated telephone line required by the conditions of approval of a preconstruction permit or certificate for the electronic transmission of data; or

2. The charges billed by any laboratory for performing the analysis of audit samples collected pursuant to testing or monitoring required by the conditions of approval of a preconstruction permit or certificate.

(f) (No change.)

(g) Any person to whom the Department has issued a preconstruction permit or certificate, or a renewal thereof, shall, when requested by the Department, provide such testing facilities exclusive of instrumentation and sensing devices as may be necessary for the Department to determine the kind and amount of air contaminants emitted from the equipment or control apparatus. During testing by the Department, the equipment and control apparatus shall be operated under such conditions within their capacities as may be requested by the Department. The testing facilities may be either permanent or temporary, at the discretion of the person responsible for their provision, and shall conform to all applicable laws, regulations, and rules concerning safe construction and safe practice.

7:27-8.9 Reporting requirements

(a) Upon the request of the Department, any person holding a preconstruction permit or certificate shall submit to the Department any record relevant to any preconstruction permit or certificate. Such record shall be submitted to the Department within 30 days of the request by the Department or within a longer time period if approved in writing by the Department.

(b) Any person to whom the Department has issued a preconstruction permit or certificate shall submit any required report

in a format and on a schedule approved by the Department. Such report shall be transmitted on paper, on computer disk, or electronically, at the discretion of the Department.

(c) Any person submitting any report to the Department, including, but not limited to, a report submitted as *[notice of a seven-day-notice change]* ***an amendment*** of a preconstruction permit or certificate pursuant to N.J.A.C. 7:27-*[8.14 or 8.15]* ***8.3(c)*** shall include, as an integral part of the report, certifications complying with N.J.A.C. 7:27-1.39.

(d) (No change.)

(e) Any person to whom the Department has issued a preconstruction permit or certificate shall provide, in each *[notice]* ***report*** of *[a seven-day-notice change]* ***an amendment of permit and certificate information***, specification of the date and nature of each change that has occurred. The *[notice]* ***report*** shall be submitted on forms obtained from the Department. Changes to be reported to the Department as *[a seven-day-notice change]* ***an amendment*** of the preconstruction permit or certificate are specified in N.J.A.C. 7:27-*[8.15]* ***8.3(c)***.

7:27-8.10 Revocation

(a) The Department may revoke its approval of a certificate or a renewal thereof, if the person to whom the Department has issued the certificate:

1. (No change.)

2. Constructs or alters, or allows to be constructed or altered, equipment or control apparatus without applying for and obtaining from the Department approval of a preconstruction permit for such alteration of the equipment or control apparatus;

3. Fails to allow lawful entry by authorized representatives of the Department, pursuant N.J.A.C. 7:27-1.31;

4. Fails to inform the Department of a change in the preconstruction permit or certificate information, as required pursuant to N.J.A.C. 7:27-*[8.14 or 15]* ***8.3(c)*** and 8.9(e), as an *[administrative]* amendment of the preconstruction permit or certificate, *[or as a seven-day-notice change in accordance with the procedures set forth at N.J.A.C. 7:27-8.14 or 8.15, respectively]* ***within 120 days of the occurrence of the change***;

5.-6. (No change.)

7. Fails to reimburse the Department within 60 days of receipt of an invoice for any of the following charges incurred by the Department:

i. The charges billed by any telephone company for the maintenance of a dedicated telephone line required by the conditions of approval of a preconstruction permit or certificate for the electronic transmission of data; or

ii. The charges billed by any laboratory for performing the analysis of audit samples collected pursuant to monitoring any testing required by the conditions of approval of a preconstruction permit or certificate; or

8. (No change.)

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

7:27-8.11 Service fees

(a) Any person subject to the provisions of this subchapter shall submit with each application for a preconstruction permit, an operating certificate or a renewal thereof, or with a request for an *[administrative]* amendment, *[seven-day-notice change, alteration,]* environmental improvement pilot test, or a banking service, as an integral part thereof, a non-refundable base service fee in accordance with the Base Fee Schedule.

(b) Prior to taking final action on any application for a preconstruction permit, an operating certificate or a renewal thereof, or on any request for an *[administrative]* amendment, seven-day-notice change, alteration, environmental improvement pilot test or a banking service, the Department will invoice each applicant for any additional fees due to the Department, assessed in accordance with the Base Fee Schedule and the Supplementary Fee Schedule below. The applicant shall submit any fees so assessed to the Department within 60 days of receipt of the invoice.

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

(e) *[For equipment at a facility which is subject to N.J.A.C. 7:27-22, Operating Permits, the service fees set forth at the Base Fee Schedule, items 2 and 4, and the Supplementary Fee Schedule, item 7, shall not be required for the renewal of an operating certificate which expires after July 1, 1994, or for a periodic compliance inspection performed after July 1, 1994. All other fees shall be paid pursuant to this section.]* ***(Reserved)***

(f) A complete application fee for a preconstruction permit and certificate shall include both the preconstruction permit application fee set forth below at item 1 and the operating certificate fee set forth below at item 2.

A. BASE FEE SCHEDULE

Activity	Basis	Amount
1. Preconstruction Permit Application[1]		
a. Category I	Per Application	$100.00
b. Category II	Per First New or Altered Piece of Equipment or Control Apparatus Listed in N.J.A.C. 7:27-8.2(a) per Application, plus	500.00
	Per Each Additional New or Altered Piece of Equipment or Control Apparatus Listed in N.J.A.C. 7:27-8.2(a) in an Application, provided that identical equipment to be used in identical processes and using identical materials shall be treated as one piece of equipment for fee calculations	350.00
2. Certificate Application		
a. Category I	Per Operating Certificate	150.00
b. Category II	Per Operating Certificate	500.00
3. *[Administrative Amendment and Seven-Day-Notice Change]* ***Amendment***		
a. Change in business name, division name, plant name; mailing address or telephone number; company stack designation; plant contact, responsible official, authorized representative or agent	Per Preconstruction Permit	$ 0.00
b. Correction of a typographical error		$ 0.00
c. Transfer of Ownership or operating permit	Per Preconstruction Permit	$ 50.00
d. Any decrease in maximum allowable rate of production or hours of operation per time period	Per preconstruction permit *[or operating permit]*	$ 50.00
e. Any change listed in *[N.J.A.C. 7:27-8.15, (seven-day-notice changes)]* ***N.J.A.C. 7:27-8.3(c), 3, 4, 5 or 6***	Per change	$200.00
4.-5. (No change.)		
6. Application for environmental improvement pilot test	Per Application or Per extension	$250.00

[1]Should both Category I and Category II equipment and control apparatus be included in a single application, the new or altered Category I equipment and control apparatus will be subject to the Category I fee; and the new or altered Category II equipment and control apparatus will be subject to the Category II fee.

B. SUPPLEMENTARY FEE SCHEDULE

(No change.)

*[7:27-8.14 Administrative amendments

(a) A person holding a preconstruction permit or certificate shall keep the information in the preconstruction permit or certificate up to date. Such person shall report any change listed at (b) below to the Department as an administrative amendment.

(b) The following changes shall be reported to the Department as administrative amendments:

1. A change in company name or mailing address, division name; plant name or address, name or address of each owner's agent; name or telephone number of the on-site facility manager, any additional plant contact, or of any responsible official (as defined at N.J.A.C. 7:27-1.4);

2. A change in any company stack designation;

3. Correction of any typographical error, including a mistake in the spelling, punctuation, or formatting of text, but excluding a change to any word, term, number or usage which would allow an emission increase or would constitute a seven-day-notice change, or alteration;

4. A transfer of ownership or operational control of the facility;

5. A decrease, not required by an applicable requirement, in the maximum allowable rate of emission of any air contaminant or category of air contaminants, provided that the decrease does not entail either any physical change made to equipment or control apparatus or any operational change;

6. A decrease, not required by an applicable requirement, in maximum allowable hours of operation per time period; or

7. A decrease, not required by an applicable requirement, in maximum allowable rate of production, provided that the decrease does not entail either any physical change made to equipment or control apparatus or any operational change.

(c) An application for an administrative amendment shall be made on forms available from the Department at the address in N.J.A.C. 7:27-8.4(a).

(d) If a facility is not covered by an operating permit pursuant to N.J.A.C. 7:27-22, the permittee shall notify the Department of the administrative amendment any time up to 120 days after the change is made. If the facility is covered by an operating permit pursuant to N.J.A.C. 7:27-22, the permittee may make the change to the preconstruction permit or certificate upon the Department's receipt of an administratively complete application for the administrative amendment.

(e) Within 30 days of the Department's receipt of a notice of an administrative amendment, the Department shall:

1. Acknowledge the administrative amendment and amend the preconstruction permit or certificate; or

2. Notify the permittee that the change was not eligible for processing as an administrative amendment. In this event, a permittee shall be subject to penalties for noncompliance with the preconstruction permit or certificate during the time the change was in effect, pursuant to N.J.A.C. 7:27A.

7:27-8.15 Seven-day-notice changes

(a) A permittee may make may any of the changes at (c) below through the procedures for a seven-day-notice change set forth in this section. The Department shall attach the notice of the seven-day-notice change to the preconstruction permit. If the requirements of this section are met, a permittee may make a seven-day-notice change seven days after the Department's receipt of the notice of the change.

(b) Any other provision of this section notwithstanding, no change may be made pursuant to this section if the change would:

1. Require an increase in any emissions limit established in the operating permit, including any maximum allowable emissions rate or concentration or any emissions cap;

2. Include construction, installation, or alteration of equipment or control apparatus; or would include replacement of equipment or control apparatus, or of any substantial component thereof, except as provided in (c)2, 3 or 11 below;

3. Change a monitoring, recordkeeping, or reporting requirement set forth in the preconstruction permit or certificate, if the changed requirement would be inconsistent with, or less stringent than, the existing requirement; or

4. Be made at a facility subject to operating permit requirements pursuant to N.J.A.C. 7:27-22, and would constitute a significant modification pursuant to N.J.A.C. 7:27-22.24, or modification under any provision of Title I of the CAA.

(c) Except as prohibited at (b) above, any of the following changes may be made as a seven-day-notice change, pursuant to the procedures of this section:

1. A change in the contents of a storage tank, bin, silo or other storage container, for which a preconstruction permit and certificate are in effect, provided such change does not:

i. Involve the use or storage of any HAP; or

ii. Cause the storage tank to become, pursuant to N.J.A.C. 7:27-16.2(b), subject to any control requirement to which the storage tank was not previously subject;

2. Replacement of any equipment or control apparatus which is not a substantial component as defined at N.J.A.C. 7:27-8.1, provided that:

i. The replacement equipment or control apparatus operates on the same physical or chemical principle as that which is being replaced;

ii. The replacement equipment or control apparatus is equivalent to, or better than, for the purpose of air pollution control, that which is being replaced;

iii. A preconstruction permit or operating permit is in effect for the equipment or control apparatus; and

iv. The date of approval of the preconstruction permit authorizing the installation of the equipment or control apparatus being replaced is less than five years prior to the date of installation of the replacement equipment or control apparatus;

3. Replacement of any equipment or control apparatus which is a substantial component as defined at N.J.A.C. 7:27-8.1, provided that:

i. The replacement is authorized in the preconstruction permit or certificate;

ii. The replacement is made in accordance with a schedule included in the preconstruction permit or certificate or is identified in the permit or certificate as a spare component kept on site for replacement purposes; and

iii. The component being replaced was installed less than five years previous to the replacement;

4. Any of the following changes to a stack or chimney or the use thereof, provided that the change is in compliance with EPA stack height regulations promulgated at 40 CFR 51:

i. A change in the number of stacks or chimneys serving the equipment or control apparatus, provided that the change does not result in any discharge height lower than that of the tallest stack or chimney existing prior to the change;

ii. A decrease in the diameter of a stack or chimney, provided that the exhaust is vented upward;

iii. The replacement of an existing stack or chimney with a taller stack or chimney, provided that this results in an effective stack height which is no less than that existing before the change; or

iv. An increase in the exit temperature or volume of gas emitted from a stack or chimney;

5. Any reconfiguration to an alternate operating scenario, including to an alternate configuration or a change in the production process, not authorized in the preconstruction permit or certificate in effect, provided that the notice to the Department of the change contains the information required at N.J.A.C. 7:27-22.27 and that the alternate operating scenario conforms with the requirements of that section;

6. Addition, replacement, or removal of auxiliary devices or appurtenances serving equipment or control apparatus;

7. A change in the relative use, expressed in percent by weight, of any raw material in the operation of equipment or control apparatus or in the process, including the introduction of a raw material not authorized in the preconstruction permit or certificate permit in effect;

8. A decrease in the maximum allowable rate of emission of any air contaminant or category of air contaminant based on operational change, provided that the decrease does not entail any physical change made to equipment or control apparatus;

9. A modification of an authorization for intra-facility emissions trading included in a preconstruction permit, consistent with the intra-facility emissions trading provisions of N.J.A.C. 7:27-22.28;

10. A change in operation, as provided for by N.J.A.C. 7:27-22.28, which implements intra-facility emissions trading not expressly allowed by the preconstruction permit or certificate, provided that:

i. The intra-facility emissions trading is conducted pursuant to the following provisions of this chapter allowing such emissions trading:

(1) The mathematical combination provisions of N.J.A.C. 7:27-9.2(d);

(2) The emissions averaging provisions of proposed N.J.A.C. 7:27-19.6; or

(3) Any emissions averaging provisions of this chapter that expressly allow the averaging to be incorporated into a preconstruction permit or certificate pursuant to this section;

ii. The intra-facility emissions trading is approved through a preconstruction permit issued by the Department pursuant to N.J.A.C. 7:27-8.; and

iii. The permittee conforms with the intra-facility emissions trading provisions set forth at N.J.A.C. 7:27-22.28;

11. Alteration of equipment or control apparatus, or installation of new equipment or control apparatus, provided that;

i. The equipment or control apparatus are at a facility with an approved facility-wide permit, as defined at N.J.A.C. 7:27-8.1; and

ii. The alteration or installation meets the criteria for an exemption for facilities with a facility-wide permit set forth at N.J.A.C. 7:27-8.17; or

12. Relocation of a temporary facility to a site not specifically authorized in the preconstruction permit or operating certificate, unless:

i. Air quality simulation or risk assessment is required pursuant to N.J.A.C. 7:27-22.8(d); and

ii. The operating certificate specifies that an alteration is required for the relocation.

(d) A permittee shall, pursuant to (e) and (f) below, submit a timely and administratively complete notice for any change being made, pursuant to this section as a seven-day-notice change. No permittee may make a change at a facility pursuant to this section unless the written notice of the change is administratively complete and is received by the Department at least seven days before the change is made;

(e) To be deemed timely, a notice shall be submitted to the Department at least seven days prior to the change being made at the facility.

(f) To be deemed administratively complete, the notice shall include all information required by the form of notice obtained from the Department, which form shall require the following information:

1. A description of the planned change, and a statement of the reason the change is being made;

2. The date(s) or schedule for when the change will be made, or a description of the types of circumstances under which the change would be made;

3. The specific source operations that will be changed or will be affected by the change;

4. For each source operation given in (f)3 above, each air contaminant for which the quantity or rate of actual emissions would be

increased or decreased as a result of the change, and the quantity of that increase or decrease, including any new air contaminant which may be emitted as a result of the change;

5. Specification of any permit requirement or applicable requirement that will be:

i. Complied with through the change; or

ii. No longer applicable as a result of the change;

6. A statement affirming that the facility will comply with all preconstruction permits and certificates issued for the facility;

7. Certification of the notice of the change in accordance with N.J.A.C. 7:27-1.39; and

8. Any other information that is reasonably necessary to enable the Department to determine whether the notice satisfies the requirements of this section.

(g) For a facility with an approved facility-wide permit, making a change pursuant to (c)11 above, an administratively complete notice shall include, in addition to the information required at (f) above, a Pollution Prevention Plan Modification or Pollution Prevention Assessment pursuant to N.J.A.C. 7:1K-3 and 4.

(h) If the notice is not received by the Department at least seven days prior to the change, the permittee shall be liable for penalties for each day between the day the change was made, and the seventh day after the Department's receipt of the notice.

(i) Upon receipt of a notice of a seven-day-notice change, the Department will issue an acknowledgement of receipt of the notice, and file the notice as an attachment to the preconstruction permit or certificate. Such acknowledgement does not constitute approval by the Department of the change as a seven-day-notice change.

(j) If the Department subsequently determines that the change filed with a preconstruction permit or certificate pursuant to (i) above is not eligible for processing through seven-day-notice change procedures, the permittee shall be subject to penalties for noncompliance with the preconstruction permit or certificate, pursuant to N.J.A.C. 7:27A-3, for each day during which the change was in operation. The Department's failure to notify a permittee that a change is not eligible for processing as a seven-day-notice change shall not be a defense to liability for such penalties.

(k) The permittee shall attach a copy of each notice submitted pursuant to this section to the copy of the preconstruction permit or certificate the permittee maintains at the facility.

(l) A permittee may elect to make as an alteration, any change authorized to be made as a seven-day-notice change.

7:27-8.16 Alterations

(a) A permittee may make any change given at (b) below through the procedures for alterations set forth in this section.

(b) A change shall be made as an alteration pursuant to this section, if the change is:

1. A change in the location of the point of discharge of any air contaminant from equipment or control apparatus into the outdoor atmosphere, unless the change is authorized in the preconstruction permit or certificate in effect;

2. Replacement of equipment or control apparatus or of any substantial component thereof if:

i. The replacement equipment or control apparatus does not operate on the same physical or chemical principle as that which is being replaced;

ii. The replacement equipment or control apparatus is not equivalent to, or better than, for the purpose of air pollution control, that which is being replaced;

iii. The equipment or control apparatus is a substantial component, as defined at N.J.A.C. 7:27-8.1;

iv. No preconstruction permit or operating permit is in effect for the equipment or control apparatus; or

v. The date of approval of the preconstruction permit authorizing the installation of the equipment or control apparatus being replaced is more than five years prior to the date of installation of the replacement equipment or control apparatus;

3. The introduction of any new raw material to equipment or control apparatus for which no certificate or operating permit is in effect, including the change of contents of a storage tank for which no certificate is in effect;

4. Any of the following changes to equipment or control apparatus, or to the use thereof, if the change may increase the concentration or rate of any air contaminant emission:

i. Addition, replacement, or removal of auxiliary devices or appurtenances;

ii. Change in the relative use, expressed in percent by weight, of any raw material in the operation of equipment or control apparatus or in the process, including the introduction of a raw material not authorized in the preconstruction permit or certificate or operating permit in effect; or

iii. Change in the production process in which the equipment or control apparatus is used;

5. Increase in the concentration or rate of emission of any air contaminant above that authorized by the preconstruction permit or certificate, or operating permit, in effect, including an increase in any maximum allowable emissions rate or concentration or any emissions cap;

6. Emission of any air contaminant not authorized by the preconstruction permit or certificate in effect;

7. Any change to a stack or chimney or the use thereof, including any change to a stack dispersion parameter including, but not limited to, temperature, velocity, direction, or volumetric flow rate, if:

i. The change is not in compliance with EPA stack height regulations promulgated at 40 CFR 51; or

ii. The change may result in an increase in the ambient concentration of any air contaminant;

8. Any change in the concentration of any air contaminant in the influent to existing control apparatus above that authorized in the preconstruction permit or certificate, or operating permit, in effect;

9. Any increase in the total hours of operation per time period or the rate of production above that authorized in the preconstruction permit or certificate, or operating permit, in effect;

10. Any change to equipment or control apparatus, or to the use thereof, if the change will result in a contravention of any State or Federal ambient air quality standard, any provision of this chapter, or any condition or approval of any preconstruction permit or certificate in effect.

11. A change which causes the facility to be subject to, or which would constitute a modification pursuant to, any of the following:

i. Emission offset requirements pursuant to N.J.A.C. 7:27-18.2(a) and (b);

ii. NSPS regulations at 40 CFR 60;

iii. NESHAPS regulations at 40 CFR 63;

iv. PSD regulations at 40 CFR 52; or

v. Federal visibility regulations promulgated pursuant to 42 USC §7491 or 7492;

12. A change which relaxes any monitoring, recordkeeping or reporting required by the preconstruction permit or certificate;

13. A change which requires a case-by-case determination of an emission limitation or other standard contained in a State or Federal rule. This includes, for example, an application for a variance from a specific emission limit;

14. A relocation of a temporary facility to a site, other than is authorized in the preconstruction permit or certificate;

15. A change which establishes or changes a permit condition for which there is no corresponding underlying applicable requirement, and which the facility has assumed to avoid an applicable requirement to which the facility would otherwise be subject. Such conditions include:

i. A Federally enforceable emissions cap assumed to avoid classification as a major facility or to avoid becoming subject to:

(1) Emission offset requirements pursuant to N.J.A.C. 7:27-18.2;

(2) NSPS regulations at 40 CFR 60;

(3) NESHAPS regulations at 40 CFR 63;

(4) PSD regulations at 40 CFR 52; or

(5) Federal visibility regulations promulgated pursuant to 42 USC §7491 or 7492; or

ii. An alternative emissions limit for early reductions of HAPs approved pursuant to regulations promulgated under 42 U.S.C. §7412(i)(5); or

16. Any incorporation into the operating permit of a new alternative operating scenario or a new authorization for intra-facility emissions trading, not authorized by the existing preconstruction permit or certificate; or

17. Any change which is eligible to be processed as an administrative amendment or a seven-day-notice change pursuant to N.J.A.C. 7:27-8.14 or 8.15, respectively.

(c) No person may make any change which is an alteration pursuant to (b) above until the Department approves the application for an alteration.

(d) An application for an alteration shall be submitted to the Department on forms available from the Department at the address in N.J.A.C. 7:27-8.4(a). Those forms shall require the provision of all the information required for an initial application at N.J.A.C. 7:27-8.4, except that the form for an application for an alteration shall require only such information as is relevant to the proposed alteration.

(e) At a facility for which an operating permit is in effect pursuant to N.J.A.C. 7:27-22, an application for an alteration shall be submitted simultaneously with the application for a minor modification or significant modification for the proposed change, required pursuant to N.J.A.C. 7:27-22. The Department will initiate the review of both applications simultaneously. However, the application for a minor modification or significant modification shall not be deemed administratively complete until the Department approves the application for the preconstruction permit; and the time periods for Department action on an administratively complete application for a minor modification or significant modification, set forth at N.J.A.C. 7:27-22.23 and N.J.A.C. 7:27-22.24, respectively, shall not begin until the preconstruction permit is approved. If the Department denies the preconstruction permit, the minor modification or significant modification shall also be denied.

7:27-8.17 Exemption for facilities subject to the Pollution Prevention Act

(a) A person is not required to obtain a preconstruction permit or a certificate for an alteration of equipment or control apparatus, or installation of new equipment or control apparatus, if:

1. The production process using the equipment or control apparatus, is identified in and subject to an approved facility-wide permit issued under N.J.S.A. 13:1D-35 et seq.;

2. The alteration or installation is either:

i. Allowed under the facility-wide permit; or

ii. Documented in a modification to a Pollution Prevention Plan, which satisfies the requirements of N.J.A.C. 7:1K-3 and 4, or in a Pollution Prevention Assessment as defined in N.J.A.C. 7:1K-1.5; and

3. The alteration or installation does not cause any of the following:

i. An increase in the generation of nonproduct output per unit of production manufactured by the equipment or production process;

ii. An exceedance of the maximum allowable concentration or rate of emission of any air contaminant for the production process or the entire facility, whichever is more stringent;

iii. An exceedance of the maximum allowable concentration or effluent limitation of any discharge to waters of the State; or

iv. The addition of a new production process.

(b) Any person who is exempted pursuant to (a) above from obtaining a preconstruction permit or certificate shall:

1. Notify the Department of the alteration or installation pursuant to the procedures for a seven-day-notice change at N.J.A.C. 7:27-8.15; and

2. Submit to the Department, together with the notice given pursuant to (b)1 above, documentation of the alteration or installation in the Pollution Prevention Plan Modification or Pollution Prevention Assessment, required pursuant to (a)2ii above.]*

7:27-8.24 (Reserved)

7:27-8.25 (Reserved)

***7:27-8.27 Exemption for pollution prevention alterations at facilities subject to N.J.S.A. 13:1D-35 et seq.**

(a) A person is not required to obtain a permit or a certificate for an alteration of equipment or control apparatus, or installation of new equipment or control apparatus, if:

1. The production process using the equipment or control apparatus, is identified in and subject to an approved facility-wide permit issued under N.J.S.A. 13:1D-35 et seq.;

2. The alteration or installation is either:

i. Allowed under the facility-wide permit; or

ii. Documented in a modification to a Pollution Prevention Plan, which satisfies the requirements of N.J.A.C. 7:1K-3 and 4, or in a Pollution Prevention Assessment as defined in N.J.A.C. 7:1K-1.5; and

3. The alteration or installation does not cause any of the following:

i. An increase in the generation of nonproduct output per unit of production manufactured by the equipment of production process;

ii. An exceedance of the maximum allowable concentration or rate of emission of any air contaminant for the production process or the entire facility, whichever is more stringent;

iii. An exceedance of the maximum allowable concentration or effluent limitation of any discharge to waters of the State; or

iv. The addition of a new production process.

(b) Any person who is exempted pursuant to (a) above from obtaining a permit and certificate shall report the alteration or change and the Pollution Prevention Plan Modification or Pollution Prevention Assessment to the Department within 120 days after the occurrence of the alteration or change, as an amendment of the facility-wide permit pursuant to the procedures for amendment at N.J.A.C. 7:27-8.3(c).

(c) For equipment or control apparatus subject to (a) above, the facility wide permit shall constitute the operating certificate required by this chapter.*

APPENDIX I

TABLE A
HAZARDOUS AIR POLLUTANTS

[Chemical] **Air Contaminant***	CAS Number
Acrolein	107028
Acrylamide	79061
Asbestos	1332214
Beryllium compounds	—
1,3-Butadiene	106990
Cadmium compounds	—
Chlordane	57745
2-Chloroacetophenone	532274
1,2-Dibromo-3-cholorpropane	96128
Dichloroethyl ether (Bis(2-chloroethyl)ether)	111444
1,2-Dyphenylhydrazine	122667
Heptachlor	76448
Hexachlorobenzene	118741
Hexamethylene-1.6-diisocyanate	822060
Lead compounds	—
Lindane (all isomers)	58899
Mercury compounds	—
Nickel compounds	—
Polychlorinated biphenyls (Arochlors)	1336363
1,1,2,2,-Tetrachloroethane	79345
Toxaphene (chlorinated camphene)	8001352

TABLE B
HAZARDOUS AIR POLLUTANTS

[Chemical] *Air Contaminant*	CAS Number
Acrylic acid	79107
Acrylonitrile	107131
Benzene	71432
Benzyl chloride	100447
Carbon tetrachloride	56235
Chloroform	67663
1.4-Dioxane (1.4-Diethyleneoxide)	123911
Ethylene dibromide (Dibromoethane)	106934
Ethylene dichloride (1.2-Dichloroethane)	107062
Ethylene oxide	75218
Formaldehyde	50000
Hexachlorobutadiene	87683
Hexachlorocyclopentadiene	77474
Hexachloroethane	67721
Methylene diphenyl diisocyanate (MDI)	101688
Tetrachloroethylene (Perchloroethylene)	127184
1,1,2-Trichloroethane	79005
Trichloroethylene	79016
2,4,6-Trichlorophenol	88062
Vinyl bromide	593602
Vinyl chloride	75014
Vinylidene chloride (1,1-Dicholoroethylene)	75354

TABLE C
Thresholds for De Minimis Emissions
Of Hazardous Air Pollutants

CAS Number	Air Contaminant	Annual emissions pounds per year
____	Total dioxin and furans *(3)*	0.0001
92875	Benzidine	0.06
542881	Bis (chloromethyl) ether	0.06
62759	n-Nitrosodimethylamine	0.2
____	Hexavalent chromium compounds	0.4
302012	Hydrazine	0.8
____	Arsenic and arsenic compounds	1.0
79469	2-Nitropropane	1.0
____	Any Table A HAP (1)	2.0
____	Any Table B HAP (2)	20.0
____	Any other HAP	400.0

(1) This air contaminant category shall apply to any HAP listed in Table A at N.J.A.C. 7:27-8, Appendix I.

(2) This air contaminant category shall apply to any HAP listed in Table B at N.J.A.C. 7:27-8, Appendix I.

(3) As defined in EPA/625/3-87/012, Interim Procedures for Estimating Risks associated with exposures to mixtures of chlorinated-p-Dioxins and Dibenzofurans.

TABLE D
Thresholds for De Minimis Emissions
Of Other Air Contaminants

Air Contaminant	*[Annual]* *Hourly* emissions (pounds per hour)
VOC	0.05
TSP	0.05
PM-10	0.05
NOx	0.05
CO	0.05
SO2	0.05
Any other air contaminant (1)	0.05

(1) This air contaminant category shall apply to any other air contaminant that the facility has the potential to emit in a quantity greater than or equal to 100 tons per year.

7:27-18.1 Definitions

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

. . .

"Preconstruction permit" means a "Permit to Construct, Install, or Alter Control Apparatus or Equipment" issued by the Department pursuant to the Air Pollution Control Act of 1954, specifically N.J.S.A. 26:2C-9.2.

. . .

SUBCHAPTER 22. *[OPERATIVE]* *OPERATING* PERMITS

7:27-22.1 Definitions

Words and terms, when used in this subchapter, have the meanings given below unless defined at N.J.A.C. 7:27-1.4 or the context clearly indicates otherwise.

"Accountable" means, in respect to compliance with an emissions limit, verifiable through the keeping, maintenance, and accessibility of clear, appropriately comprehensive, and reliable records.

"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 by the Department.

"Administrative amendment" means the type of change made at a facility, and incorporated into an operating permit, through the procedures for administrative amendments at N.J.A.C. 7:27-22.20.

"Administratively complete application" means an application which includes sufficient information for the Department to commence review of the application. This information shall include all of the information required by this subchapter for the type of application being submitted, submitted on or with forms obtained from the Department and in accordance with the instructions accompanying the application forms. To be complete, an application shall include all preconstruction permits issued for the facility as of the date of the operating permit application. An application which is administratively complete may require supplementary information in order for the Department to take final action on the application.

"Affected state" means, in respect to an application for an operating permit, operating permit renewal, minor modification, or significant modification, any state in the United States that:

1. Is contiguous to New Jersey; or

2. Is located within 50 miles of the facility which is the subject of the application.

"Affected Title IV facility" means a facility that includes one or more "affected units," as that term is defined in the acid deposition control provisions ***(commonly known as "acid rain" provisions)*** of Title IV ***of*** the CAA, 42 U.S.C. §7651 et seq. This term has the same meaning as the term "affected source" as defined in 40 CFR 70.

"Affected Title IV unit" has the ***same*** meaning ***as the term "affected unit"*** *[given to it]* in the regulations promulgated by EPA under the acid deposition control program, set forth at Title IV of the CAA.

"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 simulation model" means a mathematical procedure, taking into account the dispersive capacity of the atmosphere and other relevant factors, to predict the concentration of an air contaminant in the ambient air.

"Allowance" means an authorization granted to an affected Title IV unit by the EPA under acid deposition control requirements at Title IV of the CAA. The authorization allows the unit to emit one ton of SO_2 during or after a specified calendar year.

["Alteration" has the meaning assigned to this term at N.J.A.C. 7:27-8.1.]

"Alternative operating scenario" means a plan for operating a facility or a portion thereof in a way, or according to a method, or using methods or processes, which are different from other methods or processes used at the facility, or portion thereof. ***An alternative operating scenario may be incorporated into a permit**

through issuance of an initial operating permit, minor modification, significant modification, or authorized through a seven-day-notice.*

"Applicable Federal requirement" means any of the following standards, provisions or requirements as they apply to any source operation in a facility which is subject to this subchapter. Applicable requirements include requirements that have been promulgated or approved by EPA through rulemaking but have future-effective compliance dates:

1. Any standard or other requirement provided for in New Jersey's approved SIP (or FIP, if applicable), including any approved revisions;

2. Any provision or condition of any preconstruction permit issued pursuant to N.J.A.C. 7:27-8, except for any prohibition of nuisance odors pursuant to N.J.A.C. 7:27-8.8(f);

3. Any NSPS or other standard or requirement under 42 U.S.C. §7411 including 42 U.S.C. §7411(d);

4. Any standard or other requirement concerning HAPs under 42 U.S.C. §7412, including any requirement concerning accident prevention under 42 U.S.C. §7412(r)(7);

5. Any standard or other requirement of the acid deposition control program under Title IV of the CAA or the regulations promulgated thereunder;

6. Any requirement established pursuant to the provisions for monitoring in Title V of the CAA at 42 U.S.C. §7661c(b) or pursuant to the monitoring requirements at 42 U.S.C. §7414(a)(3);

7. Any standard or other requirement governing solid waste incineration under 42 U.S.C. §7429;

8. Any standard or other requirement for consumer and commercial products under 42 U.S.C. §7511b(e);

9. Any standard or other requirement for marine tank vessels under 42 U.S.C. §7511b(f);

10. Any standard or other requirement of the program to prevent or control the emission of air contaminants from outer continental shelf sources under 42 U.S.C. §7627;

11. Any standard or other requirement of the regulations promulgated to protect stratospheric ozone under Title VI of the CAA, unless EPA has determined that such a requirement need not be contained in an operating permit;

12. Any of the following, but only as it would apply to temporary facilities permitted pursuant to ***the provisions for temporary facilities at*** 42 U.S.C. §7661c(e):

i. A NAAQS; or

ii. An increment under ***the PSD provisions at*** 42 U.S.C. §7473; or

iii. A visibility requirement under 42 U.S.C. §7491 or 7492.

"Applicable requirement" means any ***requirement which is an*** applicable State requirement or ***an*** applicable Federal requirement ***or both***.

"Applicable State requirement" means any provision, standard or requirement in any statute or rule, as it applies to a facility or source operation which is subject to this subchapter, except an applicable Federal requirement. This term includes requirements that have been promulgated by the Department and submitted to EPA as SIP revisions but have not yet been approved by EPA.

"Applicable VOC" means any VOC which has a vapor pressure or sum of partial pressures of organic substances of 0.02 pounds per square inch (1.0 millimeters of mercury) absolute or greater at standard conditions.

"Application shield" means the protection from enforcement action set forth at N.J.A.C. 7:27-*[22.6]* ***22.7***.

"Area source" *[means, in respect to GACT standards, any stationary source of hazardous air pollutant that is not a major HAP facility.]* ***(Reserved)***

"Attainment area" means any area of the State which is not a nonattainment area.

"BACT" or "best achievable control technology" has the meaning set forth for this term in the PSD regulations at 40 CFR 52.***2.1***.

"CFR" means the United States Code of Federal Regulations.

"Carbon monoxide" or "CO" means a gas having a molecular composition of one carbon atom and one oxygen atom.

"Chemical Abstract Service number" or "CAS number" means a number assigned to a chemical by the American Chemical Society's Chemical Abstract Service Registry.

"Class I substance" means an air contaminant that is listed in 42 U.S.C. §7671a(a), or promulgated by EPA in a Federal rule, as a substance that has been found to cause or contribute significantly to harmful effects on the stratospheric ozone layer.

"Class II substance" means an air contaminant that is listed in 42 U.S.C. §7671a(b), or promulgated by EPA in a Federal rule, as a substance that is known or may reasonably be anticipated to cause or contribute to harmful effects on the stratospheric ozone layer.

"Clean Air Act" or "CAA" means the Federal Clean Air Act, 42 U.S.C. §7401 et seq., and subsequent amendments thereto.

"Commercial fuel" means solid, liquid, or gaseous fuel normally produced or manufactured, and sold for the purpose of creating useful heat.

"Compliance plan" means a plan meeting the requirements of N.J.A.C. 7:27-22.9, which is developed and submitted as part of an application for an operating permit, renewal, or significant modification.

"Compliance schedule" means the portion of a compliance plan which fulfills the requirements of N.J.A.C. 7:27-22.8(c)7ii.

"Construction of a major HAP facility" means, when used at N.J.A.C. 7:27-22.26, the fabrication (on site), erection, or installation of a new major HAP facility, or the fabrication (on site), erection, or installation of a new source operation at an existing facility if the new construction in and of itself constitutes a major HAP facility.

"Consumer Price Index" or "CPI" means, for any calendar year, the annual average Consumer Price Index for all-urban consumers published by the United States Department of Labor.

"Continuous data recorder" means a mechanism which continuously records the information gathered by a CEM, CPM, COM, or other continuous measurement device.

"Continuous emissions monitor" or "CEM" means a device which continuously measures the emissions from one or more source operations.

"Continuous monitoring system" or "CMS" means a system designed to continuously measure various parameters at a facility which may affect or relate to a facility's emissions. Components of a CMS include, but are not limited to, any continuous emissions monitor (CEM), continuous opacity monitor (COM), continuous process monitor (CPM), or any other constantly operating measuring device and recording device approved by the Department to perform one or more of the functions of a CMS. Ambient monitors, which measure the impact or concentration of air contaminants emitted by the source operation or facility in nearby areas, are not considered part of a facility's CMS.

"Continuous opacity monitor" or "COM" means a device which continuously measures opacity of flue gases *[on a continuing basis]*.

"Continuous process monitor" or "CPM" means an instrument or system which continuously measures an operational parameter at a facility, such as temperature or air flow rate.

"Control apparatus" means any device which prevents or controls the emission of any air contaminant directly or indirectly into the outdoor atmosphere.

"Co-product" means one or more incidental results of a production process that is not a primary product of the production process and that is sold in trade in the channels of commerce to the general public in the same form as it is produced, for any purpose except the purpose of energy recovery. A co-product is not considered nonproduct output. Increases in quantities of co-products do not count towards use reduction or nonproduct output reduction goals. This term shall have the same meaning as defined for the term "co-product" at N.J.A.C. 7:1K-1.5; if there is any conflict between the definition at N.J.A.C. 7:1K-1.5 and this one, the definition at N.J.A.C. 7:1K-5 shall control.

"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 at N.J.A.C. 7:27-13.

"De minimis ***emission threshold***" means, in respect to the emission of air contaminants, the quantity of any air contaminant

which does not exceed the applicable de minimis emissions level set forth in Table *[A]* **C** or Table *[B]* **D** at N.J.A.C. 7:27-*[22.6]* **8, Appendix I**.

"Designated Title IV representative" means a responsible *[official authorized, through the submission to the Department of a certificate of designation, to represent the owner or operator of an affected Title IV unit for purposes of acid deposition control program operating permit requirements, in matters pertaining to the holding, transfer, or disposition of allowances allocated to the affected Title IV unit, and the submission of operating permit applications and compliance with operating permits, and compliance plans for the affected Title IV unit.]* ***natural person authorized by the owners and operators of an affected Title IV facility and of all affected units at the Title IV facility, as evidenced by a certificate of representation submitted to EPA in accordance with Subpart B of 40 CFR Part 72, and to the Department, to represent and legally bind each owner and operator, as a matter of federal law, in all matters pertaining to the Federal Acid Rain Program. Whenever the term "responsible official" is used in this subchapter with regard to any matter under the federal Acid Rain Program, it shall be deemed to refer to the "designated Title IV representative."***

...

"Development" means investigations in a laboratory or pilot plant directed toward the structuring or establishment of methods of manufacture or of specific designs of salable substances, devices or procedures, based upon previously discovered facts, scientific principles or substances. Development shall not include production for sale of established products through established processes; nor shall it include production in plant, works or semi-works equipment for distribution through marketing-testing channels.

"DOT" means the New Jersey Department of Transportation.

"Draft operating permit" means the version of an operating permit which is developed by the Department pursuant to after the Department's receipt of an administratively complete application, and released for public comment and an opportunity for a public hearing pursuant to N.J.A.C. 7:27-22.11. After receiving and considering the comments on the draft operating permit, the Department will develop a proposed operating permit for submittal to EPA for approval prior to issuing a final operating permit.

"Emergency" means any situation arising from sudden and reasonably unforeseeable events beyond the control of a facility, such as an act of God, which requires immediate corrective action to restore normal operation, and which causes the facility, due to unavoidable increases in emissions attributable to the emergency to exceed a technology-based emission limitation set forth in its operating permit. This term shall not include noncompliance caused by improperly designed equipment, lack of preventive maintenance, careless or improper operation, or operator error.

"Emissions" means *[any release of]* any air contaminant ***or category of air contaminants discharged*** directly or indirectly into the atmosphere.

"Emissions cap" means an emissions limit, or limits, established in a permit for a group of source operations, which establishes the maximum quantity of emissions which may be released, in the aggregate, from a specified group of source operations.

"Enforceable" means, in respect to an emissions limit, based on sufficient statutory and regulatory authority to be recognized in a court of law.

"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.

"Exempt activity" means any activity which is identified as an exempt activity pursuant to the requirements for application contents at N.J.A.C. 7:27-22.5.

"Existing facility" means a facility which is in operation as of the applicable date of the provision for which this term is being used.

"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, which are under common control of the same person or persons.

"Facility-wide permit" means a single permit issued by the Department to the owner or operator of a priority industrial facility incorporating the permits, certificates, registrations, or any other relevant Department approvals previously issued to the owner or operator of the priority industrial facility pursuant to the Solid Waste Management Act, N.J.S.A. 13:1E-1 et seq., the Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq., the Air Pollution Control Act, N.J.S.A. 26:2C-1 et seq., and the appropriate provisions of the Pollution Prevention Plan prepared by the owner or operator of the priority industrial facility pursuant to N.J.S.A. 13:1D-41 and 42. This term shall have the same meaning as defined for the term "facility-wide permit" at N.J.A.C. 7:1K-1.5; if there is any conflict between the definition at N.J.A.C. 7:1K-1.5 and this one, the definition at N.J.A.C. 7:1K-1.5 shall control.

"Federally enforceable" means any limitation or condition on operation, production, or emissions that can be enforced by EPA. These limitations and conditions that can be enforced by EPA include, but are not limited to, those established pursuant to:

1. Any standard of performance for new stationary sources (NSPS) promulgated at 40 CFR 60***, or promulgated under 42 U.S.C. 7411***;

2. Any national emission standard for hazardous air pollutants (NESHAP) promulgated at 40 CFR 61***, 40 CFR 63, or promulgated under 42 U.S.C. 7412***;

3. Any *[provision of an applicable SIP]* ***standard or other requirement provided for in a SIP that has been approved by EPA, or promulgated through rulemaking by EPA***;

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

5. Any permit or order issued pursuant to requirements established under the Air Pollution Control Act, N.J.S.A. 26:2C-1 et seq., or this chapter, except to the extent that the permit or order prohibits certain odors pursuant to N.J.A.C. 7:27-8.8(f) or N.J.A.C. 7:27-5.

"Federal Implementation Plan (FIP)" means a plan, or portion thereof, promulgated by EPA pursuant to the CAA to address or otherwise correct all or a portion of an inadequacy in a SIP.

"Final operating permit" means the version of an operating permit issued by the Department after completion of the procedures required by this subchapter for a draft operating permit and a proposed operating permit.

"Fugitive emissions" means any air contaminant emissions released directly or indirectly into the outdoor atmosphere which can not reasonably pass through a stack or chimney.

"GACT standard" or "Generally Available Control Technology standard" means a National Emission Standard for a Hazardous Air Pollutant (NESHAP) establishing an emission limitation for a specific category or subcategory of area sources that emit hazardous air pollutants (HAPs), which NESHAP has been promulgated by EPA pursuant to 42 U.S.C. §7412.

"General operating permit" means a standardized operating permit, which may be used to provide authorization to operate numerous similar source operations, groups of source operations, or facilities, each of which meets the applicability criteria set forth in the general operating permit, and is issued pursuant to the procedures in N.J.A.C. 7:27-22.24.

"Hazardous air pollutant" or "HAP" means an air contaminant listed by EPA as a HAP, pursuant to 42 U.S.C. §7412(b). That list is incorporated by reference herein, together with all amendments and supplements. A copy of the list is available from the Department at the address set forth at N.J.A.C. 7:27-22.3(t).

"Initial operating permit" means the first operating permit issued pursuant to this subchapter which applies to a particular facility, or a portion thereof.

"Insignificant source operation" means a source operation which is included in the list of insignificant source operations set forth in

the application contents requirements at N.J.A.C. 7:27-*[22.56]* ***22.6(e)***.

"Install" means to carry out final setup activities necessary to provide the equipment or control apparatus with the capacity for use or service. This term includes, but is not limited to, the connection of the equipment and control apparatus, associated utilities, piping, ductwork and conveyor systems. This term does not include the term "construct," as defined at N.J.A.C. 7:27-8.1, nor the reconfiguration of equipment and control apparatus to an alternate configuration specified in the permit application and approved by the Department.

"Intermediate product" means one or more desired results of a production process that is made into a product in a subsequent production process at the same industrial facility, without the need for pollution treatment prior to its being made into a product. An intermediate product is not considered nonproduct output. Increases in quantities of intermediate products do not count towards use reduction or nonproduct output reduction goals. This term shall have the same meaning as defined for the term "intermediate product" at N.J.A.C. 7:1K-1.5; if there is any conflict between the definition at N.J.A.C. 7:1K-1.5 and this one, the definition at N.J.A.C. 7:1K-1.5 shall control.

"Intra-facility emissions trading" means the averaging of emissions of a given air contaminant from two or more source operations within a facility, such that their total emissions collectively are less than a federally enforceable emissions cap.

"Lowest achievable emission rate" or "LAER" has the meaning assigned to this term at N.J.A.C. 7:27-18.1.

"Lead" or "Pb" means elemental lead or any compound containing lead measured as elemental lead.

"MACT standard" or "Maximum Achievable Control Technology standard" means a National Emission Standard for a Hazardous Air Pollutant (NESHAP) establishing an emission limitation for a specific category or subcategory of *[major]* facilities which emit one or more hazardous air pollutants (HAPs), which NESHAP is:

1. Promulgated by EPA pursuant to 42 U.S.C. §7412; or

2. Determined by the Department on a case-by-case basis pursuant to 42 U.S.C. §7412(g) or (j).

"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 dioxides	100 tons per year
Oxides of nitrogen	25 tons per year
VOC	25 tons per year
Lead	10 tons per year
Any HAP	10 tons per year
All HAPs, collectively	25 tons per year
Any other air contaminants	100 tons per year

Major facilities are subject to this subchapter pursuant to N.J.A.C. 7:27-22.2.

"Major Hazardous Air Pollutant (HAP) facility" means a major facility, or part thereof, which emits or has the potential to emit:

1. Ten tons or more per year of any HAP; *[or]*

2. Twenty five tons or more per year of any HAPs, collectively***; or***

3. Such lesser quantity, or different criterion, as the EPA may establish by rule*.

"Manufacturing process" means any action, operation, or treatment embracing chemical, industrial, manufacturing, or processing factors, methods or forms including, but not limited to, furnaces, kettles, ovens, converters, cupolas, kilns, crucibles, stills, dryers, roasters, crushers, grinders, mixers, reactors, regenerators, separators, filters, reboilers, columns, classifiers, screens, quenchers, cookers, digesters, towers, washers, scrubbers, mills, condensers, and absorbers.

"Maximum allowable emissions" means, for the purpose of this subchapter, the maximum amount of an air contaminant allowed to be emitted, as specified in the final operating permit issued by the Department.

"Minor modification" means a change made at a permitted facility in accordance with N.J.A.C. 7:27-23.

"Modification of a major HAP facility" *[means, when used at N.J.A.C. 7:27-22.26, any physical change in, or change in the method of operation of, a major HAP facility, which:

1. Increases the facility's actual emissions of any HAP by more than an amount established by EPA as de minimis for that HAP at 40 CFR 63; or

2. Results in the emission of any HAP not previously emitted, in more than the amount established by EPA as de minimis for that HAP at 40 CFR 63.]* ***(Reserved)***

"Monitoring" means to evaluate a facility's processes, operations, emissions or other aspects over a period of time. Monitoring can be accomplished using CEMs, COMs, CMS, CPMs, or other measurement or evaluation mechanisms.

"National ambient air quality standard" or "NAAQS" means an ambient air quality standard promulgated at 40 CFR 50.

"NESHAP" means a National Emission Standard for a Hazardous Air Pollutant as promulgated under 40 CFR 63.

"New Jersey ambient air quality standard" or "NJAAQS" means an ambient air quality standard promulgated at N.J.A.C. 7:27-13.

"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 a NAAQS or NJAAQS; 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.

"Nonproduct output" or "NPO" means all hazardous substances or hazardous wastes that are generated prior to storage, out-of-process recycling, treatment, control or disposal, and that are not intended for use as a product. Nonproduct output includes fugitive releases. This term shall have the same meaning as defined for the term "nonproduct output" at N.J.A.C. 7:1K-1.5; if there is any conflict between the definition at N.J.A.C. 7:1K-1.5 and this one, the definition at N.J.A.C. 7:1K-1.5 shall control.

"NSPS" means a Standard of Performance for New Stationary Sources as promulgated under 40 CFR 60, commonly referred to as New Source Performance Standards.

"Operating certificate" ***or "certificate"*** means a "Certificate to Operate Control Apparatus or Equipment" issued by the Department pursuant to N.J.S.A. 26:2C-1 et seq., and in particular N.J.S.A. 26:2C-9.2, and implementing rules at N.J.A.C. 7:27-8. An operating certificate is generally issued for new or altered equipment at non major facilities for which operating permits are not required and for new or altered equipment at major facilities which are not yet required to have a final operating permit.

"Operating permit" means a permit issued by the Department pursuant to this subchapter to authorize the use of one or more source operations from which air contaminants may be emitted. This term includes a general operating permit which is applicable facility wide, but does not include a general operating permit which applies only to a part of a facility (unless the general operating permit is itself incorporated into a facility wide operating permit). This term also includes an operating permit issued for a temporary facility; for a facility, or part thereof, subject to a MACT or GACT standard pursuant to N.J.A.C. 7:27-22.26; or for a component of a facility pursuant to N.J.A.C. 7:27-22.5(i).

"Order" means any and all orders issued by the Department including, but not limited to, administrative orders and administrative consent orders.

"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.

"Permittee" means, for the purpose of this subchapter, any person to whom the Department has issued an operating permit.

"Person" means any individual or entity and shall include, without limitation, corporations, companies, associations, societies, firms, partnerships and joint stock companies, and shall also include, without limitation, all political subdivisions of any State, and any agencies or instrumentalities thereof.

"Phase I" means a time period designated pursuant to the Title IV acid deposition control program as commencing *[November]* ***January*** 1, 1995, and ending December 31, 1999.

"Phase II" means a time period designated pursuant to the Title IV acid deposition control program as commencing January 1, 2000, and continuing indefinitely.

"PM-10" means a class of air contaminants which includes all particulate matter having an aerodynamic diameter less than or equal to 10 micrometers.

"Pollution Prevention Assessment" means an assessment of potential pollution prevention opportunities for the use, generation and release of non-hazardous substances, prepared by an owner or operator of a priority industrial facility that is covered by an effective facility-wide permit issued by the Department, containing the same elements as those required for hazardous substances by N.J.A.C. 7:1K-4.3 and 4.5. This term shall have the same meaning as defined for the term "Pollution Prevention Assessment at N.J.A.C. 7:1K-1.5; if there is any conflict between the definition at N.J.A.C. 7:1K-1.5 and this one, the definition at N.J.A.C. 7:1K-1.5 shall control.

"Pollution Prevention Plan" means a plan required to be prepared by an industrial facility pursuant to N.J.S.A. 13:1D-41 and 42, N.J.A.C. 7:1K-3 and N.J.A.C. 7:1K-4. This term shall have the same meaning as defined for the term "Pollution Prevention Plan" at N.J.A.C. 7:1K-1.5.

"Potential to emit" means the maximum aggregate capacity of a source operation or of a facility to emit an air contaminant under its physical and operational design. Any physical or operational limitation on the capacity of a source operation or a facility to emit an air contaminant, including control apparatus, and restrictions on hours of operation or on the type or amount of material combusted, stored or processed, shall be treated as part of its design, if the limitation is Federally enforceable. Fugitive emissions shall be included in the determination of potential to emit. However, the determination shall not include any banked emission reductions that are held by the owner or operator.

"Preconstruction permit" means a "Permit to Construct, Install, or Alter Control Apparatus or Equipment" issued by the Department pursuant to N.J.S.A. 26:2C-1 et seq., in particular N.J.S.A. 26:2C-9.2, and implementing rules at N.J.A.C. 7:27-8.

"Prevention of significant deterioration" or "PSD" *[or "prevention of significant deterioration"]* means the permitting process, set forth at 40 CFR 52***.21***, which applies to new or modified major emitting facilities located in attainment areas. The EPA has delegated the administration of the PSD program in New Jersey to the Department.

"Product" means one or more desired results of a production process that is used as a commodity in trade in the channels of commerce by the general public in the same form as it is produced. Products include intermediate products transferred to a separate industrial facility owned or operated by the same owner or operator. This term shall have the same meaning as defined for the term "product" at N.J.A.C. 7:1K-1.5; if there is any conflict between the definition at N.J.A.C. 7:1K-1.5 and this one, the definition at N.J.A.C. 7:1K-1.5 shall control.

"Production process" means a process, line, method, activity or technique, or a series or combination of processes, lines, method or techniques, used to produce a product or reach a planned result. This term shall have the same meaning as defined for the term "production process" at N.J.A.C. 7:1K-1.5.

"Proposed operating permit" means the version of an operating permit which is developed by the Department pursuant to N.J.A.C. 7:27-22.12, after receipt and consideration of public comments on the draft operating permit. The Department forwards the proposed operating permit to EPA for review, pursuant to the procedures at N.J.A.C. 7:27-22.12 prior to the issuance by the Department of the final operating permit.

"Quantifiable" means measurable with an acceptable degree of accuracy and reliability.

"Rate of production" means the quantity per unit of time of any process intermediate, product, by-product, or waste generated through the use of any equipment, source operation, or a process.

"Reconstruction of a major HAP facility" means, when used at N.J.A.C. 7:27-22.26, the replacement of components at a facility to such an extent that the fixed capital cost of the new components exceeds 50 percent of the fixed capital cost that would be required to replace the facility at which the components are being replaced.

"Renewal" means the procedure set forth at N.J.A.C. 7:27-22.30 by which an applicant may seek reissuance of an operating permit prior to its expiration date.

"Replace" means, in respect to equipment or control apparatus, to remove equipment or control apparatus and place or install a different piece of equipment or control apparatus at the same location and at the same point in the manufacturing process, provided that the newly placed equipment or control apparatus serves the same function, in the same manner.

"Replicable procedure" means a procedure, including any sampling, source emissions testing, or other monitoring procedure, which gives the same result when administered on a different occasion or by a different person.

"Responsible official" has the meaning defined for this term at N.J.A.C. 7:27-1.4.

"Research" means investigations directed toward the discovery of facts, scientific principles, reactions, or substances.

"Risk assessment" means a procedure for characterizing the probability that potential exposure to air contaminants will result in adverse effects on human health, or welfare or the environment.

"Seven-day-notice change" means, for the purpose of this subchapter, a change made at a facility covered by an operating permit in accordance with N.J.A.C. 7:27-22.22.

"Shutdown" means to discontinue use of a process, piece of equipment, control apparatus, or a source operation.

"SIC code" means the Standard Industrial Classification code, assigned by the United States Office of Management and Budget, which classifies establishments according to the type of economic activity in which they are engaged. An SIC manual is available from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161.

"Significant modification" means a change made at a facility covered by an operating permit and incorporated into the operating permit in accordance with N.J.A.C. 7:27-22.24.

"Significant source operation" means any source operation which is not an exempt activity or an insignificant source operation.

"Source emission testing" means the testing of a discharge of any air contaminant from a source operation through any stack or chimney.

"Source operation" means any process, or any identifiable part thereof, that emits or can reasonably be anticipated to emit any air contaminant either directly or indirectly into the outdoor atmosphere. A source operation may include one or more pieces of equipment or control apparatus. This term includes the term "emissions unit" as defined at 40 CFR 70.2.

"Stack or chimney" means a flue, conduit or opening designed, constructed or used for emitting any air contaminant into the outdoor atmosphere.

"State Implementation Plan (SIP)" means a plan, or portion thereof, prepared by a State and approved by the EPA pursuant to 42 U.S.C. §7410, which includes enforceable emission limitations or other control measures, means or techniques, and provides for implementation, maintenance, and enforcement of one or more NAAQS.

"Substantial component" means, in respect to replacement, any equipment or control apparatus, or any component of equipment or control apparatus, if:

1. The total fixed capital cost exceeds:

i. For Category I sources, $20,000 as calculated in 1989 dollars; or

ii. For Category II sources, 50 percent of the total fixed capital cost of replacement or $20,000 as calculated 1989 dollars, whichever is greater; ***or***

2. The equipment or control apparatus, or the component, is designated in the conditions of approval of the ***operating permit or preconstruction*** permit in effect as a substantial component; *[or]*

[3. The component is a burner having a rated heat input of 10 million BTU per hour or greater.]

"Sulfur dioxide" or "SO_2" means a gas that has a molecular composition of one sulfur atom and two oxygen atoms.

"Temporary facility" means a facility which, by design, is intended to be operated at more than one location and which is relocated more than once in five years.

"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.

"TXS" means a substance regulated by N.J.A.C. 7:27-17.

"U.S.C." means the United States Code.

"Use" means, in respect to equipment, control apparatus, or a source operation, to engage in any form or manner of operation of equipment, control apparatus or the source operation subsequent to its installation. This term includes any trial operation.

"Volatile organic compound" or "VOC" means any compound of carbon (other than carbon monoxide, carbon dioxide, carbonic acid, metallic carbonates, metallic carbides and ammonium carbonate) which participates in atmospheric photochemical reactions. For the purpose of determining compliance with emissions limits or content standards, VOC shall be measured by test methods which have been approved in writing by the Department. This term does not include the compounds which EPA has excluded from its definition of VOC in the list set forth at 40 CFR 51.100(s)(1), which is incorporated by reference herein, together with all amendments and supplements. The list at 40 CFR 51.100(s)(1) currently *[includes]* ***excludes*** the compounds and the classes of perfluorocarbons set forth below ***from the definition of VOC***:

Compounds:
methane
ethane
methylene chloride (dichloromethane)
1,1,1-trichloroethane (methyl chloroform)
trichlorofluoromethane (CFC-11)
dichlorodifluoromethane (CFC-12)
trifluoromethane (FC-23)
1,1,1-trichloro-2,2,2-trifluoroethane (CFC-113)
1,2-dichloro-1,1,2,2-tetrafluoroethane (CFC-114)
chloropentafluoroethane (CFC-115)
chlorodifluoromethane (CFC-22)
2,2-dichloro-1,1,1-trifluoroethane (HCFC-123)
2-chloro-1,1,1,2-tetrafluoroethane (HCFC-124)
pentafluoroethane (HFC-125)
1,1,2,2-tetrafluoroethane (HFC-134)
1,1,1,2-tetrafluoroethane (HFC-134a)
1,1-dichloro-1-fluoroethane (HCFC-141b)
1-chloro-1,1-difluoroethane (HCFC-142b)
1,1,1-trifluoroethane (HFC-143a)
1,1-difluoroethane (HFC-152a)
Classes of perfluorocarbons:
Cyclic, branched, or linear, completely fluorinated alkanes
Cyclic, branched, or linear, completely fluorinated ethers with no unsaturations
Cyclic, branched, or linear, completely fluorinated tertiary amines with no unsaturations
Sulfur containing perfluorocarbons with no unsaturations and with sulfur bonds only to carbon and fluorine

If there is any conflict between the list set forth at 40 CFR 51.100(s)(i) and the list set forth above, the list at 40 CFR 51.100(s)(l) shall control.

7:27-22.2 *[Availability]* ***Applicability***

(a) This subchapter applies to any facility which is one of the following:

1. A facility which emits or has the potential to emit (any determination of a facility's potential to emit shall include fugitive emissions***, as defined at N.J.A.C. 7:27-22.1***), in the aggregate, any air contaminant in an amount which equals or exceeds the following applicability levels:

i. Twenty-five tons per year of VOC or NO_x;

ii. Ten tons per year of lead;

*[ii.]***iii.*** Ten tons per year of any HAP;

*[iii.]***iv.*** Twenty-five tons per year of any combination of HAPs;

*[iv.]***v.*** Such lesser quantity of any HAP as the EPA may establish by rule, pursuant to 42 U.S.C. §7412(a)(1), as a major HAP facility; or

*[v.]***vi.*** One hundred tons per year of any other air contaminant;

[2. A facility subject to any standard or requirement for HAPs under 42 U.S.C. §7412, including any NESHAP; this does not include any facility for which 42 U.S.C. §7412(r), which pertains to prevention of accidental releases of HAPs, is the only applicable requirement;]

*[3.]***2.*** An affected Title IV facility***, as defined at N.J.A.C. 7:27-22.1***;

*[4.]***3.*** A facility with any source operation in a ***source*** category designated by EPA***. EPA is authorized to designate source categories as subject to operating permit requirements*** pursuant to 40 CFR 70.3***(a)(5)*** *[as requiring an operating permit]*;

*[5.]***4.*** A facility with a solid waste incineration unit which combusts municipal waste and which has a combustion capacity greater than 250 tons of municipal waste per day; or

*[6.]***5.*** A facility for which an owner or operator elects to obtain an operating permit pursuant to *[(d)]* ***(e)*** below.

(b) A non-major facility not included in (a) above shall become subject to this subchapter if EPA completes rulemaking requiring an operating permit for that category of non-major facilities pursuant to 40 CFR 70.3(b)1 or 2.

*[(b)]***(c)*** Notwithstanding (a) above, a facility is not subject to this subchapter if the only applicable requirement which applies to the facility is:

1. A requirement pursuant to 40 CFR 60, Subpart AAA, Standards of Performance for New Residential Wood Heaters; *[or]*

2. A requirement pursuant to 40 CFR 61, Subpart M—National Emission Standard for HAPs for Asbestos, Section 61.145, Standard for Demolition and Renovation***; or***

3. A regulation or requirement under 42 U.S.C. 7412(r), Prevention of Accidental Releases*.

*[(c)]***(d)*** For the purposes of determining applicability pursuant to (a) above, an owner or operator may elect to treat any part(s) of a facility, which part(s) is used solely for research and development operations, as a separate facility ***in cases where the research and development facility has a two-digit SIC code which differs from the rest of the facility, and is not a support facility***. If any research and development operations of a facility are treated separately for the purposes of (a) above, The emissions or the potential to emit of those operations may be considered separately from the emissions or potential to emit of the remainder of the facility. *[However, research and development operations may not be treated separately for the purposes of any modeling or risk assessment required pursuant to N.J.A.C. 7:27-22.8.]*

*[(d)]***(e)*** If a facility is not subject to this subchapter, but has equipment or control apparatus subject to the operating certificate requirements at N.J.A.C. 7:27-8, the owner or operator may voluntarily elect to obtain an operating permit for the facility in lieu of obtaining operating certificate(s) for the equipment or control apparatus.

7:27-22.3 General provisions

(a) The owner or operator of a facility subject to this subchapter shall obtain and maintain an operating permit for the facility pursuant to this subchapter.

(b) The owner or operator of a facility subject to this subchapter shall ensure that no person shall use or operate any *[equipment, control apparatus, or]* source operation at the facility without a valid operating permit for the facility, which covers the source operation.

(c) The owner or operator of a facility subject to this subchapter shall ensure that no air contaminant is emitted from any source operation, group of source operations, or any other portion of the facility at a rate***, calculated as the potential to emit,*** that exceeds the applicable de minimis emission level set forth in Table *[A or B]* ***C or D*** at N.J.A.C. 7:27-*[22.6]* ***8, Appendix I,*** unless*[:

1. Emission]* ***emission*** of the air contaminant is authorized by the operating permit*[; and]*****.***

[2. The rate or concentration of the emissions does not exceed that authorized by the operating permit.]

(d) A permittee shall ensure that any source operation, equipment or control apparatus covered by the operating permit, and all components connected to, attached to, or serving the source operation, equipment or control apparatus, are operated and maintained properly and according to the requirements of the operating permit.

(e) A permittee shall ensure that all requirements of the operating permit are met.

(f) Each owner and each operator of any facility, equipment, or source operation to which this subchapter applies is responsible for ensuring compliance with all requirements of this subchapter. If the owner and operator are separate persons, or if there is more than one owner or operator, each owner and each operator is jointly and severally liable for any fees due under this subchapter, and for any penalties for violation of this subchapter.

(g) Any provision of any other rule, statute or other *[source]* ***document***, incorporated into this subchapter, includes all future supplements and amendments to the incorporated *[source]* ***document***, unless the context of this subchapter clearly indicates otherwise.

(h) The provisions of (b), (c), (d), and (e) above shall not apply at a facility:

1. Prior to the *[earlier of the following two dates:

i. The date the operating permit is issued; or

ii. The date 18 months after the]* applicable deadline for applying for an initial operating permit, set forth at N.J.A.C. 7:27-22.5; or

2. If ***a timely and administratively complete application has been filed and*** an application shield is in effect for the facility pursuant to N.J.A.C. 7:27-22.7.

(i) The term of an operating permit will be established in the operating permit. The Department will not issue an operating permit with a term of greater than five years.

(j) The expiration of an operating permit terminates the facility's right to operate unless an application shield is in effect pursuant to N.J.A.C. 7:27-22.7.

(k) The Department may, pursuant to N.J.A.C. 7:27-22.15, issue a single operating permit to an owner or operator of a temporary facility which will be operated in more than one location during the term of the operating permit. This single operating permit may authorize operation of the temporary facility at each of the locations approved by the Department in the operating permit.

(l) The Department may issue an operating permit which allows a facility to operate under one or more alternative operating scenarios, pursuant to N.J.A.C. 7:27-22.27, or which authorizes intra-facility emissions trading, pursuant to N.J.A.C. 7:27-22.28. Each alternative operating scenario or any intra-facility emissions trading for which an applicant seeks approval shall be proposed in the application for the initial operating permit, a minor modification, a significant modification, or a renewal, as appropriate. No change to an operating permit is required for any change in operation that is authorized by the operating permit pursuant to any approved alternative operating scenario or intra-facility emissions trading.

(m) ***If the SIP allows a determination of an alternative emission limit to be made to a significant source operation subject to this subchapter,*** *[The]* ***the*** Department may issue an operating permit *[including]* ***that includes*** an alternative emission limit, determined by the Department to be equivalent to, or more stringent than, that contained in an applicable requirement, provided that the alternative emissions limit has been demonstrated to be quantifiable, accountable, enforceable, and based on replicable procedures. An example of such an alternative emission limit would be *[use of a 0.5 percent sulfur limit on certain facility by-products to enforce the 310 part per million sulfur dioxide emissions limits in N.J.A.C. 7:27-9.2(e)]* ***an alternative nitrogen oxides emission limit developed in accordance with the emission averaging provisions of N.J.A.C. 7:27-19.6***.

(n) An operating permit does not convey any property right, or any exclusive privilege.

*[(o) Any transfer of ownership or operational control of a facility covered by an operating permit, which would change the name or identity of the permittee for the facility, requires the transfer of the operating permit. An administrative amendment for such a transfer shall be submitted to the Department by the permittee prior to the transfer being made, in accordance with N.J.A.C. 7:27-22.20. No person to whom ownership or operational control is transferred shall commence operation at the facility until the application for the administrative amendment for the transfer has been received by the Department.

(p) Any change made at a facility subject to this subchapter, which constitutes a minor modification pursuant to N.J.A.C. 7:27-22.23 or a significant modification pursuant to N.J.A.C. 7:27-22.24, shall also be subject to the requirement for a preconstruction permit for an alteration at N.J.A.C. 7:27-8. Any preconstruction permit issued for a facility subject to this subchapter shall be incorporated into the operating permit as a minor modification or a significant modification.]*

(o)-(p) (Reserved)

(q) Any person submitting an application, notice or report to the Department pursuant to this subchapter, or any permit, approval, authorization, order or other legal document issued pursuant thereto, shall include, as an integral part of the application or report, certification in accordance with N.J.A.C. 7:27-1.39.

(r) All information submitted to the Department pursuant to this subchapter shall be public information, unless the person submitting the information claims it as confidential in accordance with N.J.A.C. 7:27-*[1.8]* ***1.6*** through 1.30, and the Department determines that the information is entitled to confidential treatment in accordance with N.J.A.C. 7:27-1.8 through 1.30. ***All information submitted to EPA pursuant to this subchapter shall be public information, unless the person submitting the information claims it as confidential in accordance with 40 CFR Part 2, and EPA determines that the information is entitled to confidential treatment in accordance with 40 CFR Part 2.***

(s) ***Except as otherwise provided in this subchapter,*** *[The]* ***the*** submittal of any information or application by a permittee including, but not limited to, an application ***or notice*** for any change to the operating permit, ***including*** any administrative amendment, any minor or significant modification, renewal, a notice of a seven-day-notice change, a notice of planned changes or notice of past or anticipated noncompliance, does not stay any operating permit condition, nor relieve a permittee from the obligation to comply with all applicable Federal, State, and local requirements.

(t) Application forms for operating permits***, modifications to operating permits,*** and information pertaining to operating permits and the requirements of this subchapter are available at the following address:

Department of Environmental Protection *[and Energy]*
Air Quality Regulation Program
CN 027
Trenton, New Jersey 08625-0027
Attention: Operating permits
Telephone: (609) 633-8248

(u) If an additional applicable requirement becomes applicable to the facility, or an applicable requirement which was previously applicable to the facility changes, the permittee shall act to have

the new applicable requirement or the change incorporated into the operating permit, in accordance with the procedures set forth in this subchapter.

(v) The Department may terminate an operating permit upon request of the permittee ***if the Department determines that the facility is no longer subject to operating permit requirements pursuant to N.J.A.C. 7:27-22.2***.

(w) Except as provided in the permit shield provisions at N.J.A.C. 7:27-22.17, an operating permit does not relieve any person from the obligation to comply with all applicable provisions of this chapter, including preconstruction requirements under N.J.A.C. 7:27-8, to obtain any other necessary authorizations from other governmental agencies, or to comply with all other applicable Federal, State, and local laws, rules or regulations.

(x) Notwithstanding the other provisions of this section, if any of the acid deposition control provisions of N.J.A.C. 7:27-22.29 conflicts with any other provision of the subchapter, the requirements of N.J.A.C. 7:27-22.29 shall prevail for an affected Title IV facility.

(y) If the facility is in operation, an applicant for an initial operating permit must obtain and, as applicable, renew all operating certificates required pursuant to N.J.A.C. 7:27-8 until the operating permit is issued by the Department.

[(z) The provisions of this subchapter shall be operative on and after July 1, 1994.]

7:27-22.4 General application procedures

(a) The procedures in this section apply to all applications submitted to the Department pursuant to this subchapter. Specific procedures for initial operating permits, administrative amendments, seven-day-notice changes, minor modifications, significant modifications, and renewals can be found at N.J.A.C. 7:27-22.5, 22.20, 22.22, 22.23, 22.24, and 22.30, respectively.

(b) *[Any application and any notice for a seven-day-notice change shall be submitted to the Department on forms obtained from the Department at the address at N.J.A.C. 7:27-22.3(t).]* ***(Reserved)***

(c) If the applicant obtains prior written approval from the Department, an applicant may submit an application to the Department electronically, using predefined standards and information exchange protocols *[detailed]* ***to be contained*** in the Department's Technical Manual on Electronic Transfer of Information, ***which will be*** available from the Department at the address listed at N.J.A.C. 7:27-22.3(t). This technical manual *[specifies]* ***will specify*** a data dictionary and a file format, and any ANSI X12 compliant conventions required by the Department.

(d) Any application or notice shall be submitted to the Department at the address given in N.J.A.C. 7:27-22.3(t)*****. **A copy of any application or notice submitted to the Department shall also be submitted*** *[and]* to EPA at the following address***, unless EPA waives the requirement for notice at 40 CFR 70.8, or determines that an application summary, with any relevant portion of the permit application, may be submitted in lieu of the complete application***:

United States Environmental Protection Agency,
Region II
Air Compliance Branch
26 Federal Plaza, Room 500
New York, New York 10278

(e) An applicant for an initial operating permit, operating permit renewal or significant modification is *[advised]* ***encouraged*** to submit *[a]* ***an*** *[complete]* application to the Department no less than 90 days prior to the applicable application deadline set forth *[in this subchapter]* ***at N.J.A.C. 7:27-22.5, 22.30 and 22.24, respectively***.

(f) Within 30 days of receipt of *[such]* an application, the Department will issue a letter detailing any deficiencies in respect to administrative completeness in the application, thereby providing the applicant the opportunity to correct the deficiencies prior to the application deadline.

7:27-22.5 Application procedures for initial operating permits

(a)The application procedures in this section apply to all applications submitted to the Department for initial operating permits.

(b) The owner or operator of a facility subject to this subchapter shall submit a timely and administratively complete application for an initial operating permit. To be considered timely, an ***administratively complete*** application for an initial operating permit shall be submitted to the Department no later than the applicable deadline established in this section. ***An applicant for an initial operating permit is encouraged to submit the application to the Department no less than 90 days prior to the applicable application deadline set forth in this section. Within 30 days of receipt of an application, the Department will issue a letter detailing any deficiencies in respect to administrative completeness in the application, thereby providing the applicant the opportunity to correct the deficiencies prior to the complete application deadline listed at (c) below.***

(c) For any facility which commences operation prior to the applicable deadline ***at (c)3*** below, the applicable deadline for submitting an administratively complete application for an initial operating permit is the earliest deadline below which applies to the facility:

1. For ***affected Title IV*** facilities with source operations subject to the acid deposition control program Phase II requirements for initial operating permits***, the applicable deadline specified at N.J.A.C. 7:27-22.29(b);****[:

i. By January 1, 1996, for facilities with source operations subject to the requirements for SO_2 pursuant to 42 U.S.C. §7651d; and

ii. By January 1, 1998, for facilities with source operations subject to the requirements for NO_x pursuant to 42 U.S.C. §7651f;]*

2. *[Within 12 months after the effective date of EPA's designation, or by a later deadline specified by EPA in its designation, for]* ***For*** facilities with any source operation designated by EPA pursuant to 40 CFR 70.3***(a)(5)*** as requiring an operating permit***, within 12 months after the effective date of EPA's designation, or by a later deadline specified by EPA in its designation***; and

3. For all other facilities, by the deadline in the table below ***as determined by the facility's primary SIC code***:

SIC Code		***Complete*** Application deadline	***Suggested Early Submittal***
[2000 through 2199]	*[11/15/94]*		
2000 through 2086		***8/15/95***	***5/15/95***
2088 through 2199		***8/15/95***	***5/15/95***
4900 through 4910	*[11/15/94]*	***8/15/95***	***5/15/95***
4911(1)	*[11/15/94]*	***8/15/95***	***5/15/95***
4912 through 4939	*[11/15/94]*	***8/15/95***	***5/15/95***
6400 through *[9999]* ***6999***	*[11/15/94]*	***8/15/95***	***5/15/95***
8300 through 9999		***8/15/95***	***5/15/95***
4911(2)	*[5/15/95]*	***11/15/95***	***8/15/95***
4200 through 4399	*[5/15/95]*	***11/15/95***	***8/15/95***
5900 through 6399	*[5/15/95]*	***11/15/95***	***8/15/95***
7000 through 7199	*[5/15/95]*	***11/15/95***	***8/15/95***
7500 through 8299	*[5/15/95]*	***11/15/95***	***8/15/95***
0000 through 1299	*[11/15/95]*	***5/15/96***	***2/15/96***
1400 through 1999	*[11/15/95]*	***5/15/96***	***2/15/96***
3200 through 3599	*[11/15/95]*	***5/15/96***	***2/15/96***
4000 through 4199	*[11/15/95]*	***5/15/96***	***2/15/96***
4400 through 4499	*[11/15/95]*	***5/15/96***	***2/15/96***
4800 through 4899	*[11/15/95]*	***5/15/96***	***2/15/96***
5300 through 5499	*[11/15/95]*	***5/15/96***	***2/15/96***
1300 through 1399	*[5/15/96]*	***11/15/96***	***8/15/96***
2700 through 2799		***11/15/96***	***8/15/96***
2900 through 2999	*[5/15/96]*	***11/15/96***	***8/15/96***
3600 through 3999	*[5/15/96]*	***11/15/96***	***8/15/96***
4500 through 4799	*[5/15/96]*	***11/15/96***	***8/15/96***
7300 through 7499	*[5/15/96]*	***11/15/96***	***8/15/96***
2200 through 2599	*[11/15/96]*	***5/15/97***	***2/15/97***
[2700 through 2799]	*[11/15/96]*		

3000 through 3199	*[11/15/96]*	***5/15/97***	***2/15/97***
5000 through 5299	*[11/15/96]*	***5/15/97***	***2/15/97***
5500 through 5899	*[11/15/96]*	***5/15/97***	***2/15/97***
7200 through 7299	*[11/15/96]*	***5/15/97***	***2/15/97***
2087		***11/15/97***	***8/15/97***
2600 through 2699	*[5/15/97]*	***11/15/97***	***8/15/97***
2835 through 2899	*[5/15/97]*	***11/15/97***	***8/15/97***
2800 through 2834	*[11/15/97]*	***5/15/98***	***2/15/98***
4940 through 4999	*[11/15/97]*	***5/15/98***	***2/15/98***

(1) If the facility is located in Atlantic, Burlington, Gloucester, Hudson, Hunterdon, Salem, Union, Camden, Monmouth, Sussex, or Warren County.

(2) If the facility is located in Bergen, Cape May, Cumberland, Essex, Mercer, Middlesex, Ocean, Morris, Passaic or Somerset County.

*[(d) If a facility or portion thereof becomes subject to a MACT or GACT standard pursuant to N.J.A.C. 7:27-22.26, prior to the applicable application deadline for the facility set forth in this section, the owner or operator shall submit an application for an initial operating permit. The application shall include only the source operations subject to the MACT or GACT standard, and shall be submitted to the Department by the deadline set forth at N.J.A.C. 7:27-22.26(l) or (m). In such a case, the Department will issue an operating permit covering only the equipment subject to the MACT or GACT standard.

(e) If a facility is issued an operating permit pursuant to (d) above, and if the MACT or GACT standard which is the basis for the issuance of the operating permit is the sole reason that the facility is subject to the requirements of this subchapter, the operating permit issued pursuant to (d) above shall be the only operating permit required for the facility. If a facility is issued an operating permit pursuant to (d) above, and the MACT or GACT standard which is the basis for the issuance of the operating permit is not the sole reason that the facility is subject to the requirements of this subchapter, an application for an operating permit for the entire facility shall be submitted according to the schedule at (c) above.]*

(d)-(e) (Reserved)

[(f) For a facility that has not commenced operation as of the applicable deadline set forth above, the applicable deadline for submitting the application for an initial operating permit is 12 months after the date that the Department issues a preconstruction permit for the facility pursuant to N.J.A.C. 7:27-8. However, the owner or operator of such a facility is advised to submit an application at least 18 months prior to the planned commencement of operation, as the owner or operator is required to obtain an operating permit for the facility in accordance with the procedures of this section prior to commencing operation.]

(f) For a new facility that has not commenced operation as of the applicable deadline set forth in (c) above, the deadline for submitting the application is 12 months after commencing operation.

(g) For an existing facility that becomes subject to this subchapter through a change to ***the facility or to*** any source operation, or to the use thereof, *[at the facility,]* the applicable deadline for submitting the application for an initial operating permit is*[:]*

[1. If the change is one that would be a minor modification if an operating permit had been issued for the facility,] 12 months after the ***new or*** changed source operation commences operation***.**[; or

2. If the change is one that would be a significant modification if an operating permit had been issued for the facility, 12 months before the changed source operation commences operation. In such case the owner or operator shall obtain an operating permit for the facility in accordance with the procedures of this section before the change is made.]*

(h) For a facility that becomes subject to this subchapter through a change to any applicable requirement***, or creation of a new applicable requirement,*** other than a MACT or GACT standard, the applicable deadline for submitting the application for an initial operating permit is 12 months after the effective date of the new applicable requirement, unless a different application deadline is specified in the text of the new requirement.

(i) If a facility has over 100 *[stacks or chimneys]* ***source operations***, the owner or operator may elect to divide the facility into two or more components, and submit a separate application for an initial operating permit for each component. Such applications shall be submitted on a schedule proposed by the owner or operator and approved by the Department, except that the application for the final component shall be submitted no later than the application deadline established for the facility pursuant to (c) above. *[Notwithstanding the provisions of this subsection, any modeling or risk assessment required for the facility pursuant to N.J.A.C. 7:27-22.8 shall be performed on a facility-wide basis.]*

(j) The owner or operator shall provide a copy of the administratively complete application for an initial operating permit to the EPA *[and any affected state]* within 30 days of the determination that the application is administratively complete***, unless EPA has determined under 40 CFR 70.8 that an application summary, with any relevant portion of the permit application, may be provided to EPA in lieu of the entire application***.

7:27-22.6 Application contents

(a) To be administratively complete, an application for an initial operating permit shall include all information required by this section and all application fees required pursuant to N.J.A.C. 7:27-22.31. The required information shall be provided on and with forms obtained from the Department, which will direct the applicant to set the information forth in a format such that the Department can incorporate the information readily into the draft operating permit.

(b) *[The required contents of an application for authorization to operate under a general operating permit, an administrative amendment, a minor modification, a significant modification, or a renewal of an operating permit are not set forth in this section, but rather are set forth at N.J.A.C. 7:27-22.14, 22.20, 22.23, 22.24, and 22.30, respectively. Requirements for submitting a notice of a seven-day-notice change are set forth at N.J.A.C. 7:27-22.22.]* ***(Reserved)***

(c) Any source operation at a facility subject to this subchapter shall be included in the facility's application for an operating permit, except for exempt activities. A source operation shall be an exempt activity only if it is:

[1. Not subject to preconstruction permit requirements pursuant to N.J.A.C. 7:27-8;]

*[2.]***1.*** Not subject to any applicable requirement; and

*[3.]***2.*** One of the following types of source operations:

i. Source operations which have no potential for emitting any air contaminant, including, but not limited to:

(1) Stationary storage tanks which are used for the storage of water or distillates of air; and

(2) Enclosed stationary material handling equipment using pneumatic, bucket or belt conveying systems from which no emissions of air contaminants occur;

ii. Any of the following activities, if the activity supports the one or more production processes of the facility, and does not itself constitute a facility production process or a part thereof:

(1) Office activities and the equipment and implements used therein, such as typewriters, printers, and pens;

(2) Interior maintenance activities and the equipment and supplies used therein, such as janitorial cleaning products and air fresheners; this does not include any cleaning of production equipment;

(3) Bathroom and locker room ventilation and maintenance;

(4) Copying and duplication activities for internal use and for support of office activities at the facility;

(5) The activities of maintenance shops, such as welding, gluing, ***and*** soldering***, performed indoors or outdoors***; *[this does not include any such activities which are subject to preconstruction permit requirements pursuant to N.J.A.C. 7:27-8;]*

(6) First aide or emergency medical care provided at the facility, including related activities such as sterilization and medicine preparation;

(7) Laundry operations that service uniforms or other clothing used at the facility;

(8) Architectural maintenance activities conducted to take care of the buildings and structures at the facility, including repainting, reroofing, and sandblasting;

(9) Exterior maintenance activities conducted to take care of the grounds of the facility, including lawn maintenance;

(10) Food preparation to service facility cafeterias and dining rooms; *[and]*

(11) The use of portable space heaters which reasonably can be carried and relocated by an employee; ***and**

(12) Laboratory hoods used for research and development, quality assurance and quality control testing and sampling activities.*

iii. The engine of any vehicle, including, but not limited to, any marine vessel, any vehicle running upon rails or tracks, any motor vehicle, any forklift, any tractor, or any mobile construction equipment;

iv. Storage tanks, reservoirs, containers, or bins used on any farm for the storage of agricultural commodities produced by or consumed in the farm's own operations. This does not include storage tanks, reservoirs, containers or bins used by distributors of agricultural commodities or by research facilities which develop products for use in agricultural production; or

v. Potable water treatment equipment, not including air stripping equipment.

(d) All source operations ***which are not exempt pursuant to (c) above shall be*** included in a facility's application ***for an operating permit. Source operations*** shall be *[considered]* ***classified as either*** significant *[source operations unless the source operation satisfies the criteria for an insignificant source operation set forth in (e) below]* ***or insignificant, in accordance with (e) below. Different types and amounts of information are required for significant and insignificant source operations in the application for an operating permit*.**

(e) In an application, an owner or operator may claim a source operation to be an insignificant source operation if ***the source operation is*:**

1. *[The source operation is not]* ***Not*** subject to an applicable requirement;

2. Not listed in N.J.A.C. 7:27-8.2(a) or listed in N.J.A.C. 7:27-8.2(b), and not an exempt activity per (c) above. This includes all equipment listed at N.J.A.C. 7:27-8.2(a) or (b), regardless of its exempt or non-exempt status under the preconstruction permit program.

*[2. The potential to emit of the source operation is less than any applicable de minimis emissions level set forth in Table A or B below;

3. The source operation is not subject to preconstruction permit requirements pursuant to N.J.A.C. 7:27-8; and

4. The source operation is one of the following:

i. Equipment used in a manufacturing process involving a surface coating operation or graphic arts operation including, but not limited to, spray and dip painting, roller coating, electrostatic depositing, surface stripping or spray cleaning, from which direct or indirect emissions of air contaminants occur and in which the quantity of coating or cleaning material used in any source operation is less than both of the following:

(A) One half gallon in any one hour; and

(B) Two and one-half gallons in any one day;

ii. An unheated open top surface cleaner having a top opening equal to or less than six square feet (0.56 square meters);

iii. A tank or vessel used in a process involving surface cleaning or preparation, including but not limited to, degreasing, etching, pickling, or plating, which has a capacity equal to or less than 100 gallons. This shall not include any tank or vessel which is an unheated open top surface cleaner having a top opening equal to or less than six square feet (0.56 square meters), a heated oven top surface cleaner, or a component of a conveyorized surface cleaner;

iv. Equipment, used in a process, other than as set forth in i, ii, or iii above, from which the direct and indirect emissions of each air contaminant occurs in amount(s) which are less than the applicable de minimis emission level set forth in Table A or B, below, and in which the combined weight of all materials, excluding air and water, introduced into any one source operation is 50 pounds in any one hour or less;

v. A stationary storage tank which has a capacity equal to or less than 10,000 gallons which is used for the storage of liquids other than applicable VOC;

vi. A stationary storage tank which has a capacity less than 2,000 gallons and which is used for the storage of applicable VOC;

vii. A tank, reservoir, container or bin which has a capacity equal to or less than 2,000 cubic feet and which is used for the storage of solid particles;

viii. Commercial fuel burning equipment having a heat input rate less than 1,000,000 BTU per hour to the burning chamber; this shall not include any incinerator or any equipment used for the burning of noncommercial fuel, crude oil, or process by-products in any form;

ix. Water treatment equipment if the concentration in the water of each TXS is less than 100 parts per billion by weight and the total concentration in the water of VOC is less than 3,500 parts per billion by weight;

x. Air stripping equipment with a capacity equal to or less than 100,000 gallons per day which is used in potable water treatment;

xi. A storage tank maintained under a pressure greater than one atmosphere provided that any vent serving such storage tank has the sole function of relieving pressure under emergency conditions; or

xii. Equipment used for woodworking which is vented into a room, including equipment used for sanding, drilling, cutting or planing unpainted wood or wood products.]*

*[Table A
Thresholds for De Minimis Emissions
of Hazardous Air Pollutants

Air Contaminant	Annual emissions (pounds per year)
Total dioxins and furans	0.0001
Benzidine	0.06
Bis (chloromethyl) ether	0.06
n-Nitrosodimethylamine	0.2
Hexavalent chromium compounds	0.4
Hydrazine	0.8
Arsenic and arsenic compounds	1.0
2-Nitropropane	1.0
Any Table A HAP (1)	2.0
Any Table B HAP (2)	20.0
Any other HAP	400.0

(1) This air contaminant category shall apply to any HAP listed in Table A at N.J.A.C. 7:27-8, Appendix I.

(2) This air contaminant category shall apply to any HAP listed in Table B at N.J.A.C. 7:27-8, Appendix I.

Table B
Thresholds for De Minimis Emissions
of Other Air Contaminants

Air Contaminant	Hourly emissions (pounds per hour)
VOC	0.05
TSP	0.05
PM-10	0.05
NOx	0.05
CO	0.05
SO2	0.05
Any other air contaminant	0.05]*

(f) An application for an initial operating permit shall include all information required by the application form, the instructions accompanying the application form, and the applicable completeness checklist(s) for the application. This shall include the following:

1. Information pertaining to the identification of the applicant, including:

i. The company name and mailing address, division name and the plant name and address (if different);

ii. The name and address of each owner, each owner's agent (if any), and each operator of the facility;

iii. The name and telephone number of the on-site facility manager and of any additional on-site contact person; and

iv. The name and address of any responsible official, as defined at N.J.A.C. 7:27-1.4;

2. For the source operations proposed to be insignificant source operations pursuant to *[(d) or]* (e) above, the following information:

i. *[The]* ***A list of the*** types of insignificant source operations found at the facility *[and the total number of each type of insignificant source operation]* ***; and***

ii. *[For all insignificant source operations collectively, an]* ***An*** estimate of *[their total potential to emit, in the aggregate, each air contaminant; and]* ***the total emissions from all insignificant source operations, listed separately for each criteria pollutant;***

[iii. If so requested on the application form, for any type or class of insignificant source operations, an estimate of the total potential to emit each air contaminant of that type or class or source operations;]

3. For each source operation at the facility which will be subject to the operating permit, other than exempt activities or those listed in (e) above as proposed insignificant source operations, information including, but not limited to, the following:

i. A brief description of the source operation;

ii. The identification number of any preconstruction permit issued by the Department for the source operation;

iii. Identification of any stack or chimney which serves the source operation and specification of:

(1) Any stack designation assigned by the Department for the stack or chimney; and

(2) Any stack designation assigned at the facility for any stack or chimney; and

iv. Identification of the production process in which the source operation is used;

4. A ***general*** description of each of the facility's production processes and products, identified by SIC Code, in sufficient detail to determine which applicable requirements apply to the facility. This description shall set forth for each production process:

i. The significant source operations associated with the production process pursuant to (f)3iv above;

ii. The product(s) or intermediate product(s), together with any associated co-products, produced by the production process; and

iii. A ***general*** description of the operating scenario used to produce the product(s) or intermediate product(s), and a description of any alternative operating scenarios which may be used to produce the same product(s) or intermediate product(s). Such description of an alternate operating scenario shall be prepared pursuant to N.J.A.C. 7:27-22.27;

5. The following information pertaining to emissions at the facility:

i. For each significant source operation, each air contaminant that it may emit and its potential to emit that air contaminant, including any fugitive emissions, in tons per year, and any other units***, for example pounds per hour,*** required to verify compliance with any applicable requirement. If the source operation's potential to emit a given air contaminant does not exceed the applicable de minimis emissions threshold set forth in Table *[A or B above]* ***C or D of N.J.A.C. 7:27-8, Appendix I***, *[the application shall state that the source operation does not have the potential to emit any air contaminant in a quantity that exceeds the applicable de minimis emissions threshold]* ***the air contaminant need not be included***;

ii. For the facility, each air contaminant, if any, emitted as fugitive emissions and not associated with any source operation; the cause of that air contaminant being emitted as fugitive emissions; and ***a reasonable estimate of*** the facility's *[potential to emit that air contaminant as]* fugitive emissions ***of that air contaminant***, in tons per year, and any other units required to verify compliance with any applicable requirement. However, if the facility's potential to emit a given air contaminant as fugitive emissions does not exceed the maximum exempt emissions threshold set forth in Table *[A or B above]* ***C or D of N.J.A.C. 7:27-8, Appendix I***, the information required by this paragraph need not be given in respect to that air contaminant;

iii. For the facility as a whole, the facility's aggregate potential to emit, in tons per year, each air contaminant that may be emitted within the facility, including the emissions determined pursuant to (a)5i and ii above *[and the emissions estimated for insignificant source operations, as specified pursuant to N.J.A.C. 7:27-22.6(e)]*;

iv. Identification of each stack or chimney at the facility and, for each stack or chimney, designation of which significant source operations are vented through the stack and chimney;

v. For each source operation, a listing of any fuels used and the maximum quantity of each commercial fuel or non-commercial fuel to be used annually;

vi. For each production process, the raw materials to be used, and either the maximum rate of production and the maximum annual hours of operation, or the maximum batch size and the maximum number of batches per year;

vii. For each source operation, a description of the control apparatus, if any, serving the source operation; if the control apparatus is not used for all operating scenarios, a description of the circumstances under which it is not used;

viii. For the facility, identification and description of all monitoring devices or activities proposed to verify compliance with applicable requirements;

ix. Any additional emissions information or emissions-related information needed to verify whether any potentially applicable requirement applies to the facility or to any source operation at the facility;

x. Any other information required by an applicable requirement;

xi. Any calculations upon which information in (f)5i through x is based; and

xii. For each criteria pollutant, any emission reductions which have been banked, pursuant to N.J.A.C. 7:27-18.8, and *[which]* ***an indication as to whether they*** are held by the owner or operator of the facility ***or by another person***;

6. For each significant source operation at the facility or, if applicable, for each group of source operations or for the facility as a whole, information pertaining to air pollution control requirements as follows:

i. *[Each]* ***Description of each*** applicable requirement;

ii. Citation to the State or Federal rule, regulation, permit or other authority, which establishes each applicable requirement upon which the proposed permit conditions are based;

*[ii.]***iii.*** For each applicable requirement, each provision of the applicable requirement which sets forth a maximum allowable emissions limitation, a limitation on operation affecting emissions, or a work practice standards affecting emissions applicable to the facility;

*[iii.]***iv.*** The proposed permit conditions which incorporate and reflect each provision provided pursuant to (f)6ii above;

[iv. Citation to the State or Federal rule, regulation, permit or other authority, which establishes each applicable requirement upon which the proposed permit conditions are based;]

v. Identification of any difference in form between a proposed permit condition and the applicable requirement upon which the proposed permit condition is based; and

vi. If the owner or operator seeks to have, pursuant to N.J.A.C. 7:27-22.3(m), the operating permit include an alternative emission limit for any significant source operation or any group of significant source operations, a demonstration that:

(1) The alternative emissions limit is allowed in the SIP;

*[(1)]***(2)*** The proposed alternative emissions limit is equivalent to, or more stringent than, that contained in an applicable requirement; and

*[(2)]***(3)*** The alternative emissions limit is quantifiable, accountable, enforceable, and based on replicable procedures;

7. An explanation of any proposed exemption from an otherwise applicable provision of an applicable requirement, including a citation of the legal authority authorizing the exemption;

8. A proposed compliance plan meeting the requirements of N.J.A.C. 7:27-22.9;

9. *[Any]* ***A listing of any*** preconstruction permits issued by the Department pursuant to N.J.A.C. 7:27-8 prior to the date of application and any applications for preconstruction permits not yet finally acted upon;

*[10. The following information pertaining to modeling or risk assessment:

i. The modeling and risk assessment information required at N.J.A.C. 7:27-22.8 for the facility; or

ii. A statement that modeling and risk assessment are not required pursuant to N.J.A.C. 7:27-22.8 for the facility;]*

*[11.]***10.*** A statement that a copy of the application has been sent to EPA*[, and to any affected states]* or, if so requested by the Department, summaries of the application have been so submitted, in order to provide notice to the EPA *[and the affected states]*;

*[12.]***11.*** Certification of the application pursuant to N.J.A.C. 7:27-1.39; and

*[13.]***12.*** Any other information that is reasonably necessary to enable the Department to determine whether the applicant has satisfied the requirements of this subchapter for the issuance of a permit.

(g) Any applicant who seeks an operating permit authorizing the operation of a production process in one or more alternative modes shall propose these modes as alternative operating scenarios, in the application for an operating permit or significant modification, pursuant to N.J.A.C. 7:27-22.27. If the Department approves one or more alternative operating scenarios as part of an operating permit, the *[permittee]* ***production process*** may *[operate the process]* ***be operated*** in any of the approved modes, and may *[change]* ***be changed*** between those modes, without *[modifying]* ***modification of*** the operating permit or *[notifying]* ***notification to*** the Department.

(h) Any applicant who seeks an operating permit authorizing intra-facility emissions trading pursuant to N.J.A.C. 7:27-22.28 shall propose the intra-facility emissions trading in an application for an initial operating permit. An applicant may propose emissions trading for more than one group of source operations at the facility.

(i) Any applicant who seeks an operating permit including different emissions limits that apply to a source operation during startup, shutdown, or necessary equipment maintenance, shall propose such emissions limits in the application for the operating permit or significant modification. An applicant may propose such startup, shutdown, or maintenance emissions limits for more than one source operation in the application provided that these limits do not conflict with ***the SIP or*** any state or Federal regulation.

(j) An applicant may elect to propose, in the application for an initial operating permit, the methods to be used to determine the actual emissions of each significant source operation at the facility, for the purpose of preparing emission statements required for the facility pursuant to N.J.A.C. 7:27-21.

(k) *[Any applicant who seeks to include, as a component of the operating permit for the facility, authorization for the replacement of equipment during the term of the operating permit as a seven-day-notice change, pursuant to the provisions set forth at N.J.A.C. 7:27-22.22, shall request this in the permit application and include a schedule setting forth the expected dates of such replacement.]* ***(Reserved)***

(l) Any applicant who, pursuant to N.J.A.C. 7:27-22.14, seeks to include as a component of the operating permit for the facility, one or more general operating permits shall specify the general operating permit(s) proposed to be included, identify each source operation to which the general operating permit would apply, and meet all other *[applicable]* ***general operating permit*** application requirements set forth at N.J.A.C. 7:27-22.14. The conditions of such general operating permit, if applicable, will be incorporated into the operating permit for the facility.

(m) If an applicant seeks acknowledgement in the operating permit that any specific provision of a potentially applicable requirement does not in fact apply to the facility, the applicant may cite such a specific provision***, explain why it does not apply,*** and request that the provision be specifically identified in the operating permit as being inapplicable to the facility.

(n) *[If an applicant for an initial operating permit seeks to have a compliance extension for a MACT or GACT standard incorporated into the operating permit, the applicant shall demonstrate in the application, pursuant to N.J.A.C. 7:27-22.26, that sufficient early reductions of HAP emissions have been achieved.]* ***(Reserved)***

7:27-22.7 Application shield

(a) An application shield provides that the owner or operator of a facility subject to this subchapter will not be subject to penalties for operating the facility without an operating permit during the time the application shield is in effect.

(b) An application shield is in effect for a facility if:

1. The owner or operator of the facility has submitted to the Department an application for an initial operating permit or for a renewal, in accordance with N.J.A.C. 7:27-22.5 or 22.30, whichever applies; and

2. The application is administratively complete by the applicable deadline for submittal of the application, as set forth at N.J.A.C. 7:27-22.5 or 22.30, whichever applies.

(c) The protection afforded by the application shield begins the date the application is due to the Department.

(d) An application which is administratively incomplete at the time of the application deadline applicable to the facility, but which is later completed, is ineligible for coverage by an application shield. Similarly, an administratively complete application which is submitted after the applicable deadline for its submittal is ineligible for an application shield. ***As set forth at N.J.A.C. 7:27-22.4(e), applicants are advised to submit the application 90 days prior to the application deadline to ensure that any deficiencies may be corrected by the deadline.***

(e) An application shield does not relieve an applicant of the responsibility for compliance with all other requirements of this chapter, or any permit, order, or other legal document issued pursuant thereto.

(f) An application shield terminates automatically upon either of the following:

1. The Department's final action on the application for the initial operating permit or for the renewal; or

2. Failure of the applicant to submit additional information requested by the Department within the deadline established by the Department ***pursuant to N.J.A.C. 7:27-22.10, Completeness review***.

7:27-22.8 *[Air quality simulation modeling and risk assessment]* ***(Reserved)***

*[(a) Except as provided at (b) and (c), below, an applicant for an initial operating permit shall perform air quality simulation modeling and risk assessment pursuant to this section and shall submit these to the Department with the application for the initial operating permit, if the facility's potential to emit exceeds any of the following thresholds:

1. For total dioxins and furans, 0.001 pounds per year;
2. For benzidine or bis (chloromethyl) ether, 0.6 pounds per year;
3. For n-nitrosodimethylamine, 2.0 pounds per year;
4. For hexavalent chromium compounds, 4.0 pounds per year;
5. For hydrazine, 8.0 pounds per year;
6. For arsenic and arsenic compounds, or for 2-nitropropane, 10.0 pounds per year;
7. For any HAP listed in Table A at N.J.A.C. 7:27-8, Appendix I, 20 pounds per year; or
8. For any HAP listed in Table B at N.J.A.C. 7:27-8, Appendix I, 200 pounds per year.

(b) Emissions from the combustion of natural gas or commercial fuel oil shall not be included in the determination of a facility's potential to emit for the purposes of this section.

(c) Notwithstanding (a) above, air quality simulation modeling and risk assessment are not required as part of an application for an initial operating permit which, pursuant to N.J.A.C. 7:27-22.5(d), covers only the equipment subject to a MACT or GACT standard if, pursuant to N.J.A.C. 7:27-22.5(e), the owner or operator will by a later deadline be submitting an application of an operating permit for the entire facility. In such a case, the requirement to perform air quality simulation modeling and risk assessment shall be postponed until the application for the operating permit covering the entire facility is submitted.

(d) An applicant for a renewal of an operating permit shall perform air quality simulation modeling and risk assessment pursuant to this section and shall submit these to the Department as part of the application for renewal if:

1. The applicant would be required to perform air quality simulation modeling and risk assessment pursuant to (a) above as part of an application for an initial operating permit;
2. The facility's potential to emit any HAP is more than 10 tons per year; or
3. The facility's potential to emit all HAPs collectively is more than 25 tons per year.

(e) An applicant for a significant modification shall perform air quality simulation modeling and risk assessment pursuant to this section and shall submit these to the Department as part of the application for a significant modification if the modification will result in an increase in the facility's potential to emit any air contaminant which exceeds any of the following thresholds:

1. For total dioxins and furans, 0.001 pounds per year;
2. For benzidine or bis (chloromethyl) ether, 0.6 pounds per year;
3. For n-nitrosodimethylamine, 2.0 pounds per year;
4. For hexavalent chromium compounds, 4.0 pounds per year;
5. For hydrazine, 8.0 pounds per year;
6. For arsenic and arsenic compounds, and for 2-nitropropane, 10.0 pounds per year;
7. For any HAP listed in Table A at N.J.A.C. 7:27-8, Appendix I, 20 pounds per year; or
8. For any HAP listed in Table B at N.J.A.C. 7:27-8, Appendix I, 200 pounds per year; or
9. For significant modifications which will not commence operation until after January 1, 2000:
   i. Ten tons per year of any HAP; or
   ii. Twenty-five tons per year of any combination of HAPs.

(f) Any air quality simulation modeling and risk assessment submitted as part of an application for a significant modification pursuant to (e) above shall evaluate the effects of any increase in the potential to emit HAPs, due to the proposed construction or installation of new source operations or the proposed alteration of existing source operations.

(g) The air quality simulation modeling and risk assessment required pursuant to this section shall be performed in accordance with the Department's technical manual on Risk Assessment for Operating Permits. This technical manual provides for the following three levels of air quality simulation modeling and risk assessment:

1. Level-1 screening analysis, which entails a basic risk assessment screening using worksheets to determine if further analysis is necessary;
2. Level-2 routine analysis, which entails relatively simple computer modeling and risk assesment; and
3. Level-3 refined analysis, which entails detailed computer modeling and risk assessment.

(h) All applicants subject to (a), (d) or (e) above shall perform a Level-1 screening analysis, unless the applicant elects instead to perform a Level-2 routine analysis. In addition, if the risk levels determined through the Level-1 screening analysis:

1. Meet the health-based thresholds specified in the Department's Risk Assessment for Operating Permits technical manual, the applicant shall submit the Level-1 screening analysis as part of the application; or
2. Do not meet the health-based thresholds specified in the Department's Risk Assessment for Operating Permits technical manual, the applicant need not submit the Level-1 screening analysis as part of the application. Instead the applicant shall perform a Level-2 routine analysis.

(i) All applicants who perform a Level-2 routine analysis pursuant to (j) above shall submit the analysis as part of the application for an operating permit, renewal or significant modification. In addition, if the risk levels determined through the Level-2 analysis:

1. Meet the health-based thresholds specified in the Risk Assessment for Operating Permits technical manual, the applicant is not required to perform a Level-3 refined analysis; or
2. Do not meet the health-based thresholds specified in the Risk Assessment for Operating Permits technical manual, the applicant shall perform a Level-3 refined analysis pursuant to (j) and (k) below.

(j) A Level-3 refined analysis shall be performed in accordance with the protocol described in the Risk Assessment for Operating Permits technical manual, unless specific deviations from the protocol are approved in advance by the Department.

(k) An applicant who intends to perform a Level-3 refined analysis pursuant to (i) above shall submit as part of the application a proposed schedule for the completion of a Level-3 refined analysis, which will result in submittal of the Level-3 analysis to the Department within four months after the date the application is determined to be administratively complete pursuant to N.J.A.C. 7:27-22.10, Completeness review, or N.J.A.C. 7:27-22.30, Renewals, as applicable.

(l) In any risk assessment performed as part of a Level-3 refined analysis for an operating permit for a initial operating permit, an applicant need only consider the inhalation route of exposure. The Department may require consideration of other routes of exposure in a Level-3 refined analysis performed as part of an application for a renewal or a significant modification.

(m) An applicant shall base any air quality simulation modeling and risk assessment performed pursuant to this section on the entire facility's potential to emit. In addition, an applicant may also perform air quality simulation modeling and risk assessment based on the facility's actual emissions and submit this as supplemental information in the application.

(n) Air quality simulation modeling and risk assessment in addition to that required by this section may be required for a facility subject to the preconstruction permit requirements at N.J.A.C. 7:27-8 pursuant to that subchapter.

(o) If an applicant has performed air quality simulation modeling and risk assessment for the facility, pursuant to (a) above or to a State or Federal requirement, less than five years prior to the application for an operating permit, renewal or significant modification, the applicant may submit that analysis to satisfy the requirements of this section, provided that:

1. The previously performed air quality analysis provides information at a comparable level of accuracy and detail as is required by this section;
2. No change which could increase the level of HAP emissions has been made in the facility's operations or emissions since the modeling and risk assessment were performed; and
3. The applicant obtains the prior written approval of the Department for the substitution.]*

7:27-22.9 Compliance plans

(a) Pursuant to N.J.A.C. 7:27-22.6(f)8, an applicant for an initial operating permit shall submit a proposed compliance plan, drafted in accordance with this section ***and certified in accordance with N.J.A.C. 7:27-1.39***, as part of an application for the initial operating permit.

(b) An applicant for a renewal, significant modification, or minor modification shall draft proposed revisions to any portion of the facility's compliance plan affected by any change to the facility made since the operating permit was issued. The proposed revisions shall be drafted in accordance with this section and submitted as part of the application for the renewal, significant modification, or minor modification.

(c) A proposed compliance plan shall include the following:

1. A decription of the current compliance status of the facility with respect to all applicable requirements;

2. For each applicable requirement, a statement setting forth the methods used to determine the facility's compliance status, including a description of any monitoring, recordkeeping, reporting or test methods, and any other information necessary to verify compliance with or enforce any proposed permit condition or any applicable requirement. This statement shall include, but is not limited to:

i. All monitoring, ***analysis procedures,*** recordkeeping, reporting, or test methods required by any applicable requirement***, including any applicable monitoring procedures or methods required under the Federal "enhanced monitoring program" set forth at 40 CFR Part 64****;

ii. Where the applicable requirement does not require monitoring, recordkeeping, reporting, or test methods sufficient to demonstrate the facility's compliance with the operating permit, proposed monitoring, recordkeeping, reporting, or test methods which:

(1) Are sufficient to demonstrate compliance; *[and]*

(2) Use terms, test methods, units, averaging periods, and other statistical conventions consistent with the applicable requirement; and

(3) Can be used for enforcement of the applicable requirement;

iii. Proposed requirements concerning the use, maintetnance, and installation of monitoring equipment and concerning monitoring, recordkeeping, reporting, or test methods. This shall include, but is not limited to, schedules for monitoring, recordkeeping, reporting, and source emissions testing; specification of parameters to be measured, recorded, and reported; and formats for recording and reporting ***and***

iv. Where the permittee proposes to use monitoring of operating parameters to demonstrate compliance (as opposed to direct emissions testing or monitoring), a proposed enforceable limit or range of operation for the parameter monitored, and how this parameter correlates to the emission limit.*

*[3. A statement that source emissions testing and monitoring requirements will be carried out in accordance with N.J.A.C. 7:27-22.18, and that source emissions testing and monitoring will be conducted in accordance with a protocol approved by the Department;

4. A statement that recordkeeping and reporting requirements will be carried out in accordance with N.J.A.C. 7:27-22.19;]*

*[5.]***3.*** For each applicable requirement with which the facility is in compliance at the time the application for an operating permit is submitted to the Department, a statement that the facility will continue to comply with the applicable requirement;

*[6.]***4.*** For each promulgated applicable requirement which will become applicable to the facility after the application for an operating permit is submitted to the Department, but prior to the anticipated end of the term of the operating permit:

i. The date the provision will become applicable to the facility or to any part thereof;

ii. A statement that the facility will comply with the applicable requirement on a timely basis; and

iii. A detailed compliance schedule, if such schedule is expressly required by the applicable requirement;

*[7.]***5.*** For each applicable requirement for which the facility is not in compliance at the time the application for an operating permit is submitted to the Department:

i. A narrative description of how the facility will achieve compliance with the applicable provision(s) of the applicable requirement;

ii. A proposed compliance schedule setting forth the remedial measures to be taken, including an enforceable sequence of actions with milestones leading to compliance. If the facility is subject to any order or consent decree, the proposed schedule of remedial measures shall incorporate the order or consent decree, and shall be at least as stringent as the order or consent decree; ***and****

iii. A schedule for submittal of progress reports***, certified in accordance with N.J.A.C. 7:27-1.39,*** every six months, or more frequently if specified by the underlying applicable requirement, order, consent decree; *[and]*

[iv. A statement that the facility will comply with the compliance schedule on a timely basis and that the permittee will submit progress reports, certified in accordance with N.J.A.C. 7:27-1.39, in accordance with the schedule in (c)7iii above;]

*[8.]***6.*** The following statements:

i. The permittee will ensure the compliance of the facility with the accidental release provisions at ***42 U.S.C. 7412(r) and**** N.J.A.C. 7:31;

ii. The permittee will ensure the compliance of the facility with any employee trip reduction rules promulgated by ***NJ*DOT**; and

iii. The permittee will ensure that any architectural coatings used at the facility conform with the standards set forth at N.J.A.C. 7:27-23; and

*[9.]***7.*** A schedule for the periodic submittal of compliance certifications, prepared in accordance with N.J.A.C. 7:27-22.19(f). Submittal shall be annual, or more frequent if so specified by the underlying applicable requirement or by the Department ***in the operating permit****.

(d) If any source operation or any aspect of a facility's operation is in violation of any applicable requirement, and the facility is not subject to an order or consent decree for the violation, the owner or operator of the facility may request an administrative consent order from the Department to address the violation pursuant to N.J.A.C. 7:27A. A request to enter into an administrative consent order shall be submitted to:

Air ***and Environmental**** Quality Enforcement
[New Jersey Department of Environmental Protection and Energy] ***NJDEP****
401 E. State Street*
CN 422
Trenton, New Jersey 08625***-422****

(e) The Department's approval of a compliance plan or compliance schedule does not constitute any approval or sanction by the Department of any noncompliance with any applicable requirement, nor does it relieve any owner or operator from liability for penalties for any noncompliance. ***Applicants are encouraged to seek an administrative consent order from the Department to address the possibility of penalties for noncompliance, and other enforcement actions.****

7:27-22.10 Completeness review

(a) Within 30 days of receipt of an application for an initial operating permit, a renewal, a minor modification, or significant modification, the Department will:

1. Determine that the application is administratively complete, and so notify the applicant; or

2. Notify the applicant that the application is administratively incomplete, specify in writing the additional information required for the Department to commence review of the application, and provide a reasonable due date by which the applicant shall submit the information to the Department.

(b) An application shall be deemed administratively complete upon the earliest of the following dates that is applicable:

1. The date the application is submitted, if the Department does not notify the applicant, within 60 days of its receipt of the application, that additional information is required;

2. The date upon which any additional information requested in writing by the Department is submitted, if the Department does not notify the applicant, within 60 days of its receipt of the information, the further information is required; or

3. The date *[the applicant receives a notice of determination of administrative completeness from the Department pursuant to (a)1 above]* ***that the Department determines that the application is administratively complete****.

(c) The Department may request additional information from an applicant at any time after the submittal of an application, regardless of whether or not the application is administratively complete at the time of the Department's information request. A Department request for additional information in regard to an application which has been determined to be complete pursuant to (b) above shall not alter the administrative completeness status of the application.

(d) In a request for additional information, the Department shall establish a ***reasonable*** date by which the information is due to the Department. Upon receipt of a written request for additional time, the Department may extend the due date for the submittal of the additional information.

(e) If an applicant fails to submit the information requested by the Department by its due date, the Department shall deny the application. In addition, the Department shall void any application shield in effect pursuant to N.J.A.C. 7:27-22.7***(f)*** *[as of]* ***effective the day following*** the due date.

(f) If an application is denied, the applicant may reapply at any time. The new application shall meet all requirements for an operating permit application, including the *[requisite]* fee ***requirement***.

7:27-22.11 Public comment

(a) This section sets forth the procedures by which the Department will obtain comment from the public and affected states on each of the following:

1. A draft operating permit developed by the Department following the receipt of an administratively complete application for an initial operating permit;

2. A draft operating permit developed by the Department following the receipt of an administratively complete application for a significant modification of an operating permit;

3. A draft operating permit developed by the Department following the receipt of an administratively complete application for renewal of an operating permit; and

4. A draft general operating permit developed by the Department pursuant to N.J.A.C. 7:27-22.14(a).

(b) The Department will provide a public comment period on the draft operating permit, during which the Department will accept written comments on the draft operating permit. The public comment period will be specified in the notice published pursuant to (c) below, and shall be at least 30 days.

(c) The Department will provide public notice of the opportunity for public comment on each draft operating permit. The notice will:

1. Identify the facility that will be subject to the operating permit, and provide the name and address of the owner or operator;

2. Indicate whether the draft operating permit is an initial operating permit, a significant modification, a renewal or a general operating permit;

3. Indicate the type of production processes involved in the draft operating permit and, for a significant modification, the emissions change that will result from the modification;

4. Give the name and address of the Department, including the name and telephone number of a person at the Department from whom interested persons may obtain additional information;

5. Announce the opportunity for public comment, and provide a description of the public comment procedures set forth in this section;

6. Specify the length of the public comment period; and

7. Include the time and location of any public hearing to be held on the draft operating permit. If no public hearing is scheduled, the notice shall include procedures for requesting a public hearing.

(d) The Department will publish the notice for each draft operating permit in a newspaper of general circulation in the area where the facility which is the subject of the application is located and will mail the notice to persons on a mailing list developed by the Department, including to persons who request in writing to be on the mailing list. The Department may also provide additional notice by using any other means the Department finds appropriate for assuring adequate notice to the public of the opportunity for public comment.

(e) Whenever there is a significant degree of public interest, the Department will hold a public hearing on the draft operating permit. The Department may schedule a public hearing and include it in the notice of opportunity for public comment pursuant to (c) above or, if the Department does not schedule a hearing, any person may request that the Department hold a public hearing on a draft operating permit. A request for a public hearing shall be submitted in writing to the Department no later than the published date of the close of the comment period, and shall include a statement of issues to be raised at the public hearing. ***The issues raised shall be relevant to the draft operating permit under review by the Department.***

(f) If a public hearing is held, the Department shall provide public notice of the public hearing at least 30 days in advance of the date the public hearing is scheduled.

(g) If in response to a request for a public hearing, the Department schedules a public hearing on a draft operating permit, the close of the public comment period shall be at 5:00 P.M. on the second State business day following the date of the public hearing ***unless a later date is specified in the notice provided pursuant to (f) above***. The Department may ***further*** extend the comment period by announcing the extension and its duration at the public hearing.

(h) At any public hearing on a draft operating permit, the Department may, at its discretion:

1. Limit the time allowed for oral statements; and

2. Request a person offering oral testimony to submit the statement also in writing.

(i) The Department shall maintain for five years a record of all persons who provided oral or written comment during the public comment period for an operating permit and of the issues raised. Such records will be available to the public.

(j) The Department, on or before publishing notice of a draft operating permit pursuant to (b) above, shall also give notice to the head of the designated air pollution control agency of any affected state, and will accept and consider any comments which are received from the affected state prior to the close of the public comment period. If the Department does not accept any recommendation provided in writing by an affected state during the public comment period, the Department will so inform the affected state and EPA in writing, setting forth the Department's reasons for not accepting the recommendation.

7:27-22.12 EPA comment

(a) After the close of the public comment period and consideration of the comments on the draft operating permit, the Department will prepare a proposed operating permit for EPA review. The Department will provide a copy of the proposed operating permit to EPA, the applicant and, upon request, to any other interested person.

(b) The Department will transmit the proposed operating permit to EPA, together with a copy of the following:

1. Any information provided by ***the*** applicant to the Department subsequent to the application being deemed administratively complete;

2. Any comments received from the public and from any affected state during the public comment period, and the Department's response to these comments; and

3. Any other supporting information necessary for EPA to review the application.

(c) If EPA objects to the proposed operating permit pursuant to the requirements of 40 CFR 70.8 during the 45 days following EPA's receipt of the proposed operating permit, the Department will revise the proposed operating permit to address EPA objection(s), and will submit the revised proposed operating permit to EPA, the applicant, and, upon request, to any other interested person.

(d) If the Department does not, within 90 days after its receipt of an objection from EPA, submit to EPA a proposed operating permit, revised to the satisfaction of EPA, the EPA may *[itself]* take final action on the application for an operating permit.

(e) If EPA does not object to the proposed operating permit within the 45 days following EPA's receipt of the proposed operating permit pursuant to (c) above or within 45 days following EPA's receipt of the revised proposed operating permit pursuant to (d) above, the Department will*[, after consideration of any comments submitted by EPA, the applicant, and other interested persons,]* take final action on the application pursuant to 7:27-22.13, except as provided in (g) below.

(f) If EPA does not object to the proposed operating permit within the 45 day period as set forth at (e) above, any person may

petition the EPA during the 60 days after the expiration of EPA's 45-day comment period, and may request that EPA object to the proposed operating permit. Any petition to EPA shall be based only on an objection that was raised by the petitioner with reasonable specificity during the public comment period unless:

1. The petitioner demonstrates that it was impracticable for the petitioner to raise the objection during the public comment period; or

2. The grounds for the objection arose after the public comment period closed.

(g) If EPA, in response to a petition made pursuant to (f) above, objects to the proposed operating permit before the Department has issued the permit, the Department will not issue a final operating permit until the EPA's objection is addressed to EPA's satisfaction.

(h) If EPA, in response to a petition made pursuant to (f) above, objects to the proposed operating permit after the Department has issued a final operating permit, the EPA may *[itself]* modify, terminate, or revoke the operating permit.

7:27-22.13 Final action on an application

(a) The Department will take final action on an application:

1. For an initial operating permit, within 18 months after the Department's receipt of an administratively complete application for an initial operating permit*[, unless EPA objects to the proposed operating permit pursuant to 7:27-22.11]*;

2. For an application for an operating permit renewal, within 12 months after the Department's receipt of an administratively complete renewal application;

3. For an application for a minor modification, within 90 days after the Department's receipt of an administratively complete application;

4. For an application for group processing of minor modifications, within 180 days after the Department's receipt of an administratively complete application;

5. For an application for a significant modification, within 12 months after the Department's receipt of an administratively complete application; or

6. For an application for an administrative amendment, within 60 days after the Department's receipt of an administratively complete application.

(b) Except pursuant to (c) below, final action by the Department on an application for an initial operating permit, renewal, significant modification, or minor modification shall be:

1. Issuance of the final operating permit, modification, or amendment *[as proposed]*;

2. *[Determination]* ***Written determination*** that the improper procedure was followed for requesting a modification or Departmental action, and identification of the proper procedure for processing the modification or obtaining the Departmental action; or

3. Denial of the application. ***If an application is denied, the Department shall state the reason(s) for the denial.***

(c) If the Department does not take final action on an application within the deadlines provided for each type of application, the applicant, and any person who commented on the draft operating permit during the public comment period, shall be entitled to bring an action, in accordance with N.J.A.C. 7:27-22.32, Hearings and appeals, to compel the Department to take final action on the application.

(d) After the Department has issued an initial operating permit, ***or a minor modification, significant modification, or operating permit renewal,*** the Department will provide a copy of the initial operating permit, as issued, to EPA.

7:27-22.14 General operating permits

(a) The Department may issue one or more general operating permits, promulgated through rulemaking. Such rulemaking will be conducted in accordance with*:*

1. *[the]* ***The*** Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq.*[, except that such rulemaking procedures shall also incorporate]*

2. *[the]* ***The*** public comment procedures set forth at N.J.A.C. 7:27-22.11*[.]***;

3. EPA comment procedures set forth at N.J.A.C. 7:27-*[22.13,]* ***22.12;*** and

4. *[any]* ***Any*** other procedural requirements related to the issuance of an operating permit.

(b) In accordance with the procedures set forth in this section, an owner or operator may apply to the Department for authorization under a general operating permit to operate any source operation, group of source operations, or facility which meets the applicability criteria set forth in a general operating permit issued by the Department. If the general operating permit applies to the entire facility, the general operating permit may serve as the operating permit for the facility. If the general operating permit applies to a part of the facility, the general operating permit may serve as a component of the operating permit for the facility.

(c) In an application for authorization to operate under a general operating permit, the owner or operator shall demonstrate how the facility or portion thereof:

1. Meets the applicability criteria set forth in the general operating permit; and

2. Will comply with all of the conditions of the general operating permit.

(d) A permittee shall operate a facility, or any portion thereof, for which authorization to operate under a general operating permit has been obtained from the Department, according to the terms and conditions of the general operating permit.

7:27-22.15 Temporary facility operating permits

(a) The Department may issue an operating permit to an owner or operator of a temporary facility which authorizes operation in more than one location during the term of the operating permit, provided that all locations at which the facility may be operated are listed in the application for the operating permit.

(b) An operating permit issued for a temporary facility shall require the permittee to:

1. Comply with all applicable requirements at all locations at which the temporary facility is operated;

2. Comply with all other applicable provisions of this chapter; and

3. Provide written notice, received at least 10 days in advance of each change in location, to:

i. The mayor of the municipality, or if there is no mayor, the governing body of the municipality to which the facility will be moved;

ii. The board of chosen freeholders or other governing body of the county to which the facility will be moved; *[and]*

iii. ***The local health agency, certified pursuant to the County Environmental Health Act, N.J.S.A. 26:3A2-21 et seq. (CEHA), and its implementing regulations, N.J.A.C. 7:1H, in the county to which the facility will be moved; and***

iv. The Department at the address given at N.J.A.C. 7:27-22.3(t) ***and the address given below:***

NJDEP
Air and Environmental Quality Enforcement
401 E. State Street
CN 422
Trenton, NJ 08625-0422*

(c) The notice required pursuant to (b)3 above shall include:

1. The location being vacated;

2. The location to which the facility will be moved;

3. The name, address, and telephone number of the permittee;

4. The Department assigned permit number, which identifies the operating permit; and

5. As to the local officials identified in (b) above, a copy of the operating permit.

(d) An operating permit issued for a temporary facility shall not relieve any person from the obligation to comply with any provision of this chapter, to obtain any other necessary authorization from other governmental agencies, or to comply with all other applicable Federal, State, and local laws, rules or regulations.

(e) In accordance with N.J.A.C. 7:27-22.29(g), a facility subject to EPA's acid deposition control program pursuant to Title IV of the CAA, 42 U.S.C. §7651 et seq., shall not be eligible for a temporary facility operating permit.

7:27-22.16 Operating permit contents

(a) The Department will include in each operating permit, drafted for, or issued to, a facility, emission limitations and standards, including any operational requirement necessary to assure compliance with all applicable requirements which apply to a source operation or a group of source operations or to the facility as a whole at the time of permit issuance.

(b) For each significant source operation at the facility, or, if applicable, for each group of source operations or for the ***entire*** facility *[as a whole]*, the operating permit shall:

1. Specify each applicable requirement and each associated permit condition, including any emission limitations and standards and any operational requirements;

2. Cite to the specific legal authority, including any State or Federal rule or regulation or any permit, which establishes the applicable requirement and any associated permit conditions;

3. Identify any difference in form between the permit condition and the applicable requirement upon which the permit condition is based; *[and]*

4. Specify the *[test method]* ***compliance assurance method*** (including a reference, if applicable, to where the *[test]* method is published) required to be used to determine compliance with the permit condition*[.]* ***; and***

5. Specifically designate as not being Federally enforceable any permit condition based on an applicable state requirement.

(c) If any other applicable Federal requirement is more stringent than an applicable requirement of EPA's acid deposition control regulations, both requirements shall be set forth in the operating permit pursuant to (b) above and both shall be enforceable by the Department and EPA.

(d) An operating permit may contain an alternative emission limit pursuant to N.J.A.C. 7:27-22.3(m), if:

1. The applicant has proposed the alternative emission limit in the application for the operating permit;

2. The applicant has proposed procedures that ensure that the alternative emissions limit is quantifiable, accountable, enforceable, and based on replicable procedures; *[and]*

3. The Department has determined, based on an equivalency demonstration provided by the applicant, that the alternative emissions limit proposed by the applicant is equivalent to, or more stringent than, that contained in an applicable requirement***; and***

4. The Department determines that the alternative emission limit is consistent with the SIP*.

(e) The Department shall incorporate into each operating permit the provisions of any effective preconstruction permit and operating certificate issued for the facility, or any part thereof, if the preconstruction permit or operating certificate was:

1. Issued prior to the date the applicant submitted the application for the operating permit to the Department, and included by the applicant in the application; or

2. Issued subsequent to the date the application was submitted to the Department and prior to the date the Department issues the draft operating permit.

(f) Each operating permit shall contain a severability clause which ensures the continued validity of all other permit conditions in the event of a challenge to any part of the operating permit.

(g) Each operating permit shall include the following statements:

1. The permittee shall comply with all conditions of the operating permit ***including the approved compliance plan****. Any noncompliance with a permit condition constitutes a violation of the New Jersey Air Pollution Control Act N.J.S.A. 26:2C-1 et seq., *[and of]* ***or*** the CAA, 42 U.S.C. §7401 et seq., ***or both,*** and is grounds for enforcement action; for ***termination,*** revocation ***and reissuance,*** or for *[reopening and]* modification of the operating permit; or for denial of an application for a renewal of the operating permit;

2. It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of *[this]* ***its*** operating permit;

3. This operating permit may be modified, terminated, or revoked for cause by EPA pursuant to *[N.J.A.C. 7:27-22.12(h)]* ***40 CFR 70.7(g)*** and revoked or reopened and modified ***for cause*** by the Department pursuant to N.J.A.C. 7:27-22.25;

4. The permittee shall furnish to the Department, within a reasonable time, any information that the Department may request in writing to determine whether cause exists for modifying, revoking and reissuing, or terminating this operating permit; or to determine compliance with the operating permit;

5. The filing of an application for a modification of an operating permit, or of a notice of planned changes or anticipated noncompliance, does not stay any operating permit conditon;

6. The operating permit does not convey any property rights of any sort, or any exclusive privilege;

7. Upon request, the permittee shall furnish to the Department copies of records required by the operating permit to be kept;

8. No permittee shall allow any air contaminant, including an air contaminant detectable by the sense of smell, to be present in the outdoor atmosphere in a quantity and duration which is, or tends to be, injurious to human health or welfare, animal or plant life or property, or which would unreasonably interfere with the enjoyment of life or property. This shall not include an air contaminant which occurs only in areas over which the permittee has exclusive use or occupancy***. Conditions relative only to nuisance situations, including odors, are not considered Federally enforceable****;

9. The Department and its authorized representatives shall have the right to enter and inspect any facility subject to this subchapter, or portion thereof, pursuant to N.J.A.C. 7:27-1***.31****; and

10. The permittee shall pay fees to the Department pursuant to this chapter.

(h) An operating permit may contain alternative operating scenario(s) pursuant to N.J.A.C. 7:27-22.27, provided that:

1. The applicant has proposed the alternative operating scenarios in the application for the operating permit; and

2. The Department is satisfied, based on the information provided by the applicant, that ***each source operation included in*** the alternative operating scenario***:*** *[will not result in any exceedance of the emission limits established for the base operating scenario or in the emission of any new air contaminant at a rate that exceeds the applicable de minimis emission levels set forth in Tables A and B at N.J.A.C. 7:27-22.6 under the alternative operating scenario(s).]*

i. Will not exceed the maximum allowable emission limit established in the operating permit for each air contaminant; and

ii. Will comply with all applicable requirements.*

(i) For any alternative operating scenario included, the operating permit shall contain permit conditions, including, but not limited to, the following:

1. The permittee shall*[, contemporaneously with making a]* ***maintain contemporaneous records at the facility of any*** *[change]* ***changes*** from one operating scenario to another*[, record in a log maintained at the facility the changeover]*; and

2. The permittee shall ensure that operation under each such alternative operating scenario ***complies with*** *[meets]* all permit conditions, applicable requirements, and the requirements of this chapter.

(j) An operating permit may contain provisions for intra-facility emissions trading within one or more groups of source operations, pursuant to N.J.A.C. 7:27-22.28.

(k) For any authorization of intra-facility emissions trading included, the operating permit shall contain permit conditions, including, but not limited to, the following:

1. The permittee shall maintain *[an emissions trading log at the facility in which the permittee shall record on a daily basis]* ***a record of*** the emissions trading that has occurred ***at the facility consistent with the specific terms and conditions of the emissions trading approval****; and

2. The permittee shall ensure that operation, notwithstanding the intra-facility emissions trading, meets all permit conditions, applicable requirements, and the requirements of this chapter.

(l) The operating permit shall contain provisions for the assertion of an affirmative defense to liability for penalties for any violation

of the operating permit occurring as a result of an equipment malfunction, an equipment startup, an equipment shutdown, or during the performance of necessary equipment maintenance. The affirmative defense shall be asserted and established as required by P.L. 1993, c.89 (adding N.J.S.A. 26:2C-19.1 through 26:2C-19.5) and any rules and regulations that the Department promulgates thereunder, and shall meet all of the requirements thereof. The permit shall also contain a provision for the assertion of an affirmative defense of emergency to liability for penalties or other sanctions for noncompliance with any technology based emission limitation in the operating permit, provided that the affirmative defense is asserted and established in compliance with 40 CFR 70.6(g) and meets all the requirements thereof.

(m) *[If requested by the applicant and approved by the Department, an operating permit shall contain authorization for replacement of specific equipment during the term of the operating permit as a seven-day-notice change pursuant to N.J.A.C. 7:27-22.22(c)3 and a schedule when such replacement is allowed.]* ***(Reserved)***

(n) Each operating permit shall include a compliance plan which includes all of the elements required for a proposed compliance plan pursuant to N.J.A.C. 7:27-22.9.

[(o) Each operating permit shall include provisions to implement the testing and monitoring requirements of N.J.A.C. 7:27-22.18, and the recordkeeping and reporting requirements of N.J.A.C. 7:27-22.19.]

(o) Each operating permit shall contain the following provisions with respect to monitoring, recordkeeping and reporting:

1. Provisions to implement the testing and monitoring requirements of N.J.A.C. 7:27-22.18, the recordkeeping and reporting requirements of N.J.A.C. 7:27-22.19, and all emissions monitoring and analysis procedures or compliance assurance methods required under the applicable requirements, including any procedures and methods promulgated pursuant to 40 CFR 64; and

2. Where the applicable requirement does not require periodic testing or instrumental or noninstrumental monitoring, provisions for periodic monitoring sufficient to yield reliable data from the relevant time period that are representative of the facility's compliance with the permit. Such monitoring requirements shall assure use of terms, test methods, units, averaging periods, and other statistical conventions consistent with the applicable requirement.

(p) Each operating permit will include a permit shield pursuant to *[the provisions of]* N.J.A.C. 7:27-22.17. If requested by the applicant in the application and approved by the Department, an operating permit shield shall acknowledge that specific provision(s) of potentially applicable requirement(s) do not apply to the facility, cite any such specific provision(s), and state that compliance with the provision(s) is not required.

(q) *[Any other provision of this section notwithstanding, an operating permit issued pursuant to N.J.A.C. 7:27-22.26(g)1 may include only those source operations which are subject to the MACT or GACT standard which formed the basis for the issuance of the operating permit.]* ***(Reserved)***

(r) If proposed by the applicant, pursuant to N.J.A.C. 7:27-22.6(j), and approved by the Department, the operating permit shall include the methods to be used to determine the actual emissions of *[each]* ***any*** significant source operation at the facility.

(s) Each operating permit shall specify an expiration date which shall be no later than five years from the date of issue.

(t) For facilities subject to EPA's acid deposition control program pursuant to Title IV of the CAA, 42 U.S.C. §7651 et seq., the operating permit shall include a permit condition prohibiting emissions from exceeding any allowances that the source lawfully holds under Title IV of the CAA or the regulations promulgated thereunder.

7:27-22.17 Permit shield

(a) The Department will include a permit shield in each operating permit ***as set forth at N.J.A.C. 7:27-22.16(p)***. A permit shield provides that compliance with the ***relevant*** conditions of the operating permit shall be deemed compliance with the specific applicable requirements ***that are in effect on the date of issuance of the draft operating permit, and*** which form the basis for *[these]* ***the*** conditions ***in the operating permit***, provided that the requirements of this section are met.

(b) A permit shield shall provided that:

1. For any applicable provision of an applicable requirement, if the provision is specifically included and identified in the operating permit, compliance with the *[provisions and]* conditions of the operating permit shall be deemed compliance with that provision of the applicable requirement; and

2. For any provision of a potentially applicable requirement, if the provision is specifically identified in the operating permit as not applicable to the facility, the permittee need not comply with the specifically identified provision.

(c) A permit shield shall *[cover the provisions of an initial]* ***apply only to operating permit conditions incorporated into the*** operating permit ***through certain procedures.***

1. A permit shield shall apply to conditions incorporated into the operating permit through the following:

i. Issuance of an initial operating permit;

ii. Issuance of an operating permit, *[a]* renewal***; or*** *[and any]*

iii. Any change made pursuant to the procedures for significant modification at N.J.A.C. 7:27-22.24*;*

iv. Any change made pursuant to the procedures for administrative amendments, ***provided the administrative amendment incorporates the provisions of a preconstruction permit that was subject to the same review procedures used for significant modification at N.J.A.C.7:27-22.4, including an opportunity for public comment.***

2. A permit shield shall not apply to provisions incorporated into the operating permit through procedures for:

i. Administrative amendment, except as noted at (c)1iv above;*

ii. Changes *[changes]* to insignificant source operations*;*

iii. *[, seven]* ***seven***-day-notice changes***; or***

iv. *[, or minor]* ***Minor*** modifications*[, set forth at N.J.A.C. 7:27-22.20, 22.21, 22.22 or 22.23 respectively, shall not be covered by a permit shield]*.

(d) If an operating permit does not expressly include or exclude an applicable requirement, the applicable requirement is not covered by the permit shield and the permittee shall comply with its provisions to the extent they apply to the permittee.

(e) If it is determined that an operating permit was issued based on inaccurate or incomplete information provided by the permittee, any permit shield provision in that operating permit shall be void as to the portions of the permit which are affected, directly or indirectly, by the inaccurate or incomplete information.

(f) Neither a permit shield, nor any provision in an operating permit, shall alter or affect the following:

1. The emergency orders provisions of 42 U.S.C. §7603, including the authority of EPA under that section;

2. The liability of an owner or operator of a facility for any violation of any applicable requirement prior to or at the time of permit issuance;

3. The applicable requirements of the acid deposition control program, consistent with 42 U.S.C. §7651g(a);

4. The ability of EPA to obtain information from a facility pursuant to the requirements for recordkeeping, monitoring, inspections and entry at 42 U.S.C. §7414; or

5. The Department's authority to enter and inspect a facility subject to this subchapter, pursuant to N.J.A.C. 7:27-1.

(g) A permit shield does not *[alleviate any liability by]* ***relieve*** the permittee ***of any liability*** for noncompliance with the operating permit.

7:27-22.18 Source emissions testing and monitoring

(a) This section sets forth the procedures by which the Department will implement the source emissions testing and monitoring requirements contained in an approved operating permit. ***Such procedures shall be consistent with the Federal rules for enhanced monitoring of stationary sources, set forth at 40 CFR Part 64. Any deadline in this section may be extended through written approval by the Department.***

(b) Within 90 days after approval of the operating permit, ***or within the time frame specified in the operating permit,*** a permittee shall submit, pursuant to this section, a request for approval of a protocol prepared in accordance with *[requirements of]* the Department's technical manual on Air Contaminant Testing and Monitoring. The protocol shall describe how the permittee proposes to carry out any source emissions testing or monitoring***, including any type of CMS monitoring,*** required by the operating permit.

(c) The protocol shall, in accordance with the Department's technical manual on Air Contaminant Testing and Monitoring, include *[all]* details of the implementation of the source emissions testing and monitoring practices required by the operating permit and shall specify *[all]* sampling and analytical procedures, equipment specifications, example calculations, and the form in which data will be submitted.

(d) The Department will inform the permittee in writing of any deficiencies in the proposed protocol, and will provide a reasonable deadline for correction of the deficiencies. The permittee shall correct the deficiencies and resubmit the protocol to the Department within the deadline.

(e) If the operating permit requires source emissions testing, the permittee shall carry out the following initial source emissions testing procedures:

1. Contact the Department within 30 days after approval of the protocol and schedule a testing date;

2. Perform the source emissions testing within 180 days after the Department's approval of the operating permit*[, unless another time period is approved by the Department in writing]*; and

3. Submit the source emissions test report to the Department, within 30 days after completion of the source emissions testing*[, unless another time period is specified by the Department in writing]*. The test report shall include all raw field and laboratory data, as well as the operating and production parameters required by the approved protocol, so that the Department may reproduce the calculations and verify the findings of the test report***.*** *[and]* ***The test report*** shall be reviewed and certified pursuant to (h) below before it is submitted to the Department.

(f) After completion of the initial source emissions testing required pursuant to (e) above, the permittee shall perform periodic source emissions testing in accordance with any applicable schedule in the operating permit, the approved protocol, and this section.

(g) If the operating permit requires monitoring using a CMS, the permittee shall perform the following initial procedures ***in accordance with the approved monitoring protocol***:

1. Install the CMS by the date specified in the operating permit;

2. Calibrate, operate and maintain all components of the CMS to measure continuously and record continuously the parameters specified in the operating permit *[in accordance with the approved monitoring protocol]*;

3. For facilities required to install CEMs, contact the Department within 30 days after approval of the monitoring protocol and schedule a date for a performance specification test *[conducted in accordance with the approved protocol,]* to verify that the CEM is operating according to the requirements of the operating permit;

4. Perform the performance specification test prior to any required source emissions testing and within 90 days after the latter of the following events:

i. Installation of the CMS; *[or]*

ii. The commencement of operation of the equipment being monitored; ***or***

iii. Department approval of the testing protocol;* and

5. Submit to the Department the performance specification report within 30 days after the completion of the performance specification test. The performance specification report shall include all raw field and laboratory data necessary for the Department to reproduce the test results as specified by the approved protocol and shall be reviewed and certified pursuant to (h) before it is submitted to the Department.

(h) Each source emissions test report or performance specification test report shall be reviewed and certified, pursuant to N.J.A.C. 7:27-1.39, by a licensed professional engineer or by an industrial hygienist certified by the American Board of Industrial Hygiene.

(i) Each permittee shall meet all requirements of the approved protocol during the term of the operating permit.

7:27-2.19 Recordkeeping and reporting

(a) Each permittee shall maintain records of all source emissions testing or monitoring performed at the facility and required by the operating permit ***in accordance with this section. Records shall be maintained***, for at least five years from the date of each sample, measurement, or report. Each permittee shall maintain all other records required by the operating permit for a period of five years from the date each record is made.

(b) Source emissions testing or monitoring records shall contain, at a minimum, the following information***, unless alternative types of records or recordkeeping are expressly approved in the operating permit***:

1. The date, source operation, and time of sampling or measurements;

2. The date(s) analyses were performed;

3. The company and the name of the person representing that company who was responsible for performing the sampling, measurements or analyses;

4. The analytical techniques or methods used;

5. The results of such analyses;

6. The operating conditions***, as specified in the operating permit,*** existing at the time of sampling or measurement***. If the record indicates a deviation from applicable requirements at a facility equipped with a CMS, the permittee shall include all data recorded beginning one hour before the recorded deviation and continuing through one hour after the recorded deviation.***

7. All calibration and maintenance records, and all original strip-chart recordings, or the equivalent for continuous monitoring instrumentation;

8. Copies of all reports required by the operating permit; and

9. Any other information required by the Department to interpret the monitoring data.

(c) A permittee shall submit reports of all source emissions testing and monitoring required by the operating permit, and supporting information, to the Department *[every six months, beginning from the date of issuance of the operating permit, or more often if specified in the operating permit]* in accordance with (d) and (e) below. The reports shall conform to a format acceptable to the Department. The reports shall be certified pursuant to N.J.A.C. 7:27-1.39 by a responsible official.

(d) A report submitted pursuant to (c) above shall be submitted:

1. For a source emissions test report, within 30 days after the completion of the sampling, unless a longer period for submittal is approved in advance in writing by the Department; *[and]*

2. For a CMS report, within 30 days of completion of each calendar quarter for the calendar quarter***; and***

3. For any other report or supporting information relating to testing or monitoring required by the operating permit to be performed from January 1 through June 30, by July 30 of the same calendar year; or from July 1 through December 31, by January 30 of the following calendar year*.

(e) Any report submitted pursuant to (c) above shall clearly identify all deviations from operating permit requirements, including those attributable to emergencies, startup, shutdown and maintenance, the probable cause of such deviations, and any corrective actions or preventive measures taken.

(f) Each permittee shall submit ***to the Department, at the address given in N.J.A.C. 7:27-22.9(d), and to EPA at the address given in N.J.A.C. 7:27-22.4(d),*** a periodic compliance certification, in accordance with the schedule for compliance certifications set forth in the compliance plan in the operating permit. This periodic compliance certification shall include the following:

1. For each applicable requirement, a statement that the facility is:

i. In compliance with the applicable requirement ***and, if so, whether the compliance is continuous or intermittent, as defined***

in the Federal rules for the enhanced monitoring of stationary sources set forth at 40 CFR Part 64*;

ii. In compliance with a compliance schedule, included in the operating permit ***pursuant to N.J.A.C. 7:27-22.9(c)7ii***, which includes a sequence of actions with milestones leading to compliance with the applicable requirement;

iii. In compliance with an order or consent decree not incorporated into a compliance schedule; or

iv. Not in compliance;

2. For each applicable requirement, a statement of the methods used to determine the facility's compliance status, including a description of any monitoring, recordkeeping, and reporting requirements and test methods; and

3. Certification in accordance with the certification procedures at N.J.A.C. 7:27-1.39.

(g) Any deviation from operating permit requirements which results in a release of air contaminants in a quantity or concentration which poses a potential threat to public health, welfare or the environment or which might reasonably result in citizen complaints shall immediately be reported by the permittee to the Department on the Department hotline at (609) 292-7172, pursuant to N.J.S.A. 26:2C-19(e). Any deviation from operating permit requirements which results in a release of air contaminants in a quantity or concentration which poses no potential threat to public health, welfare or the environment and which will not likely result in citizen complaints shall be reported in writing by the permittee to the Department by 5:00 P.M. on the second business day after the deviation occurred, except for deviations identified by source emissions testing reports.

(h) A permittee shall, upon the Department's request, submit any record relevant to the operating permit or to the emission of any air contaminant from the facility. Such record shall be submitted to the Department within 30 days of the request by the Department, or within a longer time period if approved in writing by the Department, and shall be transmitted on paper, on computer disk, or electronically, at the discretion of the Department.

(i) A permittee shall make all information in (a) through (d) above, as well as following, readily available for inspection at the facility***. If the facility is not regularly staffed, the information shall be available at the New Jersey office of the permittee which is closest to the permitted facility. The information shall be available*** at all times, pursuant to the Department's right to inspect the facility set forth at N.J.A.C. 7:27-1:

1. The operating permit together with any revisions thereto, including any administrative amendments, changes to insignificant source operations, seven-day-notice changes, minor modifications, and significant modifications;

2. *[An up-to-date]* ***Up-to-date*** diagram***s*** of the facility indicating:

i. The location of all source operations, including all equipment and control apparatus; and

ii. All stacks or chimneys, together with any stack designation included in the operating permit;

3. Records required by *[this section]* ***the operating permit***, and records relevant to the use of any source operation including, but not limited to, manufacturer's instructions for operation and maintenance, the kind and amount of air contaminants emitted, rates of production, and hours of operation;

4. Records documenting any construction, installation, or alteration, including the dates thereof, of any equipment or control apparatus during the term of the operating permit;

5. The date of commencement of operation of any equipment or control apparatus***, if operation commenced during the term of the operating permit***; and

6. Any preconstruction permit issued for the equipment or control apparatus.

(j) Requirements for recordkeeping and reporting shall be consistent with the Federal rules for enhanced monitoring of stationary sources set forth at 40 CFR Part 64.*

7:27-22.20 Administrative amendments

*[(a) A permittee may make any of the changes to an operating permit set forth at (b) below at a facility subject to an operating permit through the procedures for an administrative amendment set forth in this section. The Department shall incorporate the change into the operating permit. If the requirements of this section are met, the permittee may, at its own risk, make the change at the facility upon submittal of the amendment, but no sooner.

(b) A change may be made as an administrative amendment if the proposed change is:

1. A change in company name or mailing address; division name; plant name or address; name or address of each owner's agent; or name or telephone number of the on-site facility manager, any additional plant contact, or of any responsible official (as defined at N.J.A.C. 7:27-1.4);

2. Correction of any typographical error, including a mistake in the spelling, punctuation, or formatting of text, but excluding a change to any word, term, number or usage which would allow an emission increase or would constitute a seven-day-notice change, minor modification, or significant modification;

3. A transfer of ownership or operational control of the facility;

4. A change in any company stack designation;

5. A decrease, not required by an applicable requirement, in the maximum allowable rate of emission of any air contaminant or category of air contaminants, provided that the decrease does not entail either any physical change made to equipment or control apparatus or any operational change;

6. A decrease, not required by an applicable requirement, in maximum allowable hours of operation per time period;

7. A decrease, not required by an applicable requirement, in maximum allowable rate of production, provided that the decrease does not entail any physical change made to equipment or control apparatus or any operational change; or

8. An increase in the frequency of any monitoring, recordkeeping or reporting required by the operating permit.

(c) A permittee shall, pursuant to (d) and (e) below, submit a timely and administratively complete application for any change being made pursuant to this section as an administrative amendment.

(d) To be deemed timely, an application for an administrative amendment shall be submitted to the Department and EPA prior to the change being made.

(e) To be deemed administratively complete, an application for an administrative amendment shall include the Department assigned operating permit number, a copy of the portion of the operating permit which will be affected by the administrative amendment, a description of and reason for the amendment, and a copy of the revised portions of the operating permit reflecting the administrative amendment. For a transfer of ownership or operational control of the facility, the administrative amendment shall also include the information required in (f) below.

(f) To process a transfer in ownership or operational control pursuant to (b)2 above, a permittee shall attach to the application for an administrative amendment a written agreement between the current and new permittees, specifying the date for the transfer of ownership or operational control, permit responsibility, coverage and liability.

(g) Within 60 days of the Department's receipt of an application for an administrative amendment, the Department shall:

1. Notify the permittee that the change was not eligible for processing as an administrative amendment. In this event, a permittee may be subject to penalties for noncompliance with the operating permit during the time the change was in effect, pursuant to N.J.A.C. 7:27A; or

2. Incorporate the administrative amendment into the operating permit.

(h) A change made through an administrative amendment shall not be covered by any permit shield contained in the operating permit.

(i) A permittee may elect to make as a minor modification any change authorized to be made as an administrative amendment.]*

(Reserved)*

7:27-22.21 Changes to insignificant source operations

*[(a) A permittee may, pursuant to this section, make certain changes to equipment, control apparatus or a source operation, or to the use thereof, without notifying the Department or EPA until the renewal of the operating permit. In the application for the renewal of the operating permit, the permittee shall identify these changes.

(b) Any change made to an insignificant source operation during the term of an operating permit, including the construction or installation of a new insignificant source operation or the shutdown of an existing insignificant source operation, may be made pursuant to the procedures set forth in (a) above, provided that the change does not cause:

i. The source operation to become subject to an applicable requirement;

ii. The potential to emit of the source operation to exceed any applicable de minimis emissions level set forth in Table A or B at N.J.A.C. 7:27-22.6; and

iii. The source operation to become subject to preconstruction permit requirements pursuant to N.J.A.C. 7:27-8.

(c) A record of any change made to an insignificant source operation during the term of an operating permit, including the construction or installation of a new insignificant source operation or the shutdown of an existing insignificant source operation, shall be maintained in a log book at the facility, if such change would change the information provided in the application for the currently effective operating permit. Upon the request of any authorized representative of the Department or EPA, the permittee shall make this log book available for review.

(d) The permittee shall include all changes recorded pursuant to (c) above in the application for renewal of the operating permit.

(e) A change which is made pursuant to this section shall not be covered by any permit shield contained in the operating permit.]*

(Reserved)

7:27-22.22 Seven-day-notice changes

*[(a) A permittee may make any of the changes at (c) below through the procedures for a seven-day-notice change set forth in this section. The Department shall attach the notice of the seven-day-notice change to the operating permit, but shall not revise the operating permit until the next application for a renewal. If the requirements of this section are met, a permittee may make a seven-day-notice change seven days after the Department's receipt of the notice of the change.

(b) Any other provisions of this section notwithstanding, no change may be made pursuant to this section if the change would:

1. Require an increase in any emissions limit established in the operating permit, including any maximum allowable emissions rate or concentration or any emissions cap;

2. Include construction, installation, or alteration of equipment or control apparatus; or would include replacement of equipment or control apparatus, or of any substantial component thereof, except as provided at (c)2, 3 or 11 below;

3. Change a monitoring, recordkeeping, or reporting requirement set forth in the operating permit, if the changed requirement would be inconsistent with, or less stringent than, the existing requirement; or

4. Constitute a modification under any provision of Title I of the CAA.

(c) Except as provided at (b) above, any of the following changes may be made as seven-day notice changes, pursuant to the procedures of this section:

1. A change in the contents of a storage tank, bin, silo or other storage container, for which a preconstruction permit and certificate are in effect, provided such change does not:

i. Involve the use or storage of any HAP; or

ii. Cause the storage tank to become, pursuant to N.J.A.C. 7:27-16.2(b), subject to any control requirement to which the storage tank was not previously subject;

2. Replacement of any equipment or control apparatus which is not a substantial component as defined at N.J.A.C. 7:27-22.1, provided that:

i. The replacement equipment or control apparatus operates on the same physical or chemical principle as that which is being replaced;

ii. The replacement equipment or control apparatus is equivalent to, or better than, for the purpose of air pollution control, that which is being replaced;

iii. A preconstruction permit or operating permit is in effect for the equipment or control apparatus; and

iv. The date of approval of the preconstruction permit authorizing the installation of the equipment or control apparatus being replaced is less than five years prior to the date of installation of the replacement equipment or control apparatus;

3. Replacement of any equipment or control apparatus which is a substantial component as defined at N.J.A.C. 7:27-22.1, provided that:

i. The replacement is authorized in the operating permit;

ii. The replacement is made in accordance with a schedule included in the operating permit or is identified in the permit or certificate as a spare component kept on site for replacement purposes; and

iii. The component being replaced was installed less than five years previous to the replacement;

4. Any of the following changes to a stack or chimney or the use thereof, provided that the change is in compliance with EPA stack height regulations promulgated at 40 CFR 51:

i. A change in the number of stacks or chimneys serving the equipment or control apparatus, provided that the change does not result in any discharge height lower than that of the tallest stack or chimney existing prior to the change;

ii. A decrease in the diameter of a stack or chimney, provided that the exhaust is vented upward;

iii. The replacement of an existing stack or chimney with a taller stack or chimney, provided that this results in an effective stack height which is no less than that existing before the change; or

iv. An increase in the exit temperature or volume of gas emitted from a stack or chimney;

5. Any reconfiguration to an alternate operating scenario, including to an alternate configuration or a change in the production process, not authorized in the operating permit in effect, provided that the notice to the Department of the change contains the information required at 7:27-22.27 and that the alternate operating scenario conforms with the requirements of that section;

6. Addition, replacement, or removal of auxiliary devices or appurtenances serving an equipment or control apparatus;

7. A change in the relative use, expressed in percent by weight, of any raw material in the operation of equipment or control apparatus or in the process, including the introduction of a raw material not authorized in the permit or certificate or operating permit in effect;

8. A decrease in the maximum allowable rate of emission of an air contaminant or category of air contaminants based on operational change, provided that the decrease does not entail any physical change made to an equipment or control apparatus;

9. A modification of an authorization for intra-facility emissions trading included in an operating permit pursuant to N.J.A.C. 7:27-22.28;

10. A change in operation, as provided for by N.J.A.C. 7:27-22.28, which implements intra-facility emissions trading not expressly allowed by the operating permit, provided that:

i. The intra-facility emissions trading is conducted pursuant to the following provisions of this chapter allowing such emissions trading:

(1) The mathematical combination provisions of N.J.A.C. 7:27-9.2(d);

(2) The emissions averaging provisions of proposed N.J.A.C. 7:27-19.6; or

(3) Any emissions averaging provisions of this chapter that expressly allow the averaging to be incorporated into an operating permit pursuant to this section;

ii. The intra-facility emissions trading is approved through a preconstruction permit issued by the Department pursuant to N.J.A.C. 7:27-8; and

iii. The permittee conforms with the intra-facility emissions trading provisions set forth at N.J.A.C. 7:27-22.28;

11. Modification of equipment or control apparatus, or installation of new equipment or control apparatus, provided that:

i. The equipment or control apparatus is at a facility with an approved facility-wide permit, as defined at N.J.A.C. 7:27-22.1;

ii. The modification or installation meets the criteria for an exemption for facilities with a facility-wide permit, set forth at N.J.A.C. 7:27-8.17; and

iii. The modification or installation would not constitute a significant modification pursuant to N.J.A.C. 7:27-22.24;

12. Incorporation into the operating permit of an applicable requirement which was not previously applicable to the facility, provided that:

i. The facility is operating in compliance with the applicable requirement as of the date it becomes applicable to the facility; and

ii. No change to any source operation or to any production process is made at the facility as a result of the applicability of the applicable requirement; or

13. Relocation of a temporary facility to a site not specifically authorized in the operating permit, unless:

i. Air quality simulation or risk assessment is required pursuant to N.J.A.C. 7:27-22.8(d); and

ii. The operating permit specifies that a minor or significant modification is required for the relocation.

(d) A permittee shall, pursuant to (e) and (f) below, submit a timely and administratively complete notice for any change being made, pursuant to this section as a seven-day-notice change.

(e) To be deemed timely, a notice shall be submitted to the Department and EPA at least seven days prior to the change being made at the facility.

(f) To be deemed administratively complete, the notice shall include all information required by the form of notice obtained from the Department, which form shall require the following information:

1. A description of the planned change, and a statement of the reason the change is being made;

2. The date(s) or schedule for when the change will be made, or a description of the types of circumstances under which the change would be made;

3. The specific source operations that will be changed or will be affected by the change;

4. For each source operation given in (f)3 above, each air contaminant for which the quantity or rate of actual emissions would be increased or decreased as a result of the change, and the quantity of that increase or decrease, including any new air contaminant which may be emitted as a result of the change;

5. Specification of any permit requirement or applicable requirement that will be:

i. Complied with through the change; or

ii. No longer applicable as a result of the change;

6. A statement affirming that the facility will comply with all applicable requirements;

7. Certification of the notice of the change in accordance with N.J.A.C. 7:27-1.39; and

8. Any other information that is reasonably necessary to enable the Department to determine whether the notice satisfies the requirements of this section.

(g) To be administratively complete, any notice submitted pursuant to (c)11 above for a modification of equipment or control apparatus, or installation of new equipment or control apparatus, at a facility with an approved facility-wide permit, shall include a Pollution Prevention Plan Modification or Pollution Prevention Assessment pursuant to N.J.A.C. 7:1K-3 and 4.

(h) No permittee may make a change at a facility pursuant to this section unless the written notice of the change is complete and is received by both the Department and EPA at least seven days before the change is made.

(i) If the notice is not received by the Department at least seven days prior to the change, the permittee shall be liable for penalties for each day between the day the change was made, and the seventh day after the Department's receipt of the notice.

(j) Upon receipt of a notice of a seven-day-notice change, the Department will issue an acknowledgment of receipt of the notice and file the notice as an attachment to the operating permit. Such acknowledgement does not constitute approval by the Department of the change as a seven-day-notice change. The permittee shall include all such changes in the application for the next renewal of the operating permit, in accordance with N.J.A.C. 7:27-22.30.

(k) If the Department subsequently determines that the change filed with an operating permit pursuant to (i) above is not eligible for processing through seven-day-notice change procedures, the permittee shall be subject to penalties for noncompliance with the permit, pursuant to N.J.A.C. 7:27A-3, for each day during which the change was in operation. The Department's failure to notify a permittee that a change is not eligible for processing as a seven-day-notice change shall not be a defense to liability for such penalties.

(l) The permittee shall attach a copy of each notice submitted pursuant to this section to the copy of the operating permit the permittee maintains at the facility.

(m) The permit shield described at N.J.A.C. 7:27-22.17 shall not apply to any change made pursuant to this section.

(n) A permittee may elect to make as a minor modification, or as part of a significant modification, any change authorized to be made as a seven-day-notice change.] ***(Reserved)***

7:27-22.23 Minor modifications

*[(a) A permittee may make any change given at (c) below through the procedures for minor modifications set forth in this section. The Department shall, upon approval of an application for a minor modificaton, incorporate the changes into the operating permit.

(b) The proposed change may, at the permittee's risk, be made at the facility as soon as the administratively complete application or the minor modification is received by the Department, but no sooner. An administratively complete application for a minor modification shall include all the information required by this secton, including an approved preconstruction permit for the corresponding alteration. Any permittee who elects to implement the change proposed in an application for a minor modification prior to the Department's final action on the application (that is, between the time of the Department's receipt of the administratively complete application for a minor modification and the Department's final action on the application) shall comply with both the applicable requirements governing the change and the proposed minor modification. During this time, the facility need not comply with the existing permit provisions it seeks to modify. However, if the permittee fails to comply with the proposed permit provisions during this time, the existing permit provisions it seeks to modify may be enforced against it.

(c) Any of the following changes may be made as a minor modification, unless the change constitutes a significant modification pursuant to N.J.A.C. 7:27-22.23.

1. A change in the location of the point of discharge of any air contaminant from equipment or contol apparatus into the outdoor atmosphere, unless the change is authorized in the preconstruction permit or certificate in effect;

2. Replacement of equipment or control apparatus or of any substantial component thereof if:

i. The replacement equipment or control apparatus does not operate on the same physical or chemical principle as that which is being replaced;

ii. The replacement equipment or control apparatus is not equivalent to, or better than, for the purpose of air pollution control, that which is being replaced;

iii. The equipment or control apparatus is a substantial component, as defined at N.J.A.C. 7:27-22.1;

iv. No preconstruction permit or operating permit is in effect for the equipment or control apparatus; or

v. The date of approval of the preconstruction permit authorizing the installation of the equipment or control apparatus being replaced is more than five years prior to the date of installation of the replacement equipment or control apparatus;

3. The introduction of any new raw material to equipment or control apparatus for which no certificate or operating permit is in effect, including the change of contents of a storage tank for which no certificate is in effect;

4. Any of the following changes to equipment or control apparatus, or the use thereof, if the change may increase the concentration or rate of any air contaminant emission:

i. Addition, replacement, or removal of auxiliary devices or appurtenances;

ii. Change in the relative use, expressed in percent by weight, of any raw material in the operation of equipment or control apparatus or in the process, including the introduction of a raw material not authorized in the preconstruction permit or certificate or operating permit in effect; or

iii. Change in the production process in which the equipment or control apparatus is used;

5. Increase in the concentration or rate of emission of any air contaminant above that authorized by the preconstruction permit or certificate, or operating permit, in effect, including an increase in any maximum allowable emission rate or concentration, or any emissions cap;

6. Emission of any air contaminant not authorized by the preconstruction permit or certificate, or operating permit, in effect;

7. Any change to a stack or chimney or the use thereof, including any change to a stack dispersion parameter including, but not limited to, temperature, velocity, direction, or volumetric flow rate, if:

i. The change is not in compliance with EPA stack height regulations promulgated at 40 CFR 51; or

ii. The change may result in an increase in the ambient concentration of any air contaminant;

8. Any change in the concentration of any air contaminant in the influent to existing control apparatus above that authorized in the preconstruction permit or certificate, or operating permit, in effect;

9. Any increase in the total hours of operation per time period or the rate of production above that authorized in the preconstruction permit or certificate, or operating permit, in effect;

10. Any change to equipment or control apparatus, or to the use thereof, if the change will result in a contravention of any State or Federal ambient air quality standard, any provision of N.J.A.C. 7:27, or any condition or approval of any preconstruction permit or certificate in effect; and

11. Any change which is eligible to be processed as an administrative amendment, a change to an insignificant source operation or a seven-day-notice change pursuant to N.J.A.C. 7:27-20, 22.21 or 22.22, respectively;

(d) A permittee shall, pursuant to (e), (f), (g), (h) and (s) below, submit a timely and administratively complete application for any change being made pursuant to this section as a minor modification.

(e) To be deemed timely, an application for a minor modification shall be submitted to the Department and EPA prior to the change being made at the facility.

(f) In order to be considered administratively complete, an application for a minor modification shall meet all application contents requirements for an initial operating permit set forth at N.J.A.C. 7:27-22.6, except that an application for a minor modification shall include only such information as is relevant to the proposed modification. In addition, the application shall include, at a minimum:

1. A description of the proposed change, the emissions resulting from the change, and any new applicable requirement which will apply if the change occurs;

2. A proposed draft operating permit reflecting the proposed change;

3. Certification by a responsible official, consistent with N.J.A.C. 7:27-1.39, that the proposed change is eligible to be processed as a minor modification pursuant to (c) above; and

4. Completed forms, available at the address in N.J.A.C. 7:27-22.3(t), for the Department to use to notify EPA and affected states of the proposed change.

(g) (Reserved)

(h) To be deemed administratively complete, any application proposing the incorporation into the operating permit of a new alternative operating scenario or a new authorization for intra-facility emissions trading, not authorized by the existing operating permit, shall also meet the requirements set forth at N.J.A.C. 7:27-22.27 or 22.28, respectively.

(i) An application for a minor modification shall be submitted simultaneously with the application for a preconstruction permit for the proposed change, required pursuant to N.J.A.C. 7:27-8. The Department will initiate the review of both applications simultaneously. However, the application for a minor modification shall not be deemed administratively complete until the Department approves the application for the preconstruction permit; and the time periods set forth in this section for Department action on an administratively complete application for a minor modification shall not begin until the preconstruction permit is approved.

(j) If the application for a minor modification is administratively incomplete, the Department may deny the application, or request additional information.

(k) If the Department's issuance of a preconstruction permit renders an application for a minor modification administratively complete, the Department will, within five working days, notify the EPA and any affected state that the application is administratively complete. EPA and affected states will have 45 days from their receipt of such notice to notify the Department of any objection to, or comment on, the application. Such objection or comment shall be sent to the Department at the address set forth at N.J.A.C. 7:27-22.3(t). Unlike applications for initial operating permits, significant modifications, and renewals, applications for minor modification applications do not require public comment.

(l) Within 90 days after the application for a minor modification is administratively complete, or 15 days after the completion of EPA's 45-day review period, whichever is later, the Department will:

1. Approve the modification;

2. Deny the modification;

3. Determine that the modification requires processing as a significant modification. In such a case, the Department will terminate the application and so notify the applicant; or

4. Revise the applicant's proposed operating permit modifications, approve the modification as revised, and transmit it to the applicant.

(m) Once the Department approves a minor modification, the Department will submit a copy of the revised portions of the operating permit to EPA.

(n) The Department will not take final action on an application for a minor modification until EPA's 45-day review period has expired, or until EPA has notified the Department that it will not object to the approval of the modification, whichever comes first, or until any EPA objections have been resolved.

(o) If the Department does not, in its final action on the application, accept any recommendation on the proposed minor modification submitted by an affected state, the Department wil notify EPA and the affected state of its reasons for not accepting the recommendation.

(p) An applicant may request that the Department group-process two or more applications for minor permit modifications meeting the requirements of (r) below. Under group processing procedures, a permittee may request that all pending applications for minor modifications be group-processed. The Department will then process the applications together, using the procedures set forth in this section for minor modifications, including the provisions at (r), (s) and (t) below, which apply specifically to group processing of minor modifications.

(q) Minor modifications may be submitted for group processing only if:

1. Each proposed permit modification meets the criteria in this section for minor permit modifications; and

2. The emissions increases which would be caused by the modifications would, in the aggregate, be less than the least of the following:

i. Ten percent of the total emissions allowed by the operating permit for the source operations for which the changes are re-

quested. If the source operation emits more than one containment, the increase of each contaminant shall be calculated separately. For example, if a unit is permitted to emit 10 tons per year of SO_2 and 10 tons per year of lead, minor modifications could not be group processed unless the aggregate increase in SO_2 emissions resulting from the modifications would be less than one ton per year, and the aggregate increase in lead emissions resulting from the modifications would be less than one ton per year;

ii. Twenty percent of the threshold amount of the contaminant listed at N.J.A.C. 7:27-22.2(a)1, Applicability. For example, for a facility which emits VOCs, modifications could not be group processed unless the total emission increases of VOCs resulting from the modifications would be less than five tons per year; or

iii. Five tons per year.

(r) To obtain approval for group processing, the permittee shall submit an application on forms obtained from the Department at the address in N.J.A.C. 7:27-22.3(t), and shall meet the requirements of (h) and (i) above. In addition, to be deemed administratively complete, the application shall include a list of all of the facility's pending applications for minor modification, and a determination of whether the requested modification, aggregated with these other applications, equals or exceeds the threshold set under (q)2 above.

(s) On a quarterly basis or within five business days of receipt of an application for group-processing, whichever is earlier, the Department will notify EPA and affected States of the requested minor modifications.

(t) The Department shall act on an application for a minor modification submitted for group processing within 180 days of receipt of the request for group processing or within 15 days after the end of EPA's 45 day review period, whichever is later.]* ***(Reserved)***

7:27-22.24 Significant modifications

*[(a) Notwithstanding any other provision of this subchapter, a permittee is required to make any of the changes listed at (b) below pursuant to the significant modification procedures section set forth in this section. The Department shall, upon its approval of an application for a significant modification, incorporate the change(s) into the operating permit. The permittee shall not make the change proposed in an application for a significant modification until the Department has approved the significant modification.

(b) Any of the following changes shall be made as a significant modification:

1. A change which causes the facility to be subject to, or which would constitute a modification pursuant to, any of the following:

i. Emission offset requirements pursuant to N.J.A.C. 7:27-18.2(a) and (b);

ii. NSPS regulations at 40 CFR 60;

iii. NESHAPS regulations at 40 CFR 63;

iv. PSD regulations at 40 CFR 52; or

v. Federal visibility regulations promulgated pursuant to 42 U.S.C. §7491 or 7492;

2. A change which relaxes:

i. Any monitoring, recordkeeping or reporting required by the operating permit; or

ii. Any provision of the compliance plan, including any lengthening of the time that a source operation is in noncompliance beyond the schedule contained in the compliance plan;

3. A change which requires a case-by-case determination of an emission limitation or other standard contained in a State or Federal rule. This includes, for example, an application for a variance from a specific emission limit. This shall not include emission limitations or standards established in a preconstruction permit to incorporate advances in the art of air pollution control, as required pursuant to N.J.A.C. 7:27-8;

4. A relocation of a temporary facility to a site, other than is authorized in the operating permit, if air quality simulation modeling or risk assessment is required for the application pursuant to N.J.A.C. 7:27-22.8;

5. A change which establishes or changes a permit condition for which there is no corresponding underlying applicable requirement, and which the facility has assumed to avoid an applicable requirement to which the facility would otherwise be subject. Such conditions include:

i. A Federally enforceable emissions cap assumed to avoid classification as a major facility or to avoid becoming subject to:

(1) Emission offset requirements pursuant to N.J.A.C. 7:27-18.2;

(2) NSPS regulations at 40 CFR 60;

(3) NESHAPS regulations at 40 CFR 63;

(4) PSD regulations at 40 CFR 52; or

(5) Federal visibility regulations promulgated pursuant to 42 U.S.C. §7491 or 7492;

ii. An alternative emissions limit for early reductions of HAPs approved pursuant to N.J.A.C. 7:27-22.26 or the regulations promulgated under 42 U.S.C. §7412(i)(5);

6. Any incorporation into the operating permit of a new alternative operating scenario or a new authorization for intra-facility emissions trading, if such an incorporation does not qualify as a seven-day-notice change pursuant to N.J.A.C. 7:27-22.22, or a minor modification pursuant to N.J.A.C. 7:27-22.23; or

7. Any other change that does not constitute an administrative amendment, seven-day-notice change, or minor modification.

(c) A permittee shall, pursuant to (d) and (e) below, submit a timely and administratively complete application for any change at a facility which, pursuant to (b) above, constitutes a significant modification.

(d) To be deemed timely, an application for a significant modification shall be submitted to the Department and EPA at least 12 months prior to the planned commencement of operation of any source operation proposed to be modified.

(e) An application for a significant modification may, at the applicant's discretion, be submitted simultaneously with the corresponding application for a preconstruction permit for the proposed change, required pursuant to N.J.A.C. 7:27-8. The Department will initiate the review of both applications simultaneously. However, the application for a significant modification shall not be deemed administratively complete until the Department approves the application for the preconstruction permit; and the time periods set forth in this section for Department action on an administratively complete application for a significant modification shall not begin until the application for the preconstruction permit is approved. If the Department denies the application for the preconstruction permit, the Department shall also deny the application for the corresponding significant modification.

(f) To be deemed administratively complete, an application for a significant modification shall meet all application contents requirements for an initial operating permit set forth at N.J.A.C. 7:27-22.6, except that an application for a significant modification shall include only such information as is relevant to the proposed modification.]* ***(Reserved)***

7:27-22.25 Department initiated operating permit modifications

*[(a) An operating permit may be revoked or reopened and modified by the Department pursuant to this section. Any Department initiated permit revocation or modification shall be processed by the Department in accordance with the procedures for a significant modification.

(b) Upon a written request from the Department, a permittee shall furnish to the Department, within 30 days or within a longer time period established by the Department in the request, any information that the Department may request to determine whether cause exists for revoking, or reopening and modifying the permit.

(c) At least 30 days prior to reopening an operating permit, the Department will notify the permittee that action is necessary to modify the operating permit and that the Department will revoke, or reopen and modify, the operating permit unless the permittee acts to apply for or otherwise implement the necessary modification(s). A shorter time period may be provided if the Deparment determines that continued operation of the facility under its current operating permit may adversely affect human health or welfare, or the environment.

(d) The notice of a reopening made pursuant to (c) above will contain a reasonable deadline for action by the permittee.

(e) The Department shall reopen and modify an operating permit if any of the following occur:

1. The permittee fails to act within the time specified in the notice in (d) above to incorporate any of the following into the operating permit:

i. An additional applicable requirement which has become applicable to the facility; or

ii. A change to an applicable requirement which was previously applicable to the facility;

2. The Department or EPA determines that the permit contains a material mistake or that inaccurate statements were made in establishing the emissions standards, limitations or other provisions or conditions of the permit;

3. EPA requires the reopening of an operating permit pursuant to 40 CFR §70.7(g); or

4. The Department or EPA determine that the operating permit must be revised to assure compliance with applicable requirements.

(f) No reopening is required to incorporate a new applicable requirement pursuant to (e) above, if the date the requirement will become applicable to the facility is later than the date on which the operating permit is due to expire, unless the original permit or any of its provisions and conditions has been extended pursuant to an application shield in accordance with N.J.A.C. 7:27-22.7.

(g) Subject to (f) above but notwithstanding any other provision of this section, the Department shall ensure, by initiating a reopening or otherwise, that final action to incorporate additional applicable requirements into an operating permit is completed within 18 months of the promulgation of the additional requirement.

(h) During the period that the reopening is pending, the permittee shall comply with both the newly applicable requirements which apply to the facility and to the provisions of the current operating permit.

(i) The Department may revoke an operating permit if the Department determines that continued use of the facility pursuant to the current operating permit poses a potential threat to public health, welfare, or the environment, or that emissions from the facility would unreasonably interfere with the enjoyment of life or property. The procedures for revocation will be those for initial permit issuance.

(j) If EPA notifies the Department that cause exists to revoke or reopen and modify an operating permit, the Department shall, within 90 days of its receipt of the notice, forward to the permittee a notice of the Department's intent to modify or revoke the permit, as appropriate no later than 90 days after the notice from EPA pursuant to (d) above; and will provide to EPA and the permittee a proposed determination of revocation, or of reopening and modification, as appropriate. EPA may authorize the Department to extend the 90-day deadline for provision of a proposed determination an additional 90 days, if the Department determines that additional information from the permittee, or submission by the permittee of an application for a minor modification or a significant modification, is needed.

(k) If EPA approves the determination proposed by the Department pursuant to (j) above, or fails to act on it within 90 days of EPA's receipt of the proposed determination, the Department shall proceed to finalize the proposed determination in accordance with the procedures for finalizing a significant modification.

(l) If EPA objects to the Department's proposed determination within 90 days, the Department has 90 days from receipt of an EPA objection to resolve any objection that EPA makes and to reopen, modify, and reissue, or to revoke, the operating permit in accordance with the EPA's objection, pursuant to the procedures for a significant modification.

(m) The provisions of this section shall not be construed to allow the extension of the compliance deadline in any applicable requirement. Implementation of applicable requirements shall proceed in accordance with any deadlines established in the applicable requirement.]* ***(Reserved)***

7:27-22.26 MACT and GACT standards

*[(a) MACT and GACT standards are applicable requirements which limit emissions of HAPs from stationary source operations or facilities. There are two types of MACT standards: those promulgated by EPA as described in (b) below; and those established on a case-by-case basis as described in (c) below. GACT standards are promulgated by EPA for a category of area sources. Notwithstanding N.J.A.C. 7:27-22.3, this section shall take effect upon EPA's approval of the Department's operating permit program.

(b) A MACT or GACT standard may be established through EPA promulgation. Such an EPA-promulgated standard may apply to any facility or source operation, or category of facilities or source operations, which is subject to 42 U.S.C. §7412. Pursuant to 42 U.S.C. §7412, EPA is required to promulgate MACT standards for certain categories of facilities in accordance with a schedule prepared by EPA and proposed in the Federal Register on September 24, 1992 at 57 FR 44147-44158. A facility or source operation shall be subject to a MACT or GACT standard promulgated by EPA if:

1. The facility or source operation is in operation at the time the MACT or GACT standard is promulgated, and the facility or source operation meets the applicability criteria set forth in the MACT or GACT standard; or

2. The facility or source operation is subsequently proposed to be modified such that the facility would meet the applicability criteria set forth in the MACT or GACT standard.

(c) A case-by-case MACT standard shall be established for a facility or any source operation(s) which constitutes a major HAP facility if any of the following occur:

1. The proposed construction of a major HAP facility in an application for a preconstruction permit submitted to the Department;

2. The proposed reconstruction of a major HAP facility in an application for a preconstruction permit submitted to the Department;

3. The proposed modification of a major HAP facility in an application for a preconstruction permit submitted to the Department. However, this paragraph shall take effect only upon EPA's establishment of de minimis HAP emission levels pursuant to 42 U.S.C. §7412(g); or

4. The failure of EPA to promulgate the specific MACT standard applicable to the source operation or facility by the deadline set by EPA for such promulgation pursuant to 42 U.S.C. §7412.

(d) MACT and GACT standards are applied to a facility or to source operation(s) through an operating permit. An owner or operator of a facility subject to an EPA-promulgated MACT or GACT standard shall submit an application to the Department to have the MACT or GACT standard incorporated into the facility's operating permit pursuant to (e) and (g) below. An owner or operator of a facility subject to a case-by-case MACT standard shall submit an application to the Department for the case-by-case MACT standard pursuant to (f) and (h) below. If an owner or operator of a facility subject to a MACT or GACT standard fails to act to incorporate the MACT or GACT standard into its operating permit pursuant to this section, the Department will proceed with a Department initiated operating permit modification pursuant to N.J.A.C. 7:27-22.25, commence an appropriate enforcement action, or both.

(e) For a facility or source operation(s) subject to a MACT or GACT standard promulgated by EPA, an application to incorporate the MACT or GACT standard shall be submitted no later than the date, if any, specified by EPA in the MACT or GACT standard promulgation. If no date is specified by EPA, the application shall be submitted by the later of the following dates:

1. Twelve months after EPA's promulgation of the applicable MACT or GACT standard; or

2. Twenty-four months before the date, set forth in the notice of promulgation, by which the facility must comply with the MACT or GACT standard.

(f) For a facility or source operation(s) subject to a case-by-case MACT standard because of EPA's failure to promulgate a MACT standard by the deadline set for such promulgation, an application to incorporate the case-by-case MACT standard shall be submitted no later than 18 months after the deadline set for EPA promulgation. For a facility or source operation(s) subject to a case-by-case MACT

standard for any other reason, the Department recommends that an application to incorporate the case-by-case MACT standard be submitted no later than:

1. For construction or reconstruction, at least 18 months prior to the expected commencement of operation;

2. For modifications where the increase in HAP emissions due to the modification equals or exceeds 10 tons per year of any individual HAP or 25 tons per year of all HAP collectively, at least 18 months prior to the expected commencement of operation; and

3. For modifications where the increase in HAP emissions due to the modification is less than 10 tons per year of any individual HAP and 25 tons per year of all HAPs collectively, prior to the commencement of operation.

(g) An application to incorporate a MACT or GACT standard promulgated by EPA into an operating permit, as required pursuant to (d) above, shall be made through the following procedures:

1. If the facility does not have an operating permit at the time a MACT or GACT standard becomes applicable to the facility, the owner or operator shall apply for an initial operating permit covering only the equipment subject to the MACT or GACT standard, in accordance with the procedures for initial operating permits at N.J.A.C. 7:27-22.5, within the deadlines set forth at (e) above. If the facility is subject to any applicable requirement other than the MACT or GACT standard, the owner or operator of the facility shall apply for an operating permit for the entire facility according to the schedule set forth in the application procedures provisions at N.J.A.C. 7:27-22.5; or

2. If a facility has an operating permit at the time a MACT or GACT standard becomes applicable to the facility, the permittee shall apply in accordance with the following to incorporate the MACT or GACT standard into the operating permit:

i. If the facility is already meeting all requirements of the MACT or GACT standard, in accordance with the seven-day-notice procedures set forth at N.J.A.C. 7:27-22.22; or

ii. If the facility is not already meeting all requirements of the MACT or GACT standard, in accordance with the procedures for a significant modification set forth at N.J.A.C. 7:27-22.24.

(h) An application to incorporate a case-by-case MACT standard into an operating permit, as required pursuant to (d) above, shall be made through the following procedures:

1. For construction or reconstruction pursuant to (c)1 or 2 above, the procedures for a significant modification set forth at N.J.A.C. 7:27-22.24;

2. For modification where the increase in HAP emissions due to the modification equals or exceeds 10 tons per year of any individual HAP or 25 tons per year of all HAP collectively, the procedures for a significant modification set forth at N.J.A.C. 7:27-22.24;

3. For modifications where the increase in HAP emissions due to the modification is less than 10 tons per year of any individual HAP and 25 tons per year of all HAP collectively, the procedures for a minor modification set forth at N.J.A.C. 7:27-22.23; or

4. For a facility or source operation(s) subject to a case-by-case MACT standard because of EPA's failure to promulgate a MACT standard by the deadline set for such promulgation, the procedures for a significant modification set forth at N.J.A.C. 7:27-22.24.

(i) In an application to incorporate a case-by-case MACT standard into an operating permit, the application shall propose a case-by-case MACT standard for the facility or source operations. The Department encourages applicants to propose, where feasible, emission limits which are based on pollution prevention techniques rather than emission limits which are based on the use of control apparatus.

(j) The Department shall approve a case-by-case MACT standard proposed by an applicant pursuant to (i) above only if the case-by-case MACT standard represents the maximum degree of emission reduction achievable by the facility, taking into consideration the cost of achieving such reductions and any non-air quality health and environmental impacts and energy requirements and:

1. For a facility which is being constructed or reconstructed, is at least as stringent as the lowest emission level achievable in practice by the best controlled similar source operation;

2. For a facility which is being modified pursuant to (c)3 above, is at least as stringent as the emission limitation which would be achieved by the incorporation into any modified source operation of advances in the art of air pollution control developed for the kind and amount of HAP emitted by the modified source operations at the facility; or

3. For any category of facilities for which EPA has not promulgated a MACT standard within 18 months after the deadline for promulgation, is no less stringent than the emission limitation which would be achieved by the incorporation of advances in the art of air pollution control developed for the kind and amount of HAP emitted by any source operation at the facility, which would have been affected by the EPA promulgation.

(k) For a facility subject to a MACT or GACT standard promulgated by EPA, compliance with a MACT or GACT standard shall be achieved no later than the compliance date required by EPA in the MACT or GACT standard promulgation. If no compliance date is specified by EPA, compliance shall be achieved:

1. For a facility which has not commenced operation by the date of EPA's promulgation of the applicable MACT or GACT standard, by the time the facility commences operation; or

2. For a facility which has commenced operation prior to EPA's promulgation of an applicable MACT or GACT standard, as soon as practicable, as specified in the operating permit for the facility, but no later than three years after promulgation of the MACT or GACT standard.

(l) Notwithstanding the provisions of (k) above, the Department may allow a six-year extension of time for complying with a MACT or GACT standard promulgated by EPA for one or more source operations at a facility, if the source operation achieves sufficient early reductions of HAP emissions. To be eligible for such a compliance extension, an applicant shall demonstrate that, prior to EPA's proposal of the MACT or GACT standard applicable to the facility, the relevant source operation(s) at the facility achieved at least the following emission reductions:

1. Ninety percent of all non-particulate HAP emissions; and

2. Ninety-five percent of all particulate HAP emissions.

(m) An applicant seeking an extension pursuant to (1) above shall, in accordance with the procedures at 40 CFR 63.70 et seq., demonstrate, to the satisfaction of the Department, in the application for an operating permit:

1. The quantity of verifiable actual emissions released from the facility during a representative year no earlier than 1987. No year may be used as the representative year for which there is any evidence that emissions during that year are artificially or substantially greater than emissions in other years prior to implementation of emissions reduction measures; and

2. The emissions demonstrated in (m)1 above were reduced by an amount which equals or exceeds the standards given in (l)1 and 2 above, subsequent to the representative year and prior to the date the MACT or GACT standard was proposed by EPA.

(n) If the Department approves the compliance extension, the Department will incorporate the compliance extension into the operating permit for the facility. A source operation for which a compliance extension is approved, and incorporated by the Department into the operating permit, may delay compliance with the otherwise applicable MACT or GACT standard for six years after the compliance date set forth at (k) above, provided that all conditions of the operating permit are met, and the emission reductions demonstrated to have been achieved pursuant to (m) above, are maintained throughout that time.

(o) A compliance extension pursuant to this section shall not be available with respect to any standard or requirement promulgated by EPA to protect health and the environment pursuant to 42 U.S.C. §7412(f). If EPA promulgates such a health-based standard, any facility affected by the health-based standard shall comply with such standard according to the schedule set by EPA.

(p) For a facility subject to a case-by-case MACT standard, compliance with the MACT standard shall be achieved:

1. For a modified, newly constructed or reconstructed facility, by the date of commencement of operation of the modified, new or reconstructed facility; or

2. For a facility subject to a case-by-case MACT standard because of EPA's failure to promulgate a MACT standard, as soon as practicable, but not later than three years after the date EPA's promulgation of the MACT standard was due, pursuant to 42 U.S.C. §7412. The Department shall specify this compliance deadline for the facility in the operating permit.

(q) Any other requirement of this section notwithstanding, a facility for which construction or reconstruction is commenced after EPA proposes an applicable MACT or GACT standard, but before the MACT or GACT standard is promulgated, shall not be required to comply with the standard as promulgated until three years after the date construction or reconstruction is commenced, provided that the facility, as authorized in the preconstruction permit, complies with the MACT or GACT standard as proposed.

(r) Any other requirement of this section notwithstanding, a facility which has installed BACT, pursuant to a permit required under 40 CFR 52, or LAER, pursuant to N.J.A.C. 7:27-18, for a source operation which emits a HAP, prior to EPA's promulgation of an applicable MACT or GACT standard for the same HAP, shall not be required to comply with the MACT or GACT standard until five years after the date of that installation of BACT or LAER.]* ***(Reserved)***

7:27-22.27 Alternative operating scenarios

(a) The Department will include *[an]* alternative operating scenario***s*** in an operating permit, if *[the emission rates or concentrations for each source operation included in]* the alternative operating scenario meet***s*** all applicable requirements***, including, but not limited to, all applicable emission standards***. *[An alternative]*

1. Alternative operating scenario***s*** may, as appropriate, be incorporated into a permit through*[:

1. An]* ***an*** application for an initial operating permit, a significant modification, or a minor modification pursuant to N.J.A.C. 7:27-22.5, 22.24 or 22.23, respectively*[; or]*****.***

[2. A] ***Alternative operating scenarios may be authorized through a*** notice of a seven-day notice change pursuant to N.J.A.C. 7:27-22.22*[.]*****, provided*** *[(b) The]* ***the*** emission limit for a source operation included in *[an]* alternative operating scenario***s*** which *[is]* ***are*** being added by a seven-day notice to an existing operating permit shall not exceed the maximum allowable emission limits in the existing operating permit for the source operation.

*[(c)]*****(b)*** At a facility authorized to operate under one or more alternative operating scenarios, the permittee shall maintain *[a log at the facility and record in the log, contemporaneously with making a]* ***contemporaneous information on the*** change from one operating scenario to another*[, each changeover]*. ***This can be any means of recording information associated with the scenario in question, either manually or electronically, including but not limited to: batch sheets, production sheets, fuel records, and process records.***

*[(d)]*****(c)*** The permittee shall ensure that operation under an alternative operating scenario meets all permit conditions, applicable requirements, and the requirements of this chapter.

*[(e)]*****(d)*** An applicant or permittee seeking authorization for *[an]* alternative operating scenario***s*** shall provide to the Department, in the application for an initial operating permit, significant modification, or minor modification, or in a seven-day-notice, at least the following information:

1. A description of *[the]* ***each*** proposed alternative operating scenarios***, including, but not limited to, information on any emission changes from existing approved operating scenarios***;

2. The specific source operations that are to be included in the proposed alternative operating scenarios;

3. *[The]* ***If the equipment combusts fuel, the*** fuels that will be used under the proposed alternative operating scenarios, and the maximum quantity of fuel proposed to be used annually;

4. The product(s) that will be produced under the proposed alternative operating scenarios; and

5. *[The proposed date(s) or schedule (if known) of when the operation will be changed over from one alternative operating scenario to the other, or a description of the circumstances under which the operation will be so changed over.]* ***For any operating parameter addressed or limited in the existing operating permit that may be changed under the proposed alternative operating scenario, proposed ranges or limits for that parameter relevant to air contaminant emissions. This shall include, but not be limited to, parameters such as the quantity or type of raw material used. Operating parameters which do not affect emissions need not be included in the alternative operating scenario. As long as the facility operates within the range or limit of each specified parameter in an approved operating scenario, such operation shall be considered consistent with that operating scenario.***

*[(f)]*****(e)*** In addition to the information required at *[(c)]* ***(d)*** above, the following information shall be provided to the Department if the alternative operating scenario is proposed to be added to an existing operating permit ***as a seven-day-notice***:

1. For each source operation included in the alternative operating scenario:

i. The maximum allowable emissions limits established in the operating permit for each air contaminant*[, if that air contaminant may be emitted at a rate that exceeds the applicable de minimis emission level set forth in Tables A and B at N.J.A.C. 7:27-22.6]*;

ii. A demonstration that each of the emissions limits listed pursuant to *[(f)1i]* ***(e)1i*** above will not be exceeded under the proposed alternative operating scenario; and

iii. A demonstration that, under the proposed alternative operating scenario, *[no]* ***any new*** air contaminant not authorized by the existing operating permit *[will]* ***would*** be emitted at a rate *[that exceeds]* ***less than*** the applicable de minimis emission levels set forth in Tables *[A]* ***C*** and *[B]* ***D*** at N.J.A.C. 7:27-*[22.6]* ***8 Appendix I*****[; and]*****.***

[2. Any operating parameter relevant to air contaminant emissions, which parameter is addressed or limited in the existing operating permit, that may be changed under the proposed alternative operating scenario. This shall include, but not be limited to, parameters such as the quantity or type of raw material used.]

7:27-22.28 Intra-facility emissions trading

(a) Intra-facility emissions trading ***programs providing for trading*** within an emissions cap shall be allowed at a facility subject to this subchapter if:

1. Authorization ***obtained pursuant to (c) below*** for ***the*** intra-facility emissions trading ***program*** is *[included]*****:**

i. Incorporated in the operating permit approved by the Department***;*** or *[is established]*

ii. Attached to the operating permit through a notice of a seven-day-notice change ***or a minor modification*** pursuant to N.J.A.C. 7:27-22.22(c)10 and in accordance with (h) below; and

2. The emissions trading ***program*** conforms with the Federal emissions trading policy published on December 4, 1986, in the Federal Register, Volume 51. No. 233*[, or with any]* ***; the*** economic incentive program ***rules published on April 7, 1994, in the Federal Register, Volume 59, No. 67; or any other emissions trading*** guidance issued by EPA.

(b) Intra-facility emissions trading shall be limited to the group of source operations and to the air contaminants authorized for emissions trading *[by]* ***program incorporated in or attached to*** the operating permit. The source operations included shall be a group of source operations proposed by the applicant and approved by the Department.

(c) Any owner or operator may seek authorization for ***an*** intra-facility emissions trading ***program*** in an application for an initial operating permit, a significant modification, or a renewal, as appropriate. *[Additionally,]* ***Alternatively, an owner or operator may obtain*** authorization for emissions trading pursuant to the mathematical combination provisions of N.J.A.C. 7:27-9.2(d), the emissions averaging provisions of N.J.A.C. 7:27-19.6, or *[through]* any emissions *[averaging]* ***trading*** provisions of this *[Chapter]*

chapter that expressly allow *[the averaging]* ***an emissions trading program*** to be *[incorporated into]* ***attached to*** an operating permit pursuant to this section*[, may be established]* through a seven-day-notice change *[pursuant to N.J.A.C. 7:27-22.22(c)10]* or a minor modification.

(d) An application *[seeking]* ***or a seven-day-notice submitted to obtain*** authorization for ***an*** emissions trading ***program*** shall provide information to the Department including, but not limited to, the following:

1. A description of the planned intra-facility emissions trading ***program***;

2. A statement of the purpose for seeking ***authorization for an*** intra-facility emissions trading ***program*** at the facility. Such a statement shall indicate, for example, if the purpose of the ***authorization is to establish an*** emissions cap *[is]* ***so as*** to avoid being classified as a major facility or avoid becoming subject to requirements, such as:

i. Emission offset requirements pursuant to N.J.A.C. 7:27-18.2; or

ii. PSD regulations at 40 CFR 52;

3. Specification of any permit condition or applicable requirement that would be:

i. Complied with through ***the*** intra-facility emissions trading ***program***; or

ii. No longer applicable as a result of the emissions trading ***program***;

4. The specific source operations that would be included in the emissions trading program;

5. For each source operation subject to the emissions trading program, each air contaminant for which the quantity or rate of actual emissions may be increased or decreased as a result of ***the*** intra-facility emissions trading ***program***;

6. For each air contaminant ***identified pursuant to (d)5 above***, the proposed federally enforceable emissions cap for the group of source operations that are to be included in the emissions trading program;

7. A description of the types of circumstances under which decreases in emissions from one or more source operations will be used to offset increases in emissions from one or more other source operations;

8. Proposed permit conditions which will enable the Department ***to*** readily *[to]* verify whether emissions from the source operations have exceeded the emissions cap; such permit conditions shall set forth replicable procedures sufficient to ensure that emissions are quantified and recorded and that compliance with the emissions cap is enforceable. Such replicable procedures shall include monitoring or source emissions testing, or both, and recordkeeping and reporting procedures;

9. A statement affirming that each included source operation shall operate in compliance with the applicable provisions of this chapter and with all other applicable requirements; and

10. Certification in accordance with N.J.A.C. 7:27-1.39.

(e) A permittee may modify operating permit provisions regarding intra-facility emissions trading through the procedures for a seven-day-notice change *[if:

1. The proposed emissions trading program meets the requirements set forth at N.J.A.C. 7:27-22.22(c)9;

2. The modification is]* ***to accommodate*** a change to a source operation which is subject to the emissions cap *[and]* ***provided*** that***:**

1. The* change to the source operation is *[also]* eligible to be made by ***a*** seven-day-notice change pursuant to *[N.J.A.C. 7:27-22.22]* ***the provisions of this chapter on which the emissions trading program is based***; and

*[3.]****2.*** The modification would not result in the need to increase the emissions cap.

(f) If the Department approves ***the incorporation of an*** intra-facility emissions trading *[in the]* ***program in an*** operating permit, the Department shall establish in the operating permit:

1. A Federally enforcable cap on the aggregate emissions for the group of source operations included in the intra-facility emissions trading ***program*** authorized by the operating permit; and

2. Permit conditions which will enable the Department ***to*** readily *[to]* verify whether emissions from the source operations have exceeded the emissions cap. Such permit conditions shall set forth replicable procedures, including monitoring, source emissions testing, recordkeeping, and reporting procedures, sufficient to ensure that emissions are quantified and recorded and that compliance with the emissions cap is enforceable.

(g) The Department shall not approve any intra-facility emissions trading ***program*** proposed for an operating permit, if any State rule or Federal regulation, which is an applicable requirement, requires case-by-case approval of any increase in emissions from any source operation included in the emissions trading, unless such case-by-case approval has already been issued by the Department and EPA pursuant to the procedures in the applicable requirement.

(h) A permittee may implement an intra-facility emissions trading program explicitly authorized in the rules which have been approved as part of the SIP, even if such *[a]* ***an emissions*** trading program is not expressly authorized in the operating permit, provided that:

1. The intra-facility emissions trading ***program*** is conducted pursuant to the following provisions of this chapter *[allowing such emissions trading]*:

i. The mathematical combination provisions of N.J.A.C. 7:27-9.2(d); or

ii. The emissions averaging provisions of *[proposed]* N.J.A.C. 7:27-19.6; or

iii. Any *[emissions averaging]* provisions of this chapter that expressly allow *[the averaging]* ***an emissions trading program*** to be incorporated into an operating permit pursuant to this section;

2. The Department and EPA are provided notice of the permittee's intent to implement the intra-facility emissions trading program through the seven-day-notice change procedures set forth in N.J.A.C. 7:27-22.22, or through a minor modification or significant modification*[, as appropriate]*; and

3. The new intra-facility emissions trading program will not result in any increase in the aggregate maximum allowable emissions from the source operations included in the ***emissions trading*** program.

(i) A permittee authorized to implement ***an*** intra-facility emissions trading ***program*** shall maintain an emissions trading log at the facility. In this log the permittee shall record on a daily basis the emissions trading that has occurred. Specifically, the log shall reflect for each day:

1. Whether the facility complied with the operating permit by operating within one or more emissions caps established for one or more groups of source operations; and

2. If compliance is achieved through meeting the emissions cap for any group of source operations and for any air contaminant, for that group of source operations and for that air contaminant the following information:

i. The actual emissions of each source operation per unit of time. The unit of time used for this record shall be the same as that in which the emissions cap is given***, if the unit of time on which the cap is based is one day or less***. For example, if the emissions cap is given in pounds per hour, the record shall contain for that day the pounds of actual emissions for each hour of the day for each source operation***. If the unit of time on which the emissions cap is based is greater than one day (for example, tons per year), the actual emissions per day shall be recorded***; and

ii. The total emissions***, collectively,*** from all source operations in the group subject to the emissions cap *[per]****. The unit of time used for this record shall be the*** same unit of time as is used for (i)2i*[.]* above.

(j) The permittee shall ensure that operation*[, including operation]* pursuant to ***the*** authorized intra-facility emissions trading*[,]* ***program*** meets all permit conditions and applicable requirements, including the requirements of this chapter.

(k) A permit shield shall apply only to an intra-facility emissions trading program which is incorporated into an operating permit through issuance of an initial operating permit, an operating permit renewal, or a significant modification.

7:27-22.29 *[Affected Title IV facilities]* ***Facilities subject to acid deposition control***

(a) *[Applications for operating permits for affected Title IV facilities shall be processed by the Department in accordance with acid deposition control provisions set forth at 42 U.S.C. §7651a through 7651o and with the applicable provisions of 40 CFR 72.]* ***The Department hereby adopts and incorporates by reference the provisions of 40 CFR part 72, and any subsequent amendments thereto, for purposes of implementing an acid rain program that meets the requirements of title IV of the CAA. The term "permitting authority" shall mean the Department, and the term "Administrator" shall mean the administrator of the United States EPA. If provisions or requirements of 40 CFR part 72 conflict with or are not included in this subchapter, the part 72 provision and requirements shall apply and take precedence.***

(b) An administratively complete application to incorporate Phase II Title IV requirements into the operating permit shall be submitted:

i. By January 1, 1996, for facilities with source operations subject to the requirements for SO_2 pursuant to 42 U.S.C. §7651d; and

ii. By January 1, 1998, for facilities with source operations subject to the requirements for NO_x pursuant to 42 U.S.C. §7651f;

iii. Facilities subject to both SO_2 and NO_x requirements must meet both deadlines. The 1996 application shall address all SO_2 applicable requirements, and any applicable requirements relating to NO_x applicable to each source operating at the time of application. The 1998 application shall include the NO_x applicable requirements at that time.*

*[(b)]**(c)* For any application for an operating permit, or for any portion of an application for an operating permit, being submitted pursuant to the acid deposition control provisions of 40 CFR 72, including those portions of the compliance plan pertaining to acid deposition control requirements, an applicant shall use nationally standardized application forms, which the Department will make available upon EPA's finalization of the forms.

*[(c)]**(d)* An administratively complete application for an initial operating permit for a facility, or for any portion thereof, subject to the acid deposition control requirements of Title IV of the CAA shall include all information required by the application form, including the name and address of any designated Title IV representative, as defined at N.J.A.C. 7:27-22.1.

*[(d)]**(e)* The compliance plan for an affected Title IV facility shall meet the requirements of N.J.A.C. 7:27-22.9, except to the extent that these requirements are superseded by the acid deposition control requirements set forth at 42 U.S.C. §7651a through 7651o or by applicable provisions of 40 CFR 72.

*[(e)]**(f)* The Department will take final action on an application for an operating permit, operating permit renewal, *[significant modification or minor modification]* ***permit revision as defined in 40 CFR 72.2, or reopening*** to implement Phase II Title IV requirements within the deadlines set forth in the acid deposition control requirements at 42 U.S.C. §7651a through 7651o.

*[(f)]**(g)* Affected Title IV units subject to the acid deposition control requirements of the CAA are not eligible for authorization to operate under a general operating permit.

*[(g)]**(h)* The Department is not authorized to issue an operating permit to an owner or operator of a temporary facility which authorizes operation in more than one location during the term of the operating permit, if that temporary facility is an affected Title IV facility, as defined at N.J.A.C. 7:27-22.1.

*[(h)]**(i)* An operating permit for an affected Title IV facility shall contain a condition prohibiting emissions exceeding the allowances that the facility lawfully holds under Title IV of the CAA or the regulations promulgated thereunder.

*[(i)]**(j)* Neither a permit shield nor any provision in an operating permit shall, consistent with 42 U.S.C. §7651g(a), alter or affect the applicable requirements of the acid deposition control program.

*[(j)]**(k)* The Department shall reopen and modify an operating permit for an affected Title IV facility pursuant to the procedures at N.J.A.C. 7:27-22.25, if additional requirements (including excess emissions requirements) become applicable to the facility under the acid deposition control program at Title IV of the CAA. However, the Department shall not reopen an operating permit for the following:

1. Excess emissions offset plans which shall be deemed to be incorporated into the operating permit upon approval by the EPA; and

2. Increases in emissions that are authorized by allowances acquired pursuant to the acid deposition control program, provided that such increases do not require an operating permit revision under any other applicable requirement.

7:27-22.30 Renewals

*[(a) A permittee is required to renew the operating permit through the procedures set forth in this section. If an application for a renewal also incorporates any proposed change(s) for the facility, the Department may, upon its renewal of the permit, incorporate the change(s) into the operating permit. The permittee shall not make any change proposed in the application for renewal until the Department approves the renewal.

(b) The permittee shall submit, pursuant to (c) and (d) below, a timely and administratively complete application for the renewal of the operating permit.

(c) To be considered timely, an application for renewal shall be received by the Department at least 12 months prior to expiration of the operating permit.

(d) To be deemed administratively complete, an application for renewal of an operating permit shall include all information required by the application form for the renewal, which form shall require the following:

1. A summary of all the changes that have been incorporated into the operating permit through administrative amendments, minor modifications, or significant modifications during the past five-year term of the initial operating permit or the most recent renewal thereof;

2. Any additional changes to the operating permit which the permittee seeks to have included in the operating permit; for these changes the permittee shall set forth all information required pursuant to the procedures for an initial operating permit pursuant to N.J.A.C. 7:27-22.5;

3. Any changes which the permittee has submitted as a seven-day-notice change during the past five-year term, and which the permittee seeks to have incorporated into the operating permit;

4. A summary of the results of any source emissions testing or monitoring that has been performed during the past five-year term pursuant to the requirements of the operating permit or of any preconstruction permit issued for the source operations included in the operating permit;

5. The proposed methods to be used to determine the actual emissions of each significant source operation, for the purpose of preparing emission statements required for the facility pursuant to N.J.A.C. 7:27-21. Methods shall be included for determining emissions of VOC, NO_x, CO, SO_2, TSP, PM-10, Pb, and any other air contaminant for which the facility has a potential to emit which equals or exceeds 100 tons per year; however, no method shall be proposed for any air contaminant, if the owner or operator is not required to report that air contaminant pursuant to N.J.A.C. 7:27-21.3(a);

6. Proposed draft operating permit provisions reflecting any change in the facility or its operations made through a seven-day-notice change since the last operating permit issuance, and any changes to the facility or its operations proposed for inclusion in the renewed operating permit; and

7. Any other information that is reasonably necessary to enable the Department to determine whether the application for renewal of the operating permit satisfies the requirements of this subchapter for the renewal of an operating permit.

(e) Notwithstanding (d)5 above, a permittee is not required to propose methods to be used to determine the actual emissions of each significant source operation in an application for a renewal, if such methods have been included in the initial operating permit pursuant to N.J.A.C. 7:27-22.16(r). A permittee may however propose revisions, in an application for a renewal, to any method

for determining actual emissions previously included in the operating permit, if the revised method would be no less accurate and reliable than the method previously incorporated in the existing operating permit.

(f) An application for the renewal of an operating permit may be required to include air quality simulation modeling and risk assessment for the facility, pursuant to N.J.A.C. 7:27-22.8.

(g) If an administratively complete application for renewal is received by the Department at least 12 months prior to the date the operating permit expires, the facility will be covered by the application shield set forth at N.J.A.C. 7:27-22.7.

(h) An application for renewal of an operating permit is subject to the requirements for public comment and EPA comment set forth at N.J.A.C. 7:27-22.11 and 22.12.

(i) Unless a facility subject to this subchapter is covered by an application shield pursuant to N.J.A.C. 7:27-22.7, the right to operate the facility terminates upon the expiration of its operating permit.

(j) After an operating permit has expired, the conditions of the operating permit remain enforceable until the operating permit is reissued, except as provided in acid deposition control regulations promulgated by EPA under Title IV of the CAA.]* ***(Reserved)***

7:27-22.31 Fees

*[(a) The owner or operator of a facility subject to this subchapter shall submit operating permit fees in accordance with this section. Operating permit fees shall be adjusted annually based upon the formulas set forth in this section. There are two types of operating permit fees:

1. Application fees, determined pursuant to (d) and (e) below; and

2. Annual supplemental fees, determined pursuant to (f) below.

(b) All applications and notices submitted pursuant to this subchapter shall be accompanied by the fee required by this section. If an application or notice is submitted without the required fee, the application or notice shall be deemed administratively incomplete. Further, the Department will not accept or process any application or notice, or request for Department action, from any applicant or permittee whose supplementary operating permit fees are past due.

(c) All supplemental fees required by this section shall be submitted annually, pursuant to (h) and (i) below.

(d) Application fees for initial operating permits and renewals shall be calculated in accordance with the following procedure:

1. List the total number of pieces of equipment at the facility which are significant source operations, or a part of a significant source operation, as reported to the Department pursuant to the emissions statement requirements at N.J.A.C. 7:27-21.5(b)11; and

2. Multiply this total number of pieces of equipment by the present value of the applicable fee, as set forth in Table 1 below. The present value of the fee shall be determined by multiplying the fee amount from Table 1 by the percentage difference between the current annual Consumer Price Index and the 1994 Consumer Price Index.

(e) The fee for each significant modification, minor modification, notice of a seven-day-notice change, and administrative amendment shall be the applicable fee set forth in Table 1.

Table I
Schedule for Application Fees

Type of application	Fee
Initial Application	$125.00 per piece of equipment
Renewal	$125.00 per piece of equipment
Significant Modification	$500.00 per application
Minor Modification	$250.00 per application
Seven-Day-Notice Change	$200.00 per notice
Administrative Amendment:	
a. A change in company name or mailing address; division name; plant name; or address; name or address of any owner's agent; name or telephone number of the on-site facility manager, any additional plant contact, or any responsible official	$ 00 per application
b. A change in any company stack designation	$ 00 per application
c. Any other administrative amendment	$ 50.00 per application

ALTERNATIVE SUPPLEMENTAL FEE CALCULATION A

(f) The supplemental fee shall be based on the number of pieces of equipment subject to the operating permit. This fee shall be determined in accordance with the following procedure:

1. List the total number of pieces of equipment at the facility which are significant source operations or a part of a significant source operation, as reported to the Department pursuant to the emissions statement requirements at N.J.A.C. 7:27-21.5(b)11; and

2. Multiply this total number of pieces of equipment by the present value of $136.00 in 1994 dollars. The present value of $136.00 in 1994 dollars shall be determined by multiplying $136.00 by the percentage difference between the current Consumer Price Index and the 1994 Consumer Price Index.

ALTERNATIVE SUPPLEMENTAL CALCULATION B

(f) The supplemental fee shall be based on the facility's actual emissions for the calendar year preceding the year in which the fee is due. This fee shall be determined in accordance with the following procedure:

1. Give the facility's total actual emissions, in tons per year, for the preceding calendar year for each air contaminant, as reported to the Department pursuant to the emission statement provisions at N.J.A.C. 7:27-21;

2. Determine the quantity of each air contaminant to be summed to calculate the facility's total emissions, in tons per year as follows:

i. For VOC and NO_x, the quantity to be summed shall be the quantity of the facility's total actual emissions, in tons per year, listed in (f)1 above; and

ii. For any other air contaminant, the quantity to be summed shall be the quantity of the facility's total actual emissions, in tons per year, listed in (f)1 above, except that if the quantity of emissions exceeds 4,000 tons per year, the quantity to be summed shall be 4,000 tons per year;

3. Sum the quantities of each air contaminant determined in (f)2 above; and

4. Multiply this sum by the present value of $25.00 in 1989 dollars. The present value of $25.00 in 1989 dollars shall be determined by multiplying $25.00 by the difference between the current Consumer Price Index and the 1989 Consumer Price Index.

(g) The owner or operator of a facility for which fees are paid in accordance with this section is not subject to any otherwise applicable operating certificate service fees required by N.J.A.C. 7:27-8, Table A, items 2 and 4, and Table B, item 7, except for fees relating to any source operation which is not subject to the operating permit.

(h) For a supplemental fee submission, an owner or operator shall submit both the fee and a corresponding supplemental fee form to the Department no later than September 30 each year. The supplemental fee form shall be submitted to the address given at N.J.A.C. 7:27-22.3(t) and the fee shall be submitted to:

Department of Environmental Protection and Energy
Bureau of Revenue
CN 417
Trenton, New Jersey 08625

(i) Any owner or operator submitting supplemental fees shall set forth, on the supplemental fee form, the determination carried out pursuant to (f) above to calculate the amount of the fee.

(j) All fee payments required by this section shall be submitted to the Department as a certified check or money order made payable to the Treasurer, State of New Jersey.

(k) The Department will deposit all fees required by this section in an Operating Permit Regulation Fund. The Fund shall be non-lapsing and shall be dedicated solely for use by the Department in administering the operating permit program required by this subchapter. Monies in the fund may be used to hire and fund positions and procure necessary equipment and services adequate to perform the functions of the Department in administering the provisions of the operating permit program.

(l) Within two years after the approval by EPA of a full operating permit program pursuant to 40 CFR 70, the Department will review the fee requirements of this section. The Department will examine whether the fees required by this section accurately reflect the actual costs of administering the operating permit program. If not, the Department will propose revisions to this section which would adjust the fee requirements accordingly.

(m) To assist applicants in making the fee calculations required pursuant to this section, the Department will annually publish in the New Jersey Register a notice of administrative change, pursuant to N.J.A.C. 1:30-2.7, setting forth the adjusted present value of dollar amounts set forth in this section, and the operative dates thereof.]*

(Reserved)

7:27-22.32 Hearings and appeals

(a) An adjudicatory hearing regarding a determination made by the Department pursuant to this subchapter may be requested and granted in accordance with N.J.A.C. 7:27-8.12.

(b) If a person does not have a right to request an adjudicatory hearing pursuant to N.J.A.C. 7:27-8.12, there is final agency action as to that person when the Department takes final action on the application.

(c) If a person does have a right to request an adjudicatory hearing pursuant to N.J.A.C. 7:27-8.12, there is final agency action as to that person when the Department denies the request for an adjudicatory hearing, or when the Commissioner issues a final decision on the matter, whichever is later.

(d) A person who wishes to appeal a penalty assessed for a violation of this subchapter may request an adjudicatory hearing pursuant to the procedures at N.J.A.C. 7:27A.

(e) The Department's failure to take final action on an administratively complete application for an initial operating permit, renewal, minor modification or significant modification, within the deadlines provided by this subchapter, shall constitute grounds for the commencement of an action in lieu of the prerogative writ of mandamus, to compel Departmental action on the application.

(a)

POLICY AND PLANNING/AIR QUALITY MANAGEMENT

Emission Statements

Adopted New Rules: N.J.A.C. 7:27-21.8 and 21.9
Adopted Amendments: N.J.A.C. 7:27-21.1 and 21.10, and N.J.A.C. 7:27A-3.10

Proposed: September 7, 1993 at 25 N.J.R. 4033(a).
Adopted: September 1, 1994, by Robert C. Shinn, Jr., Commissioner, Department of Environmental Protection.
Filed: September 7, 1994 as R.1994, d.500, **with substantive and technical changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3) **and with the proposed amendments to N.J.A.C. 7:27-21.2 through 21.5 not adopted.**
Authority: N.J.S.A. 13:1B-3 and 26:2C-1 et seq., in particular 26:2C-8.
DEP Docket Number: 48-93-08/156.
Effective Date: October 3, 1994.
Operative Date: October 31, 1994.
Expiration Date: N.J.A.C. 7:27A, December 4, 1994,
N.J.A.C. 7:27, Exempt.

The Department herein adopts portions of the new rules and amendments proposed September 7, 1993 at 25 N.J.R. 4033(a). Specifically, the amendments to N.J.A.C. 7:27-21.1 and 21.10, and the new rules at N.J.A.C. 7:27-21.8 and 21.9, and the amendments to N.J.A.C. 7:27A-3.10 are being adopted. The Department is not adopting the amendments to N.J.A.C. 7:27-21.2 through 21.5 and is allowing these portions of the proposal to expire. These portions of the proposal will be proposed again when the Department reproposes amendments and new rules to the operating permit rules at N.J.A.C. 7:27-22. For more information regarding the portions of the operating permit rules to be reproposed, see the notice of adoption for the operating permit rules published elsewhere in this issue of the New Jersey Register.

Summary of Hearing Officer's Recommendations and Agency Response:

Richard V. Sinding, then Assistant Commissioner of Policy and Planning, served as the hearing officer at the October 12, 1993 public hearing regarding three related proposals held at the Department of Environmental Protection and Energy, Trenton, New Jersey. Five people spoke at the public hearing, but none addressed the emissions statement rule proposal being adopted herein. Assistant Commissioner Sinding recommended that the proposed rules be adopted with the changes described below in the Summary of Public Comments and Agency Responses and the Summary of Agency-initiated Changes. The Department accepts the recommendation.

Interested persons may inspect a copy of the hearing record, or obtain a copy for a fee, by contacting:

Janis Hoagland, Administrative Practice Officer
Department of Environmental Protection
Office of Legal Affairs
401 East State Street
CN 402
Trenton, New Jersey 08625-0402

Summary of Public Comments and Agency Responses:

The Department received written comments on proposal being adopted today from seven persons. The comment period was extended to November 23, 1993, as stated in the Notice of Extension of Public Comment Period published in the New Jersey Register on November 1, 1993 at 25 N.J.R. 4836(a). The persons who commented on this proposal are as follows:

1. Diana L. Forman, Superintendent—Environmental Control; Merck & Co., Inc.
2. Lenora Strohm, Staff Project Engineer; General Motors
3. Neale R. Bedrock; Lowenstein, Sandler, Kohl, Fisher & Boylan
4. James A. Connolly, P.E., Senior Environmental Advisor; Hoffman-La Roche
5. IAG Operating Permit Work Group (submitted on behalf of by Diana L. Forman)

6. Barbara Warren, Project Director—New York Toxics Project; Consumer Policy Institute

7. John A. Maxwell, Associate Director; New Jersey Petroleum Council

The following is a summary of the comments received on the proposal being adopted today and the Department's responses. The number(s) in parentheses after each comment identifies the person(s), as listed above, who provided comment.

General Comments

1. COMMENT: This commenter requests that the Department extend the comment period for an additional 30 days. The regulations represent a significant change to the way approximately 900 facilities operate and the regulated community should be given further time to provide in-depth commentary. (1)

This commenter expressed appreciation to DEPE for extending the deadline for comments on these proposed new and amended rules until November 23. (7)

RESPONSE: The Department extended the comment period 27 days until November 23, 1993, and published a notice of extended comment period in the New Jersey Register on November 1, 1993, at 25 N.J.R. 4836(a).

2. COMMENT: This commenter expressed appreciation for the opportunity to comment on this proposal and offered their assistance regarding proposed changes. (2)

This commenter expressed appreciation for the opportunity to work with DEPE in formulating these rules. (4)

RESPONSE: The Department acknowledges the commenter's appreciation and recognizes the importance of input from the regulated community, environmental groups and other interested parties.

N.J.A.C. 7:27-21.2 Applicability

3. COMMENT: This commenter urges DEP to require the reporting of hazardous air pollutants under N.J.A.C. 7:27-21. Such reporting will be very useful to the Agency in deciding priorities for permitting when case-by-case determinations become necessary. There should be no difficulty in requiring that any HAPs be counted as a subset of VOCs or particulates if appropriate. In addition, in many situations, DEPE will not be getting accurate measurements of VOCs, but best guesses. (6)

RESPONSE: The Department is currently working out a manageable procedure for the reporting of Hazardous Air Pollutants (HAPs). The United States Environmental Protection Agency (EPA) is also expected to propose rules concerning HAPs reporting on a national level. After the Department determines the best method to integrate existing HAPs reporting mechanism, the Department will develop additional means for HAPs reporting.

There are significant issues in reporting HAPs because particular HAPs may also be categorized as a Volatile Organic Compound (VOC) or particulates or may not fall under other categories. For example, phosphine (PH_3), hydrogen chloride (HCl), hydrogen fluoride (HF), chlorine (CL_2), and hydrazine (N_2H_4) are HAPs that are not VOCs and may not be particulates. In order to implement a meaningful reporting of HAPs, double counting must be avoided. Additionally, the Department will seek to use as much information as is already being reported to the Department and integrate it with any additional information to be reported. In an effort to streamline reporting requirements and to prevent the reporting of duplicate information, the Department does not wish to require the regulated community to provide information already being reported to the Department.

N.J.A.C. 7:27-21.5 Required contents of an emission statement

4. COMMENT: With regard to N.J.A.C. 7:27-21.5, the commenter encourages the Department to require continuous emission monitoring whenever possible. (6)

RESPONSE: Subchapter 21 does not by itself require the use of a continuous emission monitor (CEM) but does require that all emissions including those recorded by a CEM be annually reported. The Department is emphasizing the importance of using continuous emissions monitoring for appropriate source operations. For example, N.J.A.C. 7:27-19, Control and Prohibition of Air Pollution from Oxides of Nitrogen, requires some source operations to utilize CEMs. The Department expects facilities to use CEM data in estimating emissions from source operations that have CEMs.

N.J.A.C. 7:27-21.8 Request for extensions

5. COMMENT: Under N.J.A.C. 7:27-21.8(f), the phrase "necessary to prevent extreme hardship" is undefined, vague and ambiguous. The Department should either delete this requirement or articulate the standards by which it would make such a determination. (3)

RESPONSE: In order to create an even playing field between all persons needing to comply with this rule, the Department needs to decide upon a request for extension based upon the effect that complying with the rule by the April 15 reporting deadline will have on all persons. In most cases, persons will expend the necessary resources to comply with the rule by the deadline. The Department believes the use of this phrase will allow for the proper amount of discretion on the part of the Department to differentiate between those persons making a concerted effort to comply and those who are not making such an effort to meet their reporting responsibilities.

N.J.A.C. 7:27-21.9 Notification of non-applicability

6. COMMENT: With regard to N.J.A.C. 7:27-21.9(a), it is not clear in which February the non-applicability form must be submitted. The following sentence should therefore be added to the end of this paragraph: "For example, if in calendar year 1994 the facility does not meet the applicability for requiring an emission statement to be submitted (which would occur in 1995), the responsible official must submit the non-applicability statement by February 1, 1995." (1, 5)

RESPONSE: The Department agrees that this example clarifies the provision and is adding such an example to N.J.A.C. 7:27-21.9(a) upon adoption.

7. COMMENT: The information requested in N.J.A.C. 7:27-21.9(b) is overly burdensome for a facility which is no longer required to submit an emission statement. As proposed, the non-applicability notification essentially is an emission statement in and of itself. The commenter recommends that a non-applicability notification include only information identifying the facility and a certification statement providing the reasons and justifications as to why the facility is not required to submit an emission statement. Also, the commenter recommends deleting subparagraphs (b)4i through (b)4iii. (2)

RESPONSE: The Department does not believe that the requirements of N.J.A.C. 7:27-21.9 are overly burdensome. These requirements are significantly less burdensome and extensive than the requirements for submitting an emission statement. The only information required is facility identification information, the facility's total "potential to emit," and the justification as to why the facility believes an emission statement submission is not required. Actual emission information is not required, and the level of detail is significantly less than preparing an Emission Statement.

The Department believes that the information required at N.J.A.C. 7:27-21.9 is necessary in order to avoid misunderstandings between the facility and a Department in advance so that the Department would not seek enforcement action against a facility who is not required to submit an emission statement or so that the facility would not mistakenly fail to submit an emission statement in the belief that the facility was not required to do so. In order to avoid this misunderstanding, the above information is needed so that the Department may accurately respond to this request and decide upon the validity of the claim.

8. COMMENT: With regard to N.J.A.C. 7:27-21.9(d), the April 1 deadline for the Department to respond to a non-applicability request is too long. It requires those facilities that should not be in the program to expend resources in order to meet the April 15 filing date or risk a possible enforcement action. The proposal should be amended to require the Department to respond within 30 days. In the event the Department does not follow this recommendation, the proposal should be amended to conform with N.J.A.C. 7:27-21.8(g); namely, that failure to respond constitutes an approval. (3)

RESPONSE: It is the Department's intent with regard to N.J.A.C. 7:27-21.9(d) and (e) to cooperatively work with those facilities submitting non-applicability notifications and to provide sufficient time for the Department to respond to a notification of non-applicability. The rule provides that the Department will not be responsible for a facility's failure to meet the April 15 deadline for Emission Statement submittal if that facility fails to timely submit a notification of non-applicability. The Department expects to receive up to 200 notices of non-applicability in the 1994 and 1995 reporting years. The Department intends to respond to notifications of non-applicability as soon as possible and within 30

days. However, given the uncertainty regarding the volume of work, the Department cannot adopt a review period of less than 60 days (that is, by April 1) in the Administrative Code.

Receipt by the Department of a notification of non-applicability does not relieve a facility from the requirements of the subchapter. If the Department determines that the facility does in fact need to submit an emission statement, the Department's receipt of a notification of non-applicability does not relieve a facility of any submission deadline established by this subchapter. However, if a facility submits a notification of non-applicability prior to February 1, and the Department does not respond until after April 1, the Department does not intend to penalize a facility for submitting a late emission statement. Alternatively, if a facility submits a notification of non-applicability after February 1, the Department is not obligated to respond, and the facility may be subject to possible enforcement action for failing to submit an emission statement after April 15.

If, after reviewing a notification of non-applicability, the Department determines that the facility needs to submit an emission statement, a facility may request up to two extensions of the April 15 reporting deadline pursuant to N.J.A.C. 7:27-21.8. If these extensions are approved by the Department, the Department would not take enforcement action for failure to submit an Emission Statement by April 15. Even if the Department responds to the notification of non-applicability on April 1, the facility would still have up to June 15 (two and a half months) to submit an emission statement, if necessary. The Department believes that this is sufficient time to submit a complete emission statement.

Finally, the Department cannot automatically approve by rule a notification of non-applicability to the Emission Statement rule if the Department fails to respond to a notice of non-applicability. Emission Statements are required by Section 182 of the Federal Clean Air Act and the Department cannot waive this Federal requirement. The Department also believes that an automatic approval would not provide the Department with adequate data for use in the development of a Statewide Emissions Inventory.

Summary of Agency-Initiated Changes:

At N.J.A.C. 7:27-21.1, the definition of "Department" is changed to reflect a recent reorganization.

The definition of the term "Federally enforceable" at N.J.A.C. 7:27-21.1 is changed to be consistent with the changes being made upon adoption to the same definition in the Operating Permit rules at N.J.A.C. 7:27-22.1, which is published elsewhere in this issue of the New Jersey Register.

The definition of the term "potential to emit" at N.J.A.C. 7:27-21.1 is changed to be consistent with the same definition proposed in the Operating Permit rules at N.J.A.C. 7:27-22.1 and adopted elsewhere in this issue of the New Jersey Register.

At N.J.A.C. 7:27-21.8(c) and 21.9(c), the Department's name is changed to reflect the recent reorganization.

The penalties proposed at N.J.A.C. 7:27A-3.10(e)21 are being adopted herein without change. However, they are recodified at N.J.A.C. 7:27A-3.10(l)21 in the revised format as adopted for N.J.A.C. 7:27A, Administrative penalties and requests for adjudicatory hearing, and published elsewhere in this issue of the New Jersey Register.

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

7:27-21.1 Definitions

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

...

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

...

"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***, or promulgated under 42 U.S.C. 7411***;

2. Any NESHAP promulgated at 40 CFR 61***, 40 CFR 63, or promulgated under 42 U.S.C. 7412***;

3. Any *[provision of an applicable State Implementation Plan]* ***standard or other requirement provided for in a State Implementation Plan that has been approved by EPA or promulgated through rulemaking by EPA***;

4. Any permit issued pursuant to the requirements established at 40 CFR 52.21; 40 CFR 51, Subpart I; 40 CFR 70; or 40 CFR 71; or

5. Any permit or order issued pursuant to requirements established under the Air Pollution Control Act, N.J.S.A. 26:2C-1 et seq., *[and]* ***or*** this chapter***, except to the extent that the permit or order includes any prohibition established solely pursuant to N.J.A.C. 7:27-8.8(f) or N.J.A.C. 7:27-5***.

...

"Operating permit" means a permit issued by the Department pursuant to N.J.A.C. 7:27-22 to authorize the use of one or more source operations from which air contaminants may be emitted.

"Order" means any and all orders issued by the Department including, but not limited to, Administrative Orders and Administrative Consent Orders.

...

"Potential to emit" means the maximum aggregate capacity of a source operation or of a facility to emit an air contaminant under its physical and operational design. Any physical or operational limitation on the capacity of a source operation or a facility to emit an air contaminant, including control apparatus, and restrictions on hours of operation or on the type or amount of material combusted, stored or processed, shall be treated as part of its design if the limitation is Federally enforceable. ***Fugitive emissions shall be included in the determination of potential to emit. However, the determination shall not include any banked emission reductions that are held by the owner or operator.***

"Preconstruction permit" means a "Permit to Construct, Install or Alter Control Apparatus or Equipment" issued by the Department pursuant to N.J.S.A. 26:2C-1 et seq., in particular N.J.S.A. 26:2C-9.2, and implementing rules at N.J.A.C. 7:27-8.

...

"USC" means the United States Code.

...

7:27-21.8 Request for extensions

(a) A responsible official who is unable to submit an emission statement pursuant to this subchapter by the due date may request an extension to submit an emission statement.

(b) A request for an extension shall include the following information:

1. The Air Pollution Control Plant Identification Number of the facility (if one exists);

2. The plant contact and telephone number;

3. The name and telephone number of the responsible official;

4. The reasons and justifications for the inability to submit the emission statement by the due date and the extreme hardship that would be prevented by submitting the emission statement after the due date; and

5. The date by which the responsible official commits to submit the emission statement which can be no later than one month from the due date.

(c) A request for an extension shall be submitted, in writing, 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—Extension Request

(d) The Department recommends that an initial request for an extension be submitted by April 1. The Department will not consider an initial request for an extension if the Department receives it after April 15.

(e) A responsible official may request one additional request for an extension as long as the Department receives it before the initial extension has expired.

(f) Within 10 working days after receipt of a request for extension, the Department will respond with its determination as to whether

the request for extension is denied or granted and the date by which the emission statement is due. The Department will grant an extension if the extension is necessary to prevent extreme hardship.

(g) A request for an extension shall be automatically granted if all of the following conditions are met:

1. The Department receives a request for an extension from the responsible official by the date set forth in (d) above for an initial request or in (e) above for an additional request;

2. The date that the responsible official commits to submit the emission statement is no later than one month after the due date as set forth in (b)5 above; and

3. The Department does not respond within 10 working days of receipt of the request.

7:27-21.9 Notification of non-applicability

(a) If conditions at a facility have changed in a manner such that a facility which was required to submit an emission statement in the previous year is not required to submit an emission statement in the current year, the responsible official shall notify the Department in accordance with this section. The responsible official shall submit such notification of non-applicability to the Department by February 1 of the first year in which the facility is not required to submit an emission statement. ***For example, if in calendar year 1994 the facility does not meet the applicability requirements for submitting an emission statement in 1995, the responsible official must submit the notification of non-applicability by February 1, 1995.***

(b) A notification of non-applicability must include the following information:

1. The plant ID of the facility;

2. The plant contact and telephone number;

3. The name and telephone number of the responsible official;

4. The reasons and justifications as to why the responsible official believes that the facility is not required to submit an emission statement pursuant to N.J.A.C. 7:27-21.2 including, but not limited to, the following:

i. The maximum annual quantity of air contaminants allowed to be emitted from all sources pursuant to each preconstruction permit held by the facility at any time during the year;

ii. The maximum annual quantity of air contaminants that can be emitted from all source operations at their maximum design capacity that are not subject to a preconstruction permit;

iii. The maximum annual quantity of all air contaminants that can be emitted as fugitive emissions; and

iv. Whether the facility is required to obtain or has voluntarily applied for an operating permit pursuant to N.J.A.C. 7:27-22; and

5. A statement as to whether the owner or operator anticipates that conditions at the facility may change in a manner that the facility may in future years be required to submit an emission statement pursuant to N.J.A.C. 7:27-21.2.

(c) A notification of non-applicability 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—Notification of Non-applicability

(d) By April 1, the Department shall respond with its determination as to whether the Department concurs with the responsible official's statement that the facility is not required to submit an emission statement. Failure of the Department to meet this deadline does not relieve the facility's responsibility to comply with all applicable provisions of this subchapter nor does it constitute the Department's concurrence with the responsible official's statement that the facility is not required to submit an emission statement.

(e) If a notification of non-applicability is received by the Department after February 1, the Department is under no obligation to respond to the notification and may take enforcement action pursuant to N.J.A.C. 7:27A-3.10 if the facility does not submit an emission statement pursuant to this subchapter and the Department determines that the facility was required to do so.

7:27-21.10 (No change in text.)

7:27A-3.10 Civil administrative penalties for violations of rules adopted pursuant to the Act

(a)-(g) (No change.)

(h) 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.

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

(l) The violations of N.J.A.C. 7:27 and the civil administrative penalty amounts for each violation are as set forth in the following Civil Administrative Penalty Schedule. The numbers of the following subsections correspond to the numbers of the corresponding subchapter in N.J.A.C. 7:27. The rule summaries for the requirements set forth in the Civil Administrative Penalty Schedule in this subsection are provided for informational purposes only and have no legal effect.

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	$2,000	$4,000	$10,000	$30,000
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)	Records Availability	$ 500	$1,000	$ 2,500	$ 7,500
N.J.A.C. 7:27-21.9(a)	Failure to Submit Notification of Non-applicability	$ 100	$ 200	$ 500	$ 1,500

22.-25. (No change.)

(m) (No change.)

(a)

ENFORCEMENT

Air Administrative Penalties and Requests for Adjudicatory Hearings

Adopted Amendments: N.J.A.C. 7:27A-3.2, 3.5 and 3.10

Proposed: September 7, 1993 at 25 N.J.R. 4045(a) (see also 25 N.J.R. 4836(a)).

Adopted: September 1, 1994 by Robert C. Shinn Jr., Commissioner, Department of Environmental Protection.

Filed: September 7, 1994 as R.1994 d.501, **with substantive and technical changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 13:1B-3, 13:1D-9, and 26:2C-1 et seq., in particular 26:2C-19.

DEP Docket Number: 47-93-08/156.

Effective Date: October 3, 1994.

Operative Date: October 31, 1994.

Expiration Date: December 4, 1994.

The New Jersey Department of Environmental Protection proposed amendments to the Air Administrative Penalties and Requests for Adjudicatory Hearing rules at N.J.A.C. 7:27A-3 in the September 7, 1993 issue of the New Jersey Register. The proposal amended the penalty amount and added penalties for violations of N.J.A.C. 7:27-8, Permits and Certificates, and added penalties for violations of proposed new rules, N.J.A.C. 7:27-22, Operating Permits. The Department published the related proposals regarding N.J.A.C. 7:27-8 and 7:27-22 in the same issue of the New Jersey Register (see 25 N.J.R. 4033(a) and 25 N.J.R. 3963(a), respectively).

Summary of Hearing Officer's Recommendations:

A public hearing was held on October 12, 1993 at the Department's public hearing room at 401 East State Street in Trenton, New Jersey for all three proposals relating to the Operating Permits Program rules. Five people spoke at the public hearing. Richard V. Sinding, then Assistant Commissioner for Policy and Planning, served as hearing officer. Assistant Commissioner Sinding recommended that the proposed rules be adopted with the changes described below in the responses to comments and in the Summary of Agency-Initiated Changes, and with the changes to correspond with those changes described in the responses to comments and the Summary of Agency-Initiated Changes in each of the companion adoptions published elsewhere in this issue of the New Jersey Register. The Department accepts the recommendation. The record of the public hearing may be inspected, or obtained upon payment of the Department's usual charges for copying, by contacting Janis E. Hoagland, Esq., Office of Legal Affairs, Department of Environmental Protection, 401 East State Street, CN 402, Trenton, New Jersey 08625-0402.

Summary of Public Comments and Agency Responses:

Eleven people submitted written comments regarding the penalties amendments being adopted herein during the comment period, which was extended to November 23, 1993. See 25 N.J.R. 4836(a). The following persons submitted comments:

1. Diana L. Forman, Superintendent, Environmental Control, Merck & Co., Inc.
2. Dr. Jim Sinclair, P.E., First Vice President, New Jersey Business & Industry Association
3. Lenora Strohm, Staff Project Engineer, General Motors
4. Paul Reinemann III, Environmental Specialist, U.S. Generating Company
5. Russell D. Potter, P.E., Finch Consulting Corporation
6. James W. Klickovich, Coordinator, Environmental Affairs and Charles E. Ash, Engineer, Environmental Affairs, Atlantic Electric
7. Neale R. Bedrock, Lowenstein, Sandler, Kohl, Fisher & Boylan
8. D.J. Campbell, Refinery Regulatory Advisor and R.M. Ivory-Moore, State Regulatory Advocate, Mobil Oil Corporation
9. John A. Maxwell, Associate Director, New Jersey Petroleum Council
10. James A. Shissias, General Manager, Environmental Affairs, Public Service Electric and Gas Company
11. Barbara Warren, Project Director, New York Toxics Project, Consumer Policy Institute

The timely submitted comments and the Department's responses are summarized below. The number(s) in parentheses after each comment identified the respective commenter(s) listed above.

1. COMMENT: The commenters expressed their appreciation for the opportunity to submit comments on the proposed rule and rule amendments, and offered their assistance regarding the proposed changes. Other commenters requested that the Department carefully consider their comments and also offered assistance. (3, 4, 6)

RESPONSE: The Department thanks the commenters for their offer to provide assistance on the proposed rule and rule amendments. The Department intends to maintain an open dialogue with the regulated community and interested persons in refining, as necessary, the Operating Permits Program and the rules related to it.

2. COMMENT: One commenter requested that the Department extend the comment period for an additional 30 days. The regulations represent a significant change to the way approximately 900 facilities operate and the regulated community should be given further time to provide in-depth commentary. Another commenter expressed appreciation for the Department's subsequent extension of the deadline for comments. (1, 9)

RESPONSE: The Department did extend the comment period from October 27, 1993 to November 23, 1993. The notice of extension was published in the New Jersey Register on November 1, 1993, at 25 N.J.R. 4836(a).

3. COMMENT: Various aspects of the proposed revisions are beyond the minimum Federal requirements and will result in considerable economic cost with little or no benefit to the environment. The Department should carefully consider the impact of the proposed rules on the State's economy, and withdraw the proposed rules and repropose substitute rules after thorough and comprehensive meetings with the business community. (4, 8, 9)

RESPONSE: Although this comment was submitted under the docket number for this penalties rule proposal, it does not seem to be applicable. The comment is, however, applicable to the new and amended rules at N.J.A.C. 7:27-22 and 7:27-8 adopted elsewhere in this issue of the New Jersey Register and is addressed in the responses to comments therein.

4. COMMENT: The Department should carefully assess the economic impact of the proposed rules on the petroleum industry as well as on the many other industries and businesses currently providing jobs and tax revenues in New Jersey. A study by the National Petroleum Council indicates that the oil industry will spend a minimum of $106 billion over a 20-year period to comply with existing and anticipated regulations. The United States Department of Energy admits that it is widely understood within the industry that some companies may close refineries or portions of them because of rising environmental costs. American refineries have made environmental progress. The petroleum industry is concerned that the State has gone too far, too fast with this rulemaking. Although the commenter agrees with the need to protect and preserve the environment, the commenter cautions the Department about exceeding Federal guidelines. The American refining industry has already lost too many jobs and does not want to lose any more. (9)

RESPONSE: Although this comment was submitted under the docket number for this penalties rule proposal, it does not seem to be applicable. The comment is, however, applicable to the new and amended rules at N.J.A.C. 7:27-22 and 7:27-8 adopted elsewhere in this issue of the New Jersey Register and is addressed in the responses to comments therein.

5. COMMENT: The enforcement provisions proposed by the Department, given the scope of the operating permit program, are overly broad and excessive. Using enforcement authority in such a manner would not serve the goals of the Operating Permit Program, but would simply be a mechanism to raise funds for the Department. This is not appropriate, particularly in light of New Jersey's proposed operating permit fee schedule and ability to assess fees for administration of the program. The Clean Air Act Amendments (CAAA) provide that penalties should be appropriate to the violation. The proposed penalties, in many cases, exceed the magnitude of the violation. It is recommended that the penalty provisions be made less stringent to be consistent with the intent of the CAAA in protecting public health and the productive capacity of the nation. (3)

RESPONSE: In determining a penalty amount, it is appropriate for the Department to take into account not only the environmental and health impacts of the violation, but also the deterrent effect of the penalty. The Department believes that the adopted penalties are not out

of proportion to the magnitude of the violations. Penalties must be consistent with the minimum United States Environmental Protection Agency (EPA) requirements at 40 CFR 70 and reducing the penalties may render the operating permit program inconsistent with these Federal requirements. An assessed penalty may, however, be adjusted in accordance with N.J.A.C. 7:27A-3.5(e) based on specific extenuating and mitigating factors. Furthermore, the determining factor for whether the Department takes enforcement action is whether or not a violation of a statute, rule, permit, or order has occurred. The method by which the Department may impose any penalty and the disposition of the monies is not a consideration in determining if an enforcement action will be taken.

6. COMMENT: The entire mandatory penalty system is out of control and has outlived its usefulness. The damaged image of the Department as an ever-expanding and self-perpetuating fee- and penalty-driven bureaucracy needs to change. To allow for economic growth, or in some cases, economic survival, the air pollution control program should change its enforcement philosophy towards the achievement of compliance built on a system of cooperation, innovation and private sector investment. The undocumented premise that the new and increased penalty system will improve compliance is rejected. Since most violations are unintentional or are caused by an unanticipated technical malfunction, higher penalties cannot improve compliance. Therefore, the underlying assumption for the imposition of higher penalties is faulty. The existing penalty philosophy connected to the enforcement of environmental regulations has been a major contributor to the perceived antibusiness climate in New Jersey. This may be the proper time for New Jersey to change its regulatory tone. (2)

RESPONSE: The Department maintains that the penalty system is a useful enforcement mechanism to ensure compliance with the New Jersey Air Pollution Control Act, N.J.S.A. 26:2C-1 et seq. As discussed in the Summary for this penalties rule proposal, the amendments to N.J.A.C. 7:27A-3 are a response to the mandates of the CAAA of 1990, which require certain minimum enforcement provisions. Both the CAAA of 1990 and the New Jersey Air Pollution Control Act require the State to establish certain emission limitations and other enforceable control measures to restrict the mounting dangers of air pollution in order to protect the health and welfare of its citizens, animal and plant life. These rule amendments are consistent with the mandates of both the CAAA of 1990 and the New Jersey Air Pollution Control Act. It should be noted that, while the amendments increase penalties for some violations, they also reduce penalties for others, particularly for violations caused by small individual source operations that emit less than 0.5 pounds per hour.

The commenter suggested that the Department change its enforcement philosophy because most violations are unintentional or are caused by unanticipated technical malfunctions and therefore the imposition of penalties cannot improve compliance. It has been the Department's experience that many violations are foreseeable and are the result of improper facility operation and maintenance or failure to properly use pollution control equipment. For violations which are not foreseeable, recent amendments to N.J.S.A. 26:2C-1 et seq. provide an affirmative defense to liability for penalties for certain air pollution control violations due to malfunctions, start-up conditions, shutdown conditions and necessary equipment maintenance. As noted in the response to Comment 11 below, the Department intends to propose an amendment to N.J.A.C. 7:27A-3 in 1995 to address the availability of the affirmative defense.

7. COMMENT: It is understood that in order to implement new regulatory programs, adequate enforcement provisions must be available. Adoption of a penalty matrix for enforcing violations by continuous emissions monitors (CEMs) and continuous process monitors (CPMs) is supported. This method is efficient, innovative and predictable. It takes into consideration the type of monitor, the size of the source and the length of the recorded violation. This matrix allows a facility to predict the level of the penalty which is likely to be levied in the event of an exceedance. The adoption of this matrix increases the efficiency of the system by allowing both the Department and the regulated community to understand the potential scope of the enforcement action. It also takes into account the proposed penalties which are less severe than those contemplated for facilities and sources without such sensitive monitoring systems. (10)

RESPONSE: The Department appreciates the commenter's support. The Department has reviewed the comments received regarding the continuous monitoring system penalty provisions at N.J.A.C. 7:27A-3.5 and 3.10 and has determined that, although the new rules are an improvement over the existing method for assessing penalties for violations reported by continuous monitoring systems, the rules would benefit from additional refinement. The Department is adopting the proposed amendments, but plans to propose amendments early in 1995 to penalty provisions concerning these monitoring systems based on more precise time intervals than are contained in the adopted amendments. For further discussion of these issues, see the responses to Comments 8 and 22, below.

8. COMMENT: "Continuous" is used throughout the proposed regulation (for example, the term "continuous processing monitors (CPMs)" in N.J.A.C. 7:27-22 and 7:27A-3, without being defined. The generally accepted meaning of continuous is "without interruption or cessation." This cannot be used when referring to CPMs. No process monitoring is on-line 100 percent of the time because calibration and other maintenance must be performed periodically to assure that these monitors are operating at the highest level of efficiency. Many continuous process monitors operate by performing measurements at discrete time intervals. The Department recognizes this fact by specifying that CPMs may have 25 percent downtime per hour and 10 percent downtime per quarter and still be considered to be producing valid measurements. Since the Department has indicated that it intends to use this equipment as a self-enforcement mechanism, it is important that the definition reflect how the device actually operates. 40 CFR 70.6(c)(5) includes all of the statutory criteria required by section 114(a)(3) of the CAAA for the content of a compliance certification, including a requirement that the certification state whether compliance was continuous or intermittent. Since the regulated community will be required to certify whether their compliance is continuous or intermittent, both these words should be defined. The following definition should be added: "Continuous: means the measurements are performed frequently enough (allowing downtime for calibration maintenance), based on the potential variability of emissions about a mean value, to allow the owner/operator to certify compliance with an applicable emissions limitation or standard." (8)

RESPONSE: EPA has proposed a definition of "continuous" to be included in 40 CFR 64. The Department has incorporated the Federal definition by reference into N.J.A.C. 7:27-22.19(f). See the adoption of N.J.A.C. 7:27-22 published elsewhere in this issue of the New Jersey Register. As discussed in response to Comment 7 above, the Department anticipates proposing amendments to N.J.A.C. 7:27A-3.10 regarding penalty assessments for violations detected by CPMs. Based on the definition of "continuous" that EPA adopts, the Department may propose a definition of "continuous" or "continuously" to clarify the rules at that time.

9. COMMENT: Given the broad wording of certain penalty assessment provisions, it is possible for a source operation to be assessed different penalties for the same infraction depending on the particular penalty assessment regulation chosen by the Department to calculate the penalty. For example, in the instance where a preconstruction permit incorporates the Department's general opacity requirements (N.J.A.C. 7:27-3.2), it is possible for a first-time opacity offense to be assessed a penalty either pursuant to N.J.A.C. 7:27A-3.5 or pursuant to N.J.A.C. 7:27A-3.10. Under N.J.A.C. 7:27A-3.5, the maximum penalty would be $10,000. Under N.J.A.C. 7:27A-3.10, the maximum penalty for violating the preconstruction permit condition would be $2,000. It is unfair for an owner or operator of a source operation to receive a penalty assessment based on the general provisions of N.J.A.C. 7:27A-3.5 if a lesser penalty is prescribed for the same specific offense under N.J.A.C. 7:27A-3.10. Nevertheless, the Department proposes to codify this practice through N.J.A.C. 7:27A-3.10(g). Through this provision, the Department proposes to allow itself the discretion to assess the higher of two possible penalty assessments. The only rationale given for this practice is "to provide a sufficient deterrent effect." The practice the Department now seeks to codify appears illicit, its codification is arbitrary and capricious, and the rationale for its codification is, at best, not straightforward. It appears that the Department adopts penalty assessment regulations to shield itself from challenges that its case-specific penalty assessments are inappropriate. In establishing assessments by regulation, the Department avoids case-by-case review of the amount of its assessments, claiming that the appropriateness of the amount assessed has been established by rule. Having promulgated such rules, the Department cannot argue that it requires discretion to impose a greater penalty on a case-by-case basis in order to provide a sufficient deterrent effect. The appropriateness of the deterrent effect

is implicit in the rule itself. If the Department requires discretion in establishing the amount of penalty assessments, then the exercise of that discretion must be subject to review. (6)

RESPONSE: N.J.A.C. 7:27A-3.10(g) establishes discretionary authority to assess the appropriate civil administrative penalty, consistent with the statutory maximum requirements, in instances where N.J.A.C. 7:27A-3.10 may provide for more than one method of penalty assessment for a particular violation. It does not allow the Department to assess a penalty under another section.

N.J.A.C. 7:27A-3.5(d) provides that the Department may assess a penalty under that section where no penalty amount is specified in N.J.A.C. 7:27A-3.6 through 3.11. In the example given by the commenter, the Department would not use N.J.A.C. 7:27A-3.5, but would use the Penalty Schedule in N.J.A.C. 7:27A-3.10(l) for a violation of N.J.A.C. 7:27-3.2 and/or a violation of N.J.A.C. 7:27-8 if there is a violation of a permit condition.

In some instances, a failure to comply with a permit condition may lead to another violation. For example, failure to properly use equipment (a violation of N.J.A.C. 7:27-8.3) may lead to a violation of a smoke emissions standard (in violation of N.J.A.C. 7:27-3.2). If the permittee has a continuous monitoring system, the Department would, under N.J.A.C. 7:27A-3.10(g), have the authority to assess a penalty for either or both violations under either N.J.A.C. 7:27A-3.10(l) or (m). The Department need not assess the lower penalty and may assess the higher penalty.

The Department has revised N.J.A.C. 7:27A-3.10(g) on adoption to more clearly identify the bases for its determination, by reference to the factors listed in N.J.A.C. 7:27A-3.5(e). This change would make the provision consistent with N.J.A.C. 7:27A-3.10(i), which authorizes the Department to consider the same factors in adjusting the amount of a penalty before assessment. Although N.J.A.C. 7:27A-3.5(e) provides the Department some flexibility to take into account extenuating and mitigating factors, any adjustment made to the penalty must be reasonably related to these factors. This change would also provide the regulated community with additional guidance on how the penalty would be assessed. For example, the Department may adjust a penalty pursuant to the factors at N.J.A.C. 7:27A-3.5(e) if a violation is of such egregious nature, or the severity of the environmental damage or the potential or actual health impacts are such that the violation poses a potential threat to the community's human health or welfare, animal or plant life or property. These provisions are consistent with the New Jersey Air Pollution Control Act, N.J.S.A. 26:2C-1 et seq., which clearly provides the Department discretion in the assessment of civil administrative penalties.

The provisions are also consistent with other Department penalty rules. Where a violator has an objection to a penalty or action taken by the Department, the violator is afforded the right to contest the action or penalty under the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., the New Jersey Air Pollution Control Act and N.J.A.C. 7:27A-3.4.

10. COMMENT: The proposed penalty regulations do not address the availability of the affirmative defense to enforcement actions (for example, equipment malfunction, start-up, shutdown, and maintenance) as contemplated by N.J.S.A. 26:2C-19.1 through 19.5. The Department's proposed regulations for operating permits at N.J.A.C. 7:27-22.16(l) address this topic and contemplate future regulations regarding the affirmative defense. Absent future regulatory action, at a minimum, N.J.A.C. 7:27A should address the availability of the affirmative defense contemplated by N.J.A.C. 7:27-22.16(l) and clearly define the Department's intentions regarding further implementation. (6)

RESPONSE: The Department agrees with this comment. However, such an amendment would represent a change too substantial to be made for adoption under the Rules for Agency Rulemaking at N.J.A.C. 1:30-4.3. The Department will be proposing amendments in 1995 to address the availability of the affirmative defense at N.J.A.C. 7:27A-3. In the meantime, the affirmative defense is available pursuant to the statute.

11. COMMENT: At the October 4, 1993 workshop, the Department stated that the penalties would be based on the percentage deviation from the amount authorized by the permit. The problem with this rigid enforcement is that, for example, a change from 0.001 pound to 0.002 pound is a 100 percent change, which is out of line with a 10 percent change from 100 tons to 110 tons. Percentage deviation should not be the only criterion used. (5)

RESPONSE: The degree of deviation from the permit condition is only one of several criteria the Department uses in assessment of penalties. The nature of air contaminant being emitted and the type of source operation are other factors the Department considers. Under N.J.A.C. 7:27A-3.10(m), continuous monitoring systems (CMS), the penalty assessment for violations detected by continuous monitoring is based upon the nature and quantity of the air contaminant being emitted and the type of source operation, as well as such additional factors as the degree of deviation from a standard and the duration of the offense. The Department is adopting a two-tiered penalty scheme at N.J.A.C. 7:27A-3.10(m) for major and minor source operations. The penalty assessment for minor source operations will be approximately one quarter to one half, depending upon the size of the source operation, of the penalty assessment for major source operations with CMS. In addition, the adopted penalty schedule at N.J.A.C. 7:27A-3.10(l) pertaining to N.J.A.C. 7:27-8.3(e) contains five categories or classes of source operations that are subject to differing penalty assessments depending on the nature of the air contaminant being emitted and the type of source operation. The rule amendments add a new Class One for source operations emitting the smallest amount of pollutants (less than 0.5 pollutant). Hazardous air pollutants (HAPS) are considered part of the newly designated Class Five for those source operations which emit the most harmful or dangerous air contaminants.

12. COMMENT: The definition of "source operation" is ambiguous. The phrase "can reasonably be expected" in the definition of a source operation is undefined, vague, and ambiguous, and should be deleted. It is appropriate to distinguish between source operations and facilities, and assess penalties by source operation. Unfortunately, there are still potential ambiguities in the definition of a source operation that should be eliminated. Whether a single source operation can include facilities and equipment covered by more than one permit is ambiguous. This is a relevant concern in the penalty regulations because the scope of the term "source operation" is the limiting factor in determining whether a violation is a first, second, or third offense for the particular source operation. The ambiguity can be eliminated by amending the definition to read: "A source operation may include one or more pieces of equipment or control apparatus but shall be limited to all those pieces of equipment or control apparatus subject, or potentially subject, to an individual Subchapter 8 preconstruction permit." In essence, the permit source at a facility should be viewed exclusive of other sources at any given facility. (6, 7)

RESPONSE: The definition of source operation at N.J.A.C. 7:27A-3.2 must be consistent with the definition of the same term at N.J.A.C. 7:27-22.1. Accordingly, this comment is addressed in the responses to comments in the adoption of N.J.A.C. 7:27-22 published elsewhere in this issue of the New Jersey Register.

13. COMMENT: For all offenses for which the Department may issue a penalty, the Department should first issue a written warning to the permit holder. The notice should identify the condition or activity that constitutes the violation and should identify the section of the law or regulation that is being violated. Furthermore, it should specify the type of action necessary to correct the violations. The Department should give the permit holder 30 days from receipt of the notice to correct the violation. Only after 30 days expires and no corrective action is taken, should the Department issue a notice of violation for which a penalty can be assessed. The 30-day grace period concept is modeled after practices engaged in by OSHA for some violations, and under the New Jersey Uniform Construction Code. (2)

RESPONSE: This issue of a "grace period" for air pollution violations is being considered by the State Legislature. The Department will be guided by any legislative changes in its enforcement of the Air Pollution Control Act.

14. COMMENT: The Department should have the flexibility to waive or reduce any or all penalties if it believes that doing so will help the process of regulatory compliance at a facility that is in violation of one or more of the standards in the penalty matrix. (2)

RESPONSE: Effective December 20, 1993 (operative January 23, 1994), the Department adopted at N.J.A.C. 7:27A-3.5(e) the discretionary authority to adjust the amount of any penalty assessed pursuant to N.J.A.C. 7:27A-3.5, 3.6, 3.7, 3.8, 3.9, or 3.10 based upon extenuating or mitigating factors. The Department is adopting herein an amendment at N.J.A.C. 7:27A-3.10(i) to allow the adjustment of the amount of any penalty determined pursuant to N.J.A.C. 7:27A-3.10 prior to the assessment of a civil administrative penalty in accordance with the same extenuating or mitigating factors listed in N.J.A.C. 7:27A-3.5(e).

15. COMMENT: For a first offense that is not of a willful nature or a deliberate action, there should be no penalty. For additional of-

fenses, the penalty matrix may be applied for actual violation of permit parameters. (2)

RESPONSE: The Air Pollution Control Act is a strict liability statute which does not require a finding of negligence or intent before imposing civil liability for a violation. The rules concerning civil administrative penalty assessment follow the statutory language of the New Jersey Air Pollution Control Act at N.J.S.A. 26:2C-19, as amended by P.L. 1985, c.12. The legislative scheme established by N.J.S.A. 26:2C-19 requires the Department to determine that there is a violation before it imposes a penalty. The Department then may issue an Administrative Order and Notice of Civil Administrative Penalty Assessment. The Air Pollution Control Act empowers the Department to assess penalties for each violation of the Act or of any rule promulgated or administrative order, operating certificate, registration requirement or permit issued pursuant thereto of not more than $10,000 for the first offense, not more than $25,000 for the second offense and not more than $50,000 for the third and each subsequent offense. The Air Pollution Control Act does not establish a scheme whereby penalties for a first offense are waived. However, as discussed in the response to Comment 13 above, the State Legislature is considering changes to the Air Pollution Control Act to include a "grace period."

16. COMMENT: There is potential ambiguity between N.J.A.C. 7:27A-3.5 and 3.10. N.J.A.C. 7:27A-3.10 assesses penalties based on the frequency of "offenses," which are related to violations by an individual "source operation." N.J.A.C. 7:27A-3.5 provides for the assessment of penalties for offenses by "violators." The term "violator" is not defined. For N.J.A.C. 7:27A-3.5 and 3.10 to be consistent, either a "violator" must be a "source operation" or the "violation" must somehow be related to a particular "source operation" for purposes of computing penalties based on multiple violations of the permit for a specific source. N.J.A.C. 7:27A-3.5 should be revised accordingly. Otherwise, for owners and operators with multiple "source operations," there will be potential confusion about aggregation of violations from different "source operations" at the same "facility" or even violations of "source operations" at different "facilities." The proposed revisions to N.J.A.C. 7:27A-3.10 help to eliminate this potential ambiguity, but the ambiguity generally remains in N.J.A.C. 7:27A-3.5. The elimination of this consistency problem is especially necessary in light of the new provisions to N.J.A.C. 7:27A-3.5 and 3.10 providing for prior offenses to be disregarded "if the violator has not committed the same offense in the year immediately preceding the date of the pending offense." This problem is clearly and appropriately dealt with in proposed N.J.A.C. 7:27A-3.5(g) and 3.10(e) but inappropriately treated in proposed N.J.A.C. 7:27A-3.5(h) and 3.10(f). The latter provisions should be revised to conform to the approach generally taken in N.J.A.C. 7:27A-3.10. (6)

RESPONSE: Penalties assessed according to the Civil Administrative Penalty Schedule in N.J.A.C. 7:27A-3.10(l) are on a per "source operation" basis for violations of N.J.A.C. 7:27-8 and 7:27-22 as noted in the Schedule. "Source operation" is defined in N.J.A.C. 7:27A-3.2 as a "process." A violator may be an individual or an entity such as a corporation which owns and/or operates one or more source operations at a facility. A violator may commit an offense that constitutes a violation of a provision of the Air Pollution Control Act or regulation promulgated pursuant thereto. The Department then issues an order and assesses a penalty against the violator, not against the source operation.

The Department assesses a higher penalty for repeated violations of the same regulation in N.J.A.C. 7:27 which occur at the same facility. In some instances, N.J.A.C. 7:27A-3.10 provides for different penalty amounts for different types of source operations (for example, based on size, type of air contaminant or whether the source operation is subject to specific regulations). A higher penalty is assessed for a subsequent offense involving a source operation of the same class as was involved in the prior offense.

The commenter also expressed concern over the potential inconsistency in the proposed new subsections N.J.A.C. 7:27A-3.5(h) and 7:27A-3.10(f) which relate to the "clean slate" provision for continuous monitoring systems. In general, the Department will establish by permit a downtime allowance as a percent of the time a CEM is not functioning in relation to the amount of time a facility is operating in a three month period (calendar quarter). A violation occurs when the total time a CEM is not functioning for the quarter exceeds the downtime allowed for the quarter. Downtime is reported by a permittee to the Department quarterly. Therefore, the Department's determination of compliance with downtime allowances is made after a quarterly report is submitted. Since a downtime allowance violation occurs only after the completion of a quarter, the Department has revised N.J.A.C. 7:27A-3.5(h) and 7:27A-3.10(f) on adoption to clarify that an offense is treated as a first offense if the same offense was not committed in the four consecutive calendar quarters immediately preceding the offense.

For example, a violation of the downtime allowance occurs during the second quarter of 1995 for a major source operation (major). This would be the first offense. Three additional violations of the downtime allowance occur at the following times at the same facility: (a) during the third quarter of 1995 for a minor source operation (minor); (b) during the first quarter of 1996 for a major source operation (major); and (c) during the second quarter of 1997 for a major source operation (major). Pursuant to N.J.A.C. 7:27A-3.5(h) or 7:27A-3.10(f), the Department would treat (a) through (c) offenses as follows: (a) this would be a first offense because the violation occurred at a different class of source operation (minor) from the initial offense (major); (b) this would be a second offense because the violation occurred at the same class of source operation (major) and within three calendar quarters of the initial violation; (c) this would be a first offense because the violation occurred more than four quarters after the preceding violation at a major source operation.

17. COMMENT: Many delays in processing are the result of inadequate, missing, or purposely excluded information. Therefore, there should be strict penalties for companies that leave out emission units or process lines in their applications. The commenter doubts that the criminal penalties will be used in any, other than the most egregious, cases. Monetary fines might stimulate the submission of more complete information. (11)

RESPONSE: N.J.A.C. 7:27A-3.6 establishes civil administrative penalties for those applicants who deliberately or willfully submit inaccurate information or who make a false statement. These amendments adopted herein do not affect the existing provisions for monetary penalties at N.J.A.C. 7:27A-3.6.

18. COMMENT: While the Department's willingness to recognize a new Class One for source operations emitting less than 0.5 pounds per hour is appreciated, the magnitude and extent of the proposed penalty schedule matrix is rejected. The proposed amendments would increase the penalty amounts for permit violations at approximately 350 major stationary sources. The penalty matrix does not reflect a permit holder's intent to pollute or violate the regulations, nor does it provide the Department with sufficient flexibility to apply discretion to encourage compliance without the issuance of a mandatory penalty. Implementation of the Federal Clean Air Act is an excellent opportunity to improve the effectiveness of the New Jersey air pollution control regulations by placing greater emphasis on compliance and less on mandatory penalties. (2)

RESPONSE: The Department appreciates the comment concerning the adoption of a Class One category for those source operations that emit less than 0.5 pounds an hour. However, the Department does not consider the intent of a violator because the Air Pollution Control Act is a strict liability statute (see response to Comment 15 above). Penalties are not mandatory under the Air Pollution Control Act or under N.J.A.C. 7:27A-3. As discussed in the response to Comment 14, N.J.A.C. 7:27A-3.10(i) gives the Department flexibility to apply the factors in N.J.A.C. 7:27A-3.5(e).

19. COMMENT: The requirement in N.J.A.C. 7:27A-3.10(j) that a facility in violation of N.J.A.C. 7:27-22.3(a) and (b) be subject to cumulative penalties per source is unduly burdensome and not warranted. The proposal fails to consider those sources whose emissions are regulated through an existing certificate to operate. A single penalty schedule, based upon the amount of emissions from those sources without certificates to operate, should be used instead. (7)

RESPONSE: The Department disagrees with this comment. The operating permit will be the administrative mechanism by which the Department will regulate facilities by incorporating all applicable Federal and State requirements under the umbrella of a single permit. The operating permit will supersede individual certificates to operate and will contain the conditions of approval for each source operation which previously were granted pursuant to N.J.A.C. 7:27-8.3(b). The operating permit will be the regulatory tool used by the Department to ensure that those source operations which were previously regulated under N.J.A.C. 7:27-8.3(b) maintain compliance with the conditions of approval of the operating permit.

A single penalty schedule could not be used since it would fail to allow the Department to assess penalties for violations of both N.J.A.C. 7:27-22.3(a) and 22.3(b). As discussed in response to Comment 20, the

Department views noncompliance with each of these sections as separate actions. Accordingly, the Department may assess separate penalties for violations of both provisions.

20. COMMENT: The regulations should not provide the Department with the discretion to assess multiple, apparently cumulative penalties for supposedly different offenses that in actuality arise from the same fact. For example, it would be a violation of N.J.A.C. 7:27-22.3(a) to fail to obtain and maintain an operating permit for a facility. Under N.J.A.C. 7:27-22.3(b), it would be a violation of the regulations to use or operate equipment, control apparatus or source operation at a facility without a valid permit. Under N.J.A.C. 7:27-22.30(b), it is an offense to fail to submit a timely and complete application for renewal of an operating permit. Noncompliance with N.J.A.C. 7:27-22.30(b) would almost surely constitute noncompliance with N.J.A.C. 7:27-22.3(a) and 22.3(b). Nevertheless, the regulations include separate, and apparently cumulative, penalty assessments for violations of all three of these provisions, as though they arose from substantively different facts. There are numerous other examples where the same conduct could trigger mutliple penalty assessments. (6)

RESPONSE: The Department disagrees that violations of N.J.A.C. 7:27-22.3(a), 22.3(b) and 22.30(b) arise from the same fact. Although the Department is not adopting N.J.A.C. 7:27-22.30 at this time, in order to address the commenter's concern, the following discussion includes examples based on N.J.A.C. 7:27-22.30 as proposed. All three enforcement provisions arise from substantially different facts. For example, N.J.A.C. 7:27-22.3(a) requires an owner or operator of a facility subject to the subchapter to obtain and maintain an operating permit by the applicable deadlines set forth at N.J.A.C. 7:27-22.5. If an owner or operator fails to submit a timely and administratively complete application by the applicable deadline in N.J.A.C. 7:27-22.5 and elects to cease operation of the affected equipment, control apparatus or source operation, the owner or operator would be in violation of N.J.A.C. 7:27-22.3(a) but not N.J.A.C. 7:27-22.3(b). However, if the owner or operator continues to operate the affected equipment, the owner or operator would also be in violation of N.J.A.C. 7:27-22.3(b). Further, N.J.A.C. 7:27-22.30(b) requires the permittee of a facility with an existing operating permit to submit an administratively complete renewal application to the Department at least 12 months prior to the expiration of the five year operating permit. If an owner or operator fails to submit a renewal application before the applicable deadline, but obtains an operating permit renewal prior to the expiration date of the operating permit, the owner or operator would be in violation of only N.J.A.C. 7:27-22.30(b). However, if the owner or operator fails to obtain an operating permit renewal prior to the expiration date and continues to operate, he or she would be in violation of N.J.A.C. 7:27-22.3(a), since the permittee would have failed to maintain the operating permit, and of N.J.A.C. 7:27-22.3(b) since the permittee would be continuing to operate without a valid permit.

On the other hand, it should be noted that if an owner or operator of a facility has submitted a timely and administratively complete application to the Department for an initial operating permit or for a renewal in accordance with N.J.A.C. 7:27-22.5 or 22.30, the owner or operator will be afforded an application shield during the Department's review process and will not be subject to penalties for operating the facility without a valid permit. The Federal rules at 40 CFR 70 allow the states the option of incorporating an "application shield" and a "permit shield" in the operating permit rules. The Department has elected to incorporate both of these shields in N.J.A.C. 7:27-22. An application shield protects the owner or operator from penalties for operating without an approved operating permit and in violation of N.J.A.C. 7:27-22.3(b). This applies to the initial operating permit and renewal permit application for the facility. See "Application Shield" at N.J.A.C. 7:27-22.7. A permit shield provides protection from certain types of enforcement action after the operating permit is approved as long as the facility is in compliance with the operating permit. See "Permit Shield" at N.J.A.C. 7:27-22.17.

21. COMMENT: The penalty amounts for the first, second, and third offenses under N.J.A.C. 7:27-8.4(c)1 (Submit Source Specific Testing Protocol) in N.J.A.C. 7:27A-3.10 are incorrect as in the proposal. Instead of $11,000, $12,000, and $15,000, they should be $1,000, $2,000, and $5,000, respectively. (7)

RESPONSE: The Department thanks the commenter for pointing out this typographical error. The Department has made the corrections in this adoption. The penalty amounts were intended to be $1,000, $2,000 and $5,000 for the first offense, second offense and third offense, respectively.

22. COMMENT: N.J.A.C. 7:27-3.10(m)1, Table 1, Continuous Monitoring Systems, defines a Level I offense for CEMs as "greater than 0%, up to and including 25%." However, under 40 CFR 60, Appendix B, an analyzer will be certified if the relative accuracy is within 20 percent or 10 percent, depending on the pollutant. Sources should not be penalized for emissions within the allowable monitor accuracy. While reporting requirements should be fulfilled for a Level I offense, the assessment of a penalty must take instrument accuracy into account. (4)

RESPONSE: The Department does not agree with the commenter that Relative Accuracy (RA) assessment of the analyzer should be considered when determining if a CEMS Level I exceedance violation occurred. All CEMS utilized for compliance determination must undergo the appropriate Performance Specification Tests (PST) and quarterly Quality Assurance requirements outlined in 40 CFR, Appendices B and F (or similar requirements in other regulations). If the CEMS cannot meet the RA standard specified in Appendices B and F, the CEMS are considered "out-of-control" and the data cannot be used for compliance purposes. Once the CEMS successfully meets the RA requirements, the CEMS data can be accepted for compliance purposes, independent of the CEMS RA value. CEMS data are considered valid and enforceable as long as the RA is within the required specification for the PST and quarterly audits. The Department's CEMS Guidelines are similar to 40 CFR Part 60 Appendix B and F criteria.

There are factors which affect the accuracy of a CEMS in addition to those factors cited by the commenter. However, due to the inherent inaccuracies in the CEM system, the Department may, on a case-by-case basis, exercise its discretion and refrain from assessing a penalty under N.J.A.C. 7:27A-3.10(m) where it finds that an emission exceeded a permit limitation by a small percentage. In such event, the Department may make a determination of a violation and take some other action such as notifying the permittee of the violation or issuing an administrative order to require upgraded emission monitors.

The Department anticipates that the United States Environmental Protection Agency will be adopting additional standards concerning the accuracy of continuous monitoring systems. The Department will evaluate these standards as they are established and determine whether any future amendments to this section are appropriate.

Summary of Agency-Initiated Changes:

The Department has adopted elsewhere in this issue of the New Jersey Register amendments to N.J.A.C. 7:27-8 and new rules at N.J.A.C. 7:27-22 to establish the operating permit program. The penalty rules at N.J.A.C. 7:27A-3 adopted herein establish penalties for violations of the operating permit requirements at N.J.A.C. 7:27-8 and 7:27-22. However, in adopting the amendments and new rules at N.J.A.C. 7:27-8 and 7:27-22, the Department reserved the following provisions: N.J.A.C. 7:27-8.14, 8.15, 8.16, 8.17, 22.8, 22.20, 22.21, 22.22, 22.23, 22.24, 22.25, 22.26 and 22.30. See the explanation of the changes being made to N.J.A.C. 7:27-8 and 7:27-22 in the adoption notice therefor published elsewhere in this issue of the New Jersey Register. In adopting N.J.A.C. 7:27A-3 herein, the Department is, accordingly, not adopting the proposed penalties and the associated footnotes in the Civil Administrative Penalty Schedule at N.J.A.C. 7:27A-3.10(l).

In addition, in adopting N.J.A.C. 7:27-8 and 7:27-22, the Department has recodified certain portions of the rules. Accordingly, the Department is herein revising N.J.A.C. 7:27A-3 upon adoption to reflect this recodification as follows:

Proposed	Adopted
N.J.A.C. 7:27-22.6, Table A	N.J.A.C. 7:27-8, Appendix 1, Table C
N.J.A.C. 7:27-22.6, Table B	N.J.A.C. 7:27-8, Appendix 1, Table D
N.J.A.C. 7:27-22.27(c)	N.J.A.C. 7:27-22.27(b)

The Department is not adopting the penalty provision for N.J.A.C. 7:27-22.19(g)2, for failure to notify the Department of a release of air contaminants in a quantity or concentration which poses no potential threat to the public and the environment and which is not likely to result in citizen complaint. The Department proposed at N.J.A.C. 7:27A-3.11(a) lesser penalty amounts for a similar violation in the September 6, 1994 issue of the New Jersey Register at 26 N.J.R. 3566(a). Accordingly, the Department will repropose penalty amounts for violations of N.J.A.C. 7:27-22.19(g)2 in the future as discussed in the response to Comment 7 above.

In N.J.A.C. 7:27A-3.10(i), the cross-reference to N.J.A.C. 7:27A-3.5 has been corrected to N.J.A.C. 7:27A-3.5(e).

In N.J.A.C. 7:27A-3.10(l) pertaining to N.J.A.C. 7:27-8.3(e), which is the penalty provision for violations of a Preconstruction Permit and Certificate Conditions and Provisions Detected by Continuous Monitoring System, a line and asterisk indicating a footnote has been removed since, rather than a footnote, the Department intended the entry here to be a cross-reference to the penalty provision at N.J.A.C. 7:27A-3.10(m).

In response to a comment regarding N.J.A.C. 7:27-22.3(c) published in the adoption notice for N.J.A.C. 7:27-22 elsewhere in this issue of the New Jersey Register, the Department has deleted N.J.A.C. 7:27-22.3(c)2 because it has been determined that the provision is redundant with N.J.A.C. 7:27-22.3(e). Accordingly, citations to N.J.A.C. 7:27-22.3(c) within N.J.A.C. 7:27A-3.10(l) which were applicable to N.J.A.C. 7:27-22.3(c)2 have been amended to N.J.A.C. 7:27-22.3(e). The remaining penalty provision applicable to N.J.A.C. 7:27-22.3(c) has been modified on adoption to remove the misleading direction to "see below" and to delete the extraneous word "and."

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

7:27A-3.2 Definitions

The following words and terms, when used in this subchapter, have the following meanings unless the context clearly indicates otherwise. Unless otherwise specified below, all words and terms are defined in N.J.S.A. 26:2C-2 and in N.J.A.C. 7:27.

...

"Continuous emissions monitor" or "CEM" means a device which continuously measures the emissions from one or more source operations.

"Continuous monitoring system" or "CMS" means a system designed to continuously measure various parameters at a facility which may affect or relate to a facility's emissions. Components of a CMS include, but are not limited to, any continuous emissions monitor (CEM), continuous opacity monitor (COM), continuous process monitor (CPM), or any other constantly operating measuring device and recording device approved by the Department to perform one or more of the functions of a CMS. Ambient monitors, which measure the impact or concentration of air contaminants emitted by the source operation or facility in nearby areas, are not considered part of a facility's CMS.

"Continuous opacity monitor" or "COM" means a device which continuously measures opacity of flue gases on a continuing basis.

"Continuous process monitor" or "CPM" means an instrument or system which continuously measures an operational parameter at a facility, such as temperature or air flow rate.

...

"HAP (Table *[A or B]* ***C***)" means hazardous air pollutant as defined in N.J.A.C. 7:27-*[22]***8, Appendix 1***.

...

"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. A source operation may include one or more pieces of equipment or control apparatus. This term includes the term "emissions unit" as defined at 40 CFR 70.2.

...

7:27A-3.5 Civil administrative penalty determination-general

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

(f) Except as provided for in (g) and (h) below, the Department may, in its discretion, treat an offense as a first offense solely for civil administrative penalty determination purposes, if the violator has not committed the same offense in the five years immediately preceding the date of the pending offense.

(g) For violations of N.J.A.C. 7:27-8.3(e) and N.J.A.C. 7:27-22.3(c) or (e) indicated by a continuous monitoring system, the Department shall calculate penalties in accordance with N.J.A.C. 7:27A-3.10(m)1 and may, in its discretion for purposes of determining the statutory maximum penalty for an offense, treat an offense as a first offense for civil administrative penalty determination purposes, at the beginning of each calendar quarter.

(h) For violations of N.J.A.C. 7:27-8.3(e) and N.J.A.C. 7:27-22.3(d) or (e) when a continuous monitoring system operates out of control or is out of service, the Department shall calculate penalties in accordance with N.J.A.C. 7:27A-3.10(m)2 and may, in its discretion, treat an offense as a first offense for civil administrative penalty determination purposes, if the violator has not committed the same offense in the *[year]* ***four consecutive calendar quarters*** immediately preceding the *[date]* ***first day*** of ***the calendar quarter during which*** the pending offense ***was committed***.

7:27A-3.10 Civil administrative penalties for violations of rules adopted pursuant to the Act

(a) The Department may assess a civil administrative penalty of not more than $10,000 for the first offense, not more than $25,000 for the second offense, and not more than $50,000 for the third and each subsequent offense for each violation of the Act, or of any rule promulgated pursuant to the Act listed in (l) and (m) below.

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

(d) Except as provided for in (e) and (f) below, the Department may, in its discretion, treat an offense as a first offense solely for civil administrative penalty determination purposes, if the violator has not committed the same offense in the five years immediately preceding the date of the pending offense.

(e) For violations of N.J.A.C. 7:27-8.3(e) and N.J.A.C. 7:27-22.3(c) or (e) indicated by a continuous monitoring system, the Department shall calculate penalties in accordance with (m)1 below and may, in its discretion for purposes of determining the statutory maximum penalty for an offense, treat an offense as a first offense for civil administrative penalty determination purposes, at the beginning of each calendar quarter.

(f) For violations of N.J.A.C. 7:27-8.3(e) and N.J.A.C. 7:27-22.3(d) or (e) when a continuous monitoring system operates out of control or is out of service, the Department shall calculate penalties in accordance with (m)2 below and may, in its discretion, treat an offense as a first offense for civil administrative penalty determination purposes, if the violator has not committed the same offense in the *[year]* ***four consecutive calendar quarters*** immediately preceding the *[date]* ***first day*** of ***the calendar quarter during which*** the pending offense ***was committed***.

(g) Where the civil administrative penalty for a violation of the Act or of any rule promulgated pursuant to the Act may be determined by using more than one provision of this section, the Department may, in its discretion, assess the highest civil administrative penalty that corresponds to the violation, *[in order to provide a sufficient deterrent effect]* ***pursuant to the factors listed in N.J.A.C. 7:27A-3.5(e)***.

(h) 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.

(i) The Department may, in its discretion prior to assessment of a civil administrative penalty, adjust the amount of any penalty determined under this section pursuant to the factors listed in N.J.A.C. 7:27A-3.5***(e)***.

(j) For violations of N.J.A.C. 7:27-22.3(a) and (b), the Department shall calculate penalties in accordance with the Civil Administrative Penalty Schedule in (l) below by adding the penalty amounts for each source operation within a facility that is subject to N.J.A.C. 7:27-22. The daily penalty for such violations shall not exceed the amounts set forth in (a) above.

(k) Footnotes 3, 4, and 8 set forth in the Civil Administrative Penalty Schedule in (l) below are intended solely to put violators on notice that in addition to assessing a civil administrative penalty, the Department may also revoke the violator's Operating Permit, Certificate or variance. These footnotes are not intended to limit the Department's discretion in determining whether or not to revoke an Operating Permit, Certificate or variance, but merely to indicate the situations in which the Department would be most likely to seek revocation.

(l) The violations of N.J.A.C. 7:27 and the civil administrative penalty amounts for each violation, are as set forth in the following

Civil Administrative Penalty Schedule. The numbers of the following subsections correspond to the numbers of the corresponding subchapter in N.J.A.C. 7:27. The rule summaries for the requirements set forth in the Civil Administrative Penalty Schedule in this subsection are provided for informational purposes only and have no legal effect.

CIVIL ADMINISTRATIVE PENALTY SCHEDULE

1.-7. (No change.)

8. The violations of N.J.A.C. 7:27-8, Preconstruction Permits and Certificates, and the civil administrative penalty amounts for each violation, per source operation, are set forth in the following table:

Citation	Rule Summary	First Offense	Second Offense	Third Offense	Fourth and Each Subsequent Offense
N.J.A.C. 7:27-8.3(a)	Obtain Preconstruction Permit				
Class: Estimated Potential Emission Rate of Source Operation					
1.	Less than 0.5 pound per hour	$100[5]	$200[5]	$500[5]	$1,500[5]
2.	From 0.5 through 10 pounds per hour, or 0.5 through 2.5 pounds per hour for VOC and NO_x	$200[5]	$400[5]	$1,000[5]	$3,000[5]
3.	Greater than 10 through 22.8 pounds per hour, or greater than 2.5 through 5.7 pounds per hour for VOC and NO_x	$600[5]	$1,200[5]	$3,000[5]	$9,000[5]
4.	Greater than 22.8 pounds per hour, or greater than 5.7 pounds per hour for VOC and NO_x	$1,000[5]	$2,000[5]	$5,000[5]	$15,000[5]
5.	Regulated pursuant to NSPS, NESHAPS, PSDAQ, EOR, TXS and HAP (Table *[A or B]* **C***)[6]	$2,000	$4,000	$10,000	$30,000

Citation	Rule Summary	First Offense	Second Offense	Third Offense	Fourth and Each Subsequent Offense
N.J.A.C. 7:27-8.3(b)	Obtain Certificate				
Class: Estimated Potential Emission Rate of Source Operation					
1.	Less than 0.5 pound per hour	$100[5]	$200[5]	$500[5]	$1,500[5]
2.	From 0.5 through 10 pounds per hour, or 0.5 through 2.5 pounds per hour for VOC and NO_x	$200[5]	$400[5]	$1,000[5]	$3,000[5]
3.	Greater than 10 through 22.8 pounds per hour, or greater than 2.5 through 5.7 pounds per hour for VOC and NO_x	$600[5]	$1,200[5]	$3,000[5]	$9,000[5]
4.	Greater than 22.8 pounds per hour, or greater than 5.7 pounds per hour for VOC and NO_x	$1,000[5]	$2,000[5]	$5,000[5]	$15,000[5]
5.	Regulated pursuant to NSPS, NESHAPS, PSDAQ, EOR, TXS and HAP (Table *[A or B]* **C***)[6]	$2,000	$4,000	$10,000	$30,000

Citation	Rule Summary	First Offense	Second Offense	Third Offense	Fourth and Each Subsequent Offense
N.J.A.C. 7:27-8.3(d)	Preconstruction Permit or Certificate Readily Available	$100	$200	$500	$1,500

Citation	Rule Summary	First Offense	Second Offense	Third Offense	Fourth and Each Subsequent Offense
N.J.A.C. 7:27-8.3(e)	Emissions Detected by Stack Tests from Source Operation				
Class: Maximum Allowable Emissions					
	Less than 0.5 pound per hour:				
1.	Less than 25 percent over the allowable standard	$500[4]	$1,000[4]	$2,500[4]	$7,500[4]
2.	From 25 through 50 percent over the allowable standard	$1,000[4]	$2,000[4]	$5,000[4]	$15,000[4]
3.	Greater than 50 percent over the allowable standard	$2,000[4]	$4,000[4]	$10,000[4]	$30,000[4]
	From 0.5 through 10 pounds per hour, or 0.5 through 2.5 pounds per hour for VOC and NO_x:				

1. Less than 25 percent over the allowable standard	$2,000[4]	$4,000[4]	$10,000[4]	$30,000[4]
2. From 25 through 50 percent over the allowable standard	$4,000[4]	$8,000[4]	$20,000[4]	$50,000[4]
3. Greater than 50 percent over the allowable standard	$8,000[4]	$16,000[4]	$40,000[4]	$50,000[4]
Greater than 10 through 22.8 pounds per hour, or greater than 2.5 through 5.7 pounds per hour for VOC and NO_x:				
1. Less than 25 percent over the allowable standard	$6,000[4]	$12,000[4]	$30,000[4]	$50,000[4]
2. From 25 through 50 percent over the allowable standard	$8,000[4]	$16,000[4]	$40,000[4]	$50,000[4]
3. Greater than 50 percent over the allowable standard	$10,000[4]	$20,000[4]	$50,000[4]	$50,000[4]
For greater than 22.8 pounds per hour, or greater than 5.7 pounds per hour for VOC and NO_x or air contaminants regulated pursuant to HAP (Table *[A or B]* **C**):				
1. Less than 25 percent over the allowable standard	$8,000[4]	$16,000[4]	$40,000[4]	$50,000[4]
2. From 25 through 50 percent over the allowable standard	$10,000[4]	$20,000[4]	$50,000[4]	$50,000[4]
3. Greater than 50 percent over the allowable standard	$10,000[4]	$20,000[4]	$50,000[4]	$50,000[4]

Citation	Rule Summary	First Offense	Second Offense	Third Offense	Fourth and Each Subsequent Offense
N.J.A.C. 7:27-8.3(e)	Preconstruction Permit and Certificate Conditions and Provisions				
Class: Emissions from Source Operation					
1. Less than 0.5 pound per hour		$400[5]	$800[5]	$2,000[5]	$6,000[5]
2. From 0.5 through 10 pounds per hour, or 0.5 through 2.5 pounds per hour for VOC and NO_x		$800[5]	$1,600[5]	$4,000[5]	$12,000[5]
3. Greater than 10 through 22.8 pounds per hour, or greater than 2.5 through 5.7 pounds per hour for VOC and NO_x		$1,200[5]	$2,400[5]	$6,000[5]	$18,000[5]
4. Greater than 22.8 pounds per hour, or greater than 5.7 pounds per hour for VOC and NO_x		$2,000[5]	$4,000[5]	$10,000[5]	$30,000[5]
5. Regulated pursuant to NSPS, NESHAPS, PSDAQ, EOR, TXS and HAP (Table *[A or B]* **C**)[6]		$3,000	$6,000	$15,000	$45,000

Citation	Rule Summary
N.J.A.C. 7:27-8.3(e)	Preconstruction Permit and Certificate Conditions and Provisions Detected by Continuous Monitoring System

[_____]

See N.J.A.C. 7:27A-3.10(m) for the calculation of civil administrative penalties[5]

Citation	Rule Summary	First Offense	Second Offense	Third Offense	Fourth and Each Subsequent Offense
N.J.A.C. 7:27-8.4(c)1	Submit Source Specific Testing Protocol	*[$11,000]* **$1,000**	*[$12,000]* **$2,000**	*[$15,000]* **$5,000**	$15,000
N.J.A.C. 7:27-8.4(c)3	Conduct Source Specific Testing	$2,000	$4,000	$10,000	$30,000
N.J.A.C. 7:27-8.4(c)4	Provide Notice of Source Specific Testing	$300	$600	$1,500	$4,500
N.J.A.C. 7:27-8.4(c)5	Submit Test Report	$500	$1,000	$2,500	$5,000
N.J.A.C. 7:27-8.4(c)6	Certify Test Report	$300	$600	$1,500	$4,500
N.J.A.C. 7:27-8.4(f)	Conduct Air Quality Impact Analysis	$2,000	$4,000	$10,000	$30,000
N.J.A.C. 7:27-8.4(g)	Submit Application for Renewal	$200	$400	$1,000	$3,000
N.J.A.C. 7:27-8.4(j)	Conduct Air Quality Impact Analysis	$2,000	$4,000	$10,000	$30,000
N.J.A.C. 7:27-8.9(a)	Submit Records	$500	$1,000	$2,500	$7,500
N.J.A.C. 7:27-8.9(b)	Submit Report	$500	$1,000	$2,500	$7,500

N.J.A.C. 7:27-8.9(c)	Certify Report	$300	$600	$1,500	$4,500
N.J.A.C. 7:27-8.9(d)	Submit Emission Report	$500	$1,000	$2,500	$7,500
*[N.J.A.C. 7:27-8.14(d)	Submit Notification of Administrative Amendment	$200	$400	$1,000	$3,000
N.J.A.C. 7:27-8.15(d)	Provide Seven-Day-Notice	$300	$600	$1,500	$4,500
N.J.A.C. 7:27-8.15(k)	Maintain Record of Seven-Day-Notice	$100	$200	$500	$1,500
N.J.A.C. 7:27-8.16(c)	Apply for and Receive Approval Prior to Making an Alteration	$800	$1,600	$4,000	$12,000
N.J.A.C. 7:27-8.17(b)	Submit Seven-Day Notice and Documentation of Alteration for Facilities Subject to Pollution Prevention Act	$300	$600	$1,500	$4,500]*

[4]Per Air Contaminant Exceeding Allowable Standard—Revoke Certificate to Operate Under N.J.A.C. 7:27-8 or Revoke Operating Permit Under N.J.A.C. 7:27-22 (if applicable)

[5]Based on Permit, if Applicable, or if Not, Estimate of Air Contaminant with Greatest Emission Rate Without Controls

[6]NSPS (40 CFR 60) EOR (N.J.A.C. 7:27-18)
NESHAPS (40 CFR 61) TXS (N.J.A.C. 7:27-17)
PSDAQ (40 CFR 51) HAP (TABLE *[A OR B]* ***C***) (N.J.A.C. *[7:27-22]* ***7:27-8, Appendix 1***)

[[11]Calculate penalty in accordance with N.J.A.C. 7:27-8.15(h)]

9.-21. (No change.)

22. The violations of N.J.A.C. 7:27-22, Operating Permits, and the civil administrative penalty amounts for each violation, per source operation, are set forth in the following tables:

Citation	Rule Summary	First Offense	Second Offense	Third Offense	Fourth and Each Subsequent Offense
N.J.A.C. 7:27-22.3(a)	Obtain and Maintain Operating Permit				
Class: Estimated Potential Emission of Source Operation					
1.	Less than 0.5 pound per hour	$100[10]	$200[10]	$500[10]	$1,500[10]
2.	From 0.5 through 10 pounds per hour, or 0.5 through 2.5 pounds per hour for VOC and NO_x	$200[10]	$400[10]	$1,000[10]	$3,000[10]
3.	Greater than 10 through 22.8 pounds per hour, or greater than 2.5 through 5.7 pounds per hour for VOC and NO_x	$600[10]	$1,200[10]	$3,000[10]	$9,000[10]
4.	Greater than 22.8 pounds per hour, or greater than 5.7 pounds per hour for VOC and NO_x	$1,000[10]	$2,000[10]	$5,000[10]	$15,000[10]
5.	Regulated pursuant to NSPS, NESHAPS, PSDAQ, EOR, TXS and HAP (Table *[A or B]* ***C***)[6]	$2,000	$4,000	$10,000	$30,000

Citation	Rule Summary	First Offense	Second Offense	Third Offense	Fourth and Each Subsequent Offense
N.J.A.C. 7:27-22.3(b)	Obtain Operating Permit Before Operation				
Class: Estimated Potential Emission of Source Operation					
1.	Less than 0.5 pound per hour	$100[10]	$200[10]	$500[10]	$1,500[10]
2.	From 0.5 through 10 pounds per hour, or 0.5 through 2.5 pounds per hour for VOC and NO_x	$200[10]	$400[10]	$1,000[10]	$3,000[10]
3.	Greater than 10 through 22.8 pounds per hour, or greater than 2.5 through 5.7 pounds per hour for VOC and NO_x	$600[10]	$1,200[10]	$3,000[10]	$9,000[10]
4.	Greater than 22.8 pounds per hour, or greater than 5.7 pounds per hour for VOC and NO_x	$1,000[10]	$2,000[10]	$5,000[10]	$15,000[10]
5.	Regulated pursuant to NSPS, NESHAPS, PSDAQ, EOR, TXS and HAP (Table *[A or B]* ***C***)[6]	$2,000	$4,000	$10,000	$30,000

Citation	Rule Summary	First Offense	Second Offense	Third Offense	Fourth and Each Subsequent Offense
N.J.A.C. 7:27-22.3(c)	Emissions Not Detected by Continuous Monitoring System *[(See Below)]* or Stack Test *[(See Below)]*				
N.J.A.C. 7:27-22.3(d)	Proper Operation *[and]*				
N.J.A.C. 7:27-22.3(e)	Other Conditions				
Class: Emission of Source Operation					
1.	Less than 0.5 pound per hour	$400[10]	$800[10]	$2,000[10]	$6,000[10]
2.	From 0.5 through 10 pounds per hour, or 0.5 through 2.5 pounds per hour for VOC and NO_x	$800[10]	$1,600[10]	$4,000[10]	$12,000[10]
3.	Greater than 10 through 22.8 pounds per hour, or greater than 2.5 through 5.7 pounds per hour for VOC and NO_x	$1,200[10]	$2,400[10]	$6,000[10]	$18,000[10]
4.	Greater than 22.8 pounds per hour, or greater than 5.7 pounds per hour for VOC and NO_x	$2,000[10]	$4,000[10]	$10,000[10]	$30,000[10]
5.	Regulated pursuant to NSPS, NESHAPS, PSDAQ, EOR, TXS and HAP (Table *[A or B]* ***C***)[6]	$3,000	$6,000	$15,000	$45,000

Citation	Rule Summary	First Offense	Second Offense	Third Offense	Fourth and Each Subsequent Offense
N.J.A.C. 7:27-22.3*[(c)]***(e)*	Emissions Detected by Stack Test				
Class: Maximum Allowable Emission of Source Operation					
	Less than 0.5 pound per hour:				
1.	Less than 25 percent over the allowable standard	$500[4]	$1,000[4]	$2,500[4]	$7,500[4]
2.	From 25 through 50 percent over the allowable standard	$1,000[4]	$2,000[4]	$5,000[4]	$15,000[4]
3.	Greater than 50 percent over the allowable standard	$2,000[4]	$4,000[4]	$10,000[4]	$30,000[4]
	From 0.5 through 10 pounds per hour, or 0.5 through 2.5 pounds per hour for VOC and NO_x:				
1.	Less than 25 percent over the allowable standard	$2,000[4]	$4,000[4]	$10,000[4]	$30,000[4]
2.	From 25 through 50 percent over the allowable standard	$4,000[4]	$8,000[4]	$20,000[4]	$50,000[4]
3.	Greater than 50 percent over the allowable standard	$8,000[4]	$16,000[4]	$40,000[4]	$50,000[4]
	Greater than 10 pounds through 22.8 pounds per hour, or greater than 2.5 through 5.7 pounds per hour for VOC and NO_x:				
1.	Less than 25 percent over the allowable standard	$6,000[4]	$12,000[4]	$30,000[4]	$50,000[4]
2.	From 25 through 50 percent over the allowable standard	$8,000[4]	$16,000[4]	$40,000[4]	$50,000[4]
3.	Greater than 50 percent over the allowable standard	$10,000[4]	$20,000	$50,000[4]	$50,000[4]
	Greater than 22.8 pounds per hour, or greater than 5.7 pounds per hour for VOC and NO_x, or air contaminants regulated pursuant to HAP (Table *[A or B]* ***C***):				
1.	Less than 25 percent over the allowable standard	$8,000[4]	$16,000[4]	$40,000[4]	$50,000[4]
2.	From 25 through 50 percent over the allowable standard	$10,000[4]	$20,000[4]	$50,000[4]	$50,000[4]
3.	Greater than 50 percent over the allowable standard	$10,000[4]	$20,000[4]	$50,000[4]	$50,000[4]

Citation	Rule Summary
N.J.A.C. 7:27-22.3*[(c)]***(e)*	Emissions Detected by Continuous Monitoring System

See N.J.A.C. 7:27A-3.10(m) for the calculation of civil administrative penalties.[10]

N.J.A.C. 7:27-22.3(e)	Operating Parameters Detected by Continuous Monitoring System

See N.J.A.C. 7:27A-3.10(m) for the calculation of civil administrative penalties.[10]

*[Class: Continuous Monitoring Systems

* See N.J.A.C. 7:27A-3.10(m) for the calculation of civil administrative penalties.[10]]*

Citation	Rule Summary	First Offense	Second Offense	Third Offense	Fourth and Each Subsequent Offense
N.J.A.C. 7:27-22.3(q)	Certify Report	$300	$600	$1,500	$4,500
N.J.A.C. 7:27-22.5(b)	Submit Application for Operating Permit	$2,000	$4,000	$10,000	$30,000
*[N.J.A.C. 7:27-22.8(a)	Perform Modeling/Risk Assessment for Initial Operating Permit	$2,000	$4,000	$10,000	$30,000
N.J.A.C. 7:27-22.8(d)	Perform Modeling/Risk Assessment for Renewal	$2,000	$4,000	$10,000	$30,000
N.J.A.C. 7:27-22.8(e)	Perform Modeling/Risk Assessment for Significant Modification	$2,000	$4,000	$10,000	$30,000]*

Citation	Rule Summary	First Offense	Second Offense	Third Offense	Fourth and Each Subsequent Offense
N.J.A.C. 7:27-22.9(a)	Submit Proposed Compliance Plan for Operating Permit				
Class					
1. Plan Not Submitted		$1,000	$2,000	$5,000	$15,000
2. Plan Incomplete		$500	$1,000	$2,500	$7,500

Citation	Rule Summary	First Offense	Second Offense	Third Offense	Fourth and Each Subsequent Offense
N.J.A.C. 7:27-22.9(b)	Submit Proposed Compliance Plan for Renewal of and Significant and Minor Modifications to Operating Permit				
Class					
1. Plan Not Submitted		$1,000	$2,000	$5,000	$15,000
2. Plan Incomplete		$500	$1,000	$2,500	$7,500

Citation	Rule Summary	First Offense	Second Offense	Third Offense	Fourth and Each Subsequent Offense
N.J.A.C. 7:27-22.14(d)	General Operating Permit Terms and Conditions				
Class: Estimated Potential Emission Rate of Source Operation					
1. Less than 0.5 pound per hour		$400[10]	$800[10]	$2,000[10]	$6,000[10]
2. From 0.5 through 10 pounds per hour, or 0.5 through 2.5 pounds per hour for VOC and NO_x		$800[10]	$1,600[10]	$4,000[10]	$12,000[10]
3. Greater than 10 through 22.8 pounds per hour, or greater than 2.5 through 5.7 pounds per hour for VOC and NO_x		$1,200[10]	$2,400[10]	$6,000[10]	$18,000[10]
4. Greater than 22.8 pounds per hour, or greater than 5.7 pounds per hour for VOC and NO_x		$2,000[10]	$4,000[10]	$10,000[10]	$30,000[10]
5. Regulated pursuant to NSPS, NESHAPS, PSDAQ, EOR, EHS, TXS and HAP (Table *[A or B]* **C**)[6]		$3,000	$6,000	$15,000	$45,000

Citation	Rule Summary	First Offense	Second Offense	Third Offense	Fourth and Each Subsequent Offense
N.J.A.C. 7:27-22.15(b)1	Temporary Facility Operating Permit Requirements				
Class: Emission of Source Operation					
1. Less than 0.5 pound per hour		$400[10]	$800[10]	$2,000[10]	$6,000[10]

2. From 0.5 through 10 pounds per hour, or 0.5 through 2.5 pounds per hour for VOC and NO_x	$800[10]	$1,600[10]	$4,000[10]	$12,000[10]
3. Greater than 10 through 22.8 pounds per hour, or greater than 2.5 through 5.7 pounds per hour for VOC and NO_x	$1,200[10]	$2,400[10]	$6,000[10]	$18,000[10]
4. Greater than 22.8 pounds per hour, or greater than 5.7 pounds per hour for VOC and NO_x	$2,000[10]	$4,000[10]	$10,000[10]	$30,000[10]
5. Regulated pursuant to NSPS, NESHAPS, PSDAQ, EOR, TXS and HAP (Table *[A or B]* *C*)[6]	$3,000	$6,000	$15,000	$45,000

Citation	Rule Summary	First Offense	Second Offense	Third Offense	Fourth and Each Subsequent Offense
N.J.A.C. 7:27-22.15(b)3	Provide Written Notice of Change	$200	$400	$1,000	$3,000
N.J.A.C. 7:27-22.18(b)	Submit Source Emission Testing and Monitoring Protocol	$1,000	$2,000	$5,000	$15,000
N.J.A.C. 7:27-22.18(d)	Resubmit Source Emission Testing and Monitoring Protocol	$500	$1,000	$2,500	$7,500
N.J.A.C. 7:27-22.18(e)1	Schedule Source Emission Testing Date	$300	$600	$1,500	$4,500
N.J.A.C. 7:27-22.18(e)2	Perform Source Emissions Testing	$2,000	$4,000	$10,000	$30,000
N.J.A.C. 7:27-22.18(e)3	Submit Source Emissions Test Report	$500	$1,000	$2,500	$7,500
N.J.A.C. 7:27-22.18(f)	Perform Periodic Source Emissions Testing	$2,000	$4,000	$10,000	$30,000
N.J.A.C. 7:27-22.18(g)3	Schedule Performance Specification Test Date	$300	$600	$1,500	$4,500
N.J.A.C. 7:27-22.18(g)4	Conduct Performance Specification Test	$1,000	$2,000	$5,000	$15,000
N.J.A.C. 7:27-22.18(g)5	Submit Performance Specification Report	$500	$1,000	$2,500	$7,500
N.J.A.C. 7:27-22.18(h)	Certify Source Emission Test Report or Performance Specification Test Report	$300	$600	$1,500	$4,500
N.J.A.C. 7:27-22.19(a)	Maintain Records of Source Emissions Testing or Monitoring	$500	$1,000	$2,500	$7,500
N.J.A.C. 7:27-22.19(c)	Submit Source Emissions Testing and Monitoring Reports	$500	$1,000	$2,500	$7,500
N.J.A.C. 7:27-22.19(f)	Submit Periodic Compliance Certification	$1,000	$2,000	$5,000	$15,000
N.J.A.C. 7:27-22.19(h)	Submit Operating Permit or Emissions Records	$500	$1,000	$2,500	$7,500
N.J.A.C. 7:27-22.19(i)	Make Information Readily Available	$500	$1,000	$2,500	$7,500
*[N.J.A.C. 7:27-22.19(g)2	Report Air Contaminant Release Not Subject to N.J.S.A. 26:2C-19(e)	$300	$600	$1,500	$4,500
N.J.A.C. 7:27-22.20(c)	Submit Application for Administrative Amendment	$200	$400	$1,000	$3,000
N.J.A.C. 7:27-22.21(c)	Maintain Log of Insignificant Source Operation Changes	$500	$1,000	$2,500	$7,500
N.J.A.C. 7:27-22.22(d)	Provide Seven-Day-Notice	$300[12]	$600[12]	$1,500[12]	$4,500[12]
N.J.A.C. 7:27-22.22(l)	Maintain Record of Seven-Day-Notice	$100	$200	$500	$1,500
N.J.A.C. 7:27-22.23(b)	Submit Application for Minor Modification	$800	$1,600	$4,000	$12,000
N.J.A.C. 7:27-22.23(d)	Submit Application for Minor Modification	$800	$1,600	$4,000	$12,000
N.J.A.C. 7:27-22.24(a)	Apply for and Receive Approval Prior to Making Significant Modification	$3,000	$6,000	$15,000	$45,000
N.J.A.C. 7:27-22.25(b)	Furnish Operating Permit Modification Information	$300	$600	$1,500	$4,500
N.J.A.C. 7:27-22.26(d)	Submit Application to Incorporate Maximum Achievable Control Technology Standard or Generally Available Control Technology Standard on Operating Permit	$2,000	$4,000	$10,000	$30,000

N.J.A.C. 7:27-22.26(k)	Achieve Compliance with Maximum Achievable Control Technology Standard or Generally Available Control Technology Standard	$3,000	$6,000	$15,000	$45,000
N.J.A.C. 7:27-22.26(p)	Achieve Compliance (Facility Subject to Case-by-Case Maximum Achievable Control Technology Standard)	$3,000	$6,000	$15,000	$45,000]*
N.J.A.C. 7:27-22.27*[(c)]**(b)*	Maintain *[Log]* ***Information*** for Alternative Operating Scenarios	$500	$1,000	$2,500	$7,500
N.J.A.C. 7:27-22.28(i)	Maintain Emissions Trading Log	$500	$1,000	$2,500	$7,500
*[N.J.A.C. 7:27-22.30(b)	Submit Application for Renewal of Operating Permit	$2,000	$4,000	$10,000	$30,000]*

[4]Per Air Contaminant Exceeding Allowable Standard—Revoke Certificate to Operate Under N.J.A.C. 7:27-8 or Revoke Operating Permit Under N.J.A.C. 7:27-22 (if applicable).

[6]NSPS (40 CFR 60) EOR (N.J.A.C. 7:27-18)
NESHAPS (40 CFR 61) TXS (N.J.A.C. 7:27-17)
PSDAQ (40 CFR 51) HAP Table *[A or B]* ***C*** (N.J.A.C. 7:27-22)

[10]Based on each Preconstruction Permit incorporated into the Operating Permit, if applicable, or if not, estimate of air contaminants with the stated emission rate without controls.

[[12]Calculate penalty in accordance with N.J.A.C. 7:27-22.22(i).]

23.-25. (No change.)

(m) The Department shall determine the amount of civil administrative penalty for violations of N.J.A.C. 7:27-8 and 7:27-22 as follows: for violations detected by continuous monitoring systems in accordance with (m)1 below; for continuous monitoring systems not installed, out of service or out of control in accordance with (m)2 below; and for violations of continuous monitoring systems recordkeeping and reporting requirements in accordance with (m)3 below. The rule summaries for the requirements set forth in the Civil Administrative Penalty Schedule in this subsection are provided for informational purposes only and have no legal effect.

1. The Department shall determine the amount of civil administrative penalty for violations of N.J.A.C. 7:27-8.3(e) and 7:27-22.3*[(c) and (e)]***(e)*** as indicated by continuous monitoring systems on the basis of the severity level, duration of the offense and the size or nature of the source operation associated with the violation as follows:

i. Table 1 of this section shall be used to determine the level of offense, based on the percentage or amount of differential from the standard or allowable set forth in the Preconstruction Permit or Operating Certificate issued pursuant to N.J.A.C. 7:27-8 or Operating Permit issued pursuant to N.J.A.C. 7:27-22.

ii. Tables 2A or 2B of this section shall be used to determine the amount of the base penalty. The level of offense determined from Table 1 is used in conjunction with either Table 2A (for any major source operation) or Table 2B (for any minor source operation) as defined in the corresponding footnotes below Tables 2A and 2B.

iii. Table 3 shall be used to determine a multiplier which shall be applied to the base penalty from either Table 2A or 2B. The multipliers included in Table 3 each correspond to the duration of the offense or the length of the averaging time provided in the Preconstruction Permit or Operating Certificate issued pursuant to N.J.A.C. 7:27-8 or Operating Permit issued pursuant to N.J.A.C. 7:27-22. The base penalty determined from Table 2A or 2B is multiplied by the appropriate Table 3 multiplier to determine the penalty amount of the offense.

CONTINUOUS MONITORING SYSTEMS[7]

TABLE 1

	CONTINUOUS EMISSION MONITORS		CONTINUOUS PROCESS MONITORS			
LEVELOF OFFENSE	AIR CONTAMINANTS (% above allowable emission rate or concentration)	OPACITY	OXYGEN (%)	pH	TEMPERATURE degrees Rankine (°F + 460)	OTHER MINIMUM OR MAXIMUM SPECIFICATIONS[2]
LEVELI	Greater than 0% up to and including 25%	Greater than the standard up to and including 20%	75% to less than 100% of the minimum oxygen concentration	pH differential of less than 2	Any deviation greater than 0% up to and including 5% of the standard	Any deviation greater than 0% up to and including 25% of the standard
LEVELII	Greater than 25% up to and including 50%	Greater than 20% up to and including 40%	50% to less than 75% of the minimum oxygen concentration	pH differential of 2 through 5	Any deviation greater than 5% up to and including 15% of the standard	Any deviation greater than 25% up to and including 50% of the standard
LEVELIII	Greater than 50%	Greater than 40%	Less than 50% of the minimum oxygen concentration	pH differential of greater than 5	Any deviation greater than 15% of the standard	Any deviation greater than 50% of the standard

[1] If applicable, use Level of Offense established in the Preconstruction Permit or Operating Certificate issued pursuant to N.J.A.C.7:27-8 or Operating Permit issued pursuant to N.J.A.C.7:27-22, if different from Table 1.

[2] e.g., Pressure Drop, Flow Rate, Oxidation Reduction Potential, etc.

CONTINUOUS MONITORING SYSTEMS

TABLE 2A
MAJOR SOURCE OPERATION[3]

LEVEL	BASE PENALTY
I	$200
II	$400
III	$1,000

TABLE 3

AVERAGING TIME OR DURATION	MULTIPLIER
≤ 30 minutes	1
> 30 min & ≤ 1 hr	2
> 1 hr & ≤ 3 hr	4
> 3 hr & ≤ 8 hr	6
> 8 hr & ≤ 24 hr	8
> 24 hr	10

TABLE 2B
MINOR SOURCE OPERATION[4]

LEVEL	BASE PENALTY
I	$100
II	$200
III	$500

[3]Any source operation with estimated potential emissions without control of greater than 22.8 pounds per hour, or greater than 5.7 pounds per hour for VOC and NO_x, or air contaminants regulated pursuant to NSPS, NESHAPS, PSDAQ, EOR, TXS and HAP (Table *[A or B]* ***C*** based on Preconstruction Permit or Certificate issued pursuant to N.J.A.C. 7:27-8 or Operating Permit issued pursuant to N.J.A.C. 7:27-22.

[4]Any source operation with estimated potential emissions without control of 22.8 pounds per hour or less, or 5.7 pounds per hour or less for VOC and NO_x based on a Preconstruction Permit or Certificate issued pursuant to N.J.A.C. 7:27-8 or an Operating Certificate issued pursuant to N.J.A.C. 7:27-22.

2. The violations of N.J.A.C. 7:27-8.3(e) and N.J.A.C. 7:27-22.3(d) or (e) for continuous monitoring systems not installed, out of service or out of control and the civil administrative penalty amounts for each violation are set forth in the following Table:

Citation	Rule Summary	First Offense	Second Offense	Third Offense	Fourth and Each Subsequent Offense
N.J.A.C. 7:27-8.3(e) and N.J.A.C. 7:27-22.3(d) and (e)	Continuous Monitoring Systems Not Installed, Out of Service, Or Out of Control				
Class:					
1. Major Source Operation[3]					
Each day through day five[5]		$200[6]	$400[6]	$1,000[6]	$3,000[6]
Day six and each subsequent day thereafter[5]		$500[6]	$1,000[6]	$2,500[6]	$7,500[6]
2. Minor Source Operation[4]					
Each day through day five[5]		$100[6]	$200[6]	$500[6]	$1,500[6]
Day six and each subsequent day thereafter[5]		$250[6]	$500[6]	$1,250[6]	$3,750[6]

3. The violations of N.J.A.C. 7:27-8.3(e) and N.J.A.C. 7:27-22.3(e) for continuous monitoring systems recordkeeping and reporting requirements and the civil administrative penalty amounts for each violation are set forth in the following Table:

Citation	Rule Summary	First Offense	Second Offense	Third Offense	Fourth and Each Subsequent Offense
N.J.A.C. 7:27-8.3(e) and N.J.A.C. 7:27-22.3(e)	Comply with Preconstruction Permit, Certificate and Operating Certificate Requirements for Continuous Monitoring Systems				
Class:					
1. Keep Records[5]		$500[6]	$1,000[6]	$2,500[6]	$7,500[6]
2. Submit Reports[5]		$300[6]	$600[6]	$1,500[6]	$4,500[6]

[3]Any source operation with estimated potential emissions without controls of greater than 22.8 pounds per hour, or greater than 5.7 pounds per hour for VOC and NO_x, or air contaminants regulated pursuant to NSPS, NESHAPS, PSDAQ, EOR, TXS and HAP (Table *[A or B]* **C**) based on Preconstruction Permit or Certificate issued pursuant to N.J.A.C. 7:27-8 or Operating Permit issued pursuant to N.J.A.C. 7:22.

[4]Any source operation with estimated potential emissions without controls of 22.8 pounds per hour or less, or 5.7 pounds per hour or less for VOC and NO_x, based on a Preconstruction Permit or Certificate issued pursuant to N.J.A.C. 7:27-8 or an Operating Permit issued pursuant to N.J.A.C. 7:27-22.

[5]Number of days after subtracting downtime allowance pursuant to N.J.A.C. 7:27-1, or a Preconstruction Permit or Certificate issued pursuant to N.J.A.C. 7:27-8 or an Operating Permit issued to N.J.A.C. 7:27-22.

[6]Per continuous monitor

[7]For instance, a Preconstruction Permit and Operating Certificate issued pursuant to N.J.A.C. 7:27-8 or an Operating Permit issued pursuant to N.J.A.C. 7:27-22 requires that for any 1-hour period, the average concentration of nitrogen oxides (NO_x) in the stack gas shall not exceed 300 parts per million by volume as determined by continuous monitoring. A violator emitted NO_x from a major source operation at an hourly averaged concentration rate of 350 parts per million by volume. Using Table 1, determine the level of offense for the air contaminant (NO_x). Because the violator emitted NO_x at a concentration less than 25% above the allowable, the Level of Offense is Level I. The source operation is considered major because it emits NO_x in excess of 5.7 pounds per hour. Using Table 2A for a major source operation, determine the base penalty that corresponds to Level I. The base penalty for a Level I offense for a major source operation is $200. Using Table 3, determine the multiplier corresponding to a 1 hour averaging time. Multiply $200 by 2, the multiplier from Table 3. The penalty for the offense is $400.

HEALTH

(a)

DIVISION OF HEALTH FACILITIES EVALUATION AND LICENSING

Standards for Licensure of Assisted Living Residences and Comprehensive Personal Care Homes

Adopted Amendments: N.J.A.C. 8:36-1.8 and 9.3

Proposed: June 6, 1994 at 26 N.J.R. 2187(a).
Adopted: August 31, 1994 by Leah Z. Ziskin, Acting Commissioner, Department of Health (with approval of the Health Care Administration Board).
Filed: September 1, 1994 as R.1994 d.496, **without change.**

Authority: N.J.S.A. 26:2H-1 et seq., specifically 26:2H-5.

Effective Date: October 3, 1994.
Expiration Date: December 20, 1998.

Summary of Public Comments and Agency Responses:

The proposed new rules were published on June 6, 1994, and elicited two responses during the comment period, which closed on July 6, 1994. Comments were received from the New Jersey State Nurses Association and the Licensed Practical Nurse Association of New Jersey, Inc.

COMMENT: The New Jersey State Nurses Association commended the Department on its promulgation of the proposed amendments pertaining to the education and qualifications of personal care assistants. The Association noted their support of "the delegation of nursing tasks to lesser trained individuals as long as three major principles are adhered to. One, the RN does the delegating, not the institution and two, the RN is in charge of the training and has confidence in the individual to whom she/he delegates. Finally, there must be adequate time allowed for the RN to assess the patient and the personal care assistant's performance. All of these conditions are in place in your regulations."

RESPONSE: The Department thanks the State Nurses Association for their support for these amendments and throughout the development of the assisted living licensing rules.

COMMENT: The Licensed Practical Nurse Association of New Jersey commended the Department "for considering licensing facilities to promote 'aging in place' in a homelike setting for frail elderly and disabled." However, the commenter also expressed safety concerns regarding "unlicensed personnel" (personal care assistants) performing various functions with elderly clients, particularly medication administration. They noted that the licensed practical nurse is "already prepared to do such duties" and has been trained in medication administration and "to recognize adverse actions and reactions to medications."

RESPONSE: The Department thanks the Association for its support of assisted living. The issue of "safety" in medication administration has been addressed during the initial development of these rules. It has been further strengthened by these proposed amendments, which were developed with the assistance and consultation of the State Board of Nursing. The Department, its various assisted living advisory groups, the State Board of Nursing and the State Nurses Association have concurred that the assisted living licensing rules provide appropriate safeguards for residents.

Full text of the adoption follows:

8:36-1.8 Qualifications of personal care assistants

(a) Each personal care assistant shall have completed:

1.-2. (No change.)

3. Another equivalent training program approved by the Department which emphasizes the concepts of assisted living and successful completion of a Department-approved competency examination.

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

(d) Personal care assistants who administer medications shall meet the following requirements:

1. Current certification in good standing as a nurse aide, homemaker home health aide, or completion of other Department approved course, as described at (a)1, 2 and 3 above;

2. Successful completion of the medication administration training course approved by the Department of Health and Board of Nursing, in accordance with N.J.A.C. 8:36-9.3(c); and

3. Successful completion of a Department of Health approved, standardized examination regarding medication administration for personal care assistants. An oral examination shall not substitute for the written component of this examination.

8:36-9.3 Administration of medications

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

(c) The administration of medications is within the scope of practice and remains the responsibility of the registered professional nurse. The registered professional nurse may choose to delegate the task of administering medications in accordance with N.J.A.C. 13:37-6.2 to personal care assistants who have completed a medication administration course approved by the State Board of Nursing and the Department. When the registered nurse delegates the task of administering medications to personal care assistants this delegation is based upon individual residents' needs and circumstances, within the specific limits. These limits shall include, but not be limited to, the following:

1. The administration of oral, ophthalmic, otic, inhalant, nasal, rectal, vaginal, and topical medications and predrawn insulin injections may be delegated. Medications requiring any other route of administration and injections other than predrawn insulin shall not be delegated. The administration of Schedule II medications shall not be delegated, except when they are ordered on a regular timetable (that is, for continuous pain control or certain neurologic conditions in accordance with N.J.A.C. 13:35-6.7(a)); in these cases, the registered nurse shall reassess the resident at least every 72 hours. The administration of Schedule II medications on a "PRN" or "as needed" basis shall not be delegated;

2. A Department of Health and Board of Nursing approved training program regarding medication administration shall be completed by each personal care assistant who will administer medications;

3. The delegating nurse shall review with the personal care assistant medication actions and untoward effects for each drug to be administered. Pertinent information about medications' potentially significant adverse drug reactions, and potential interactions shall be incorporated into the care plan for each resident, with interventions to be implemented by the personal care assistant and other caregiving staff;

4. A unit of use drug distribution system shall be developed and implemented; and

5. At least weekly, a registered nurse shall review and sign off on any modifications or additions to the medication administration record which were made by the personal care assistant under the nurse's delegation.

(b)

OFFICE OF THE COMMISSIONER
OFFICE OF LEGAL AND REGULATORY AFFAIRS
OFFICE OF BOARDS AND COUNCIL

Health Care Administration Board

Adopted Repeal: N.J.A.C. 8:43D

Proposed: April 18, 1994 at 26 N.J.R. 1627(a).
Adopted: August 31, 1994 by Leah Z. Ziskin, Acting Commissioner, Department of Health (with approval of the Health Care Administration Board).
Filed: September 1, 1994 as R.1994 d.497, **without change.**

Authority: N.J.S.A. 26:2H-1 et seq.

Effective Date: October 3, 1994.

Summary of Public Comments and Agency Responses:

No comments received.

Full text of the adopted repeal may be found in the New Jersey Administrative Code at N.J.A.C. 8:43D.

HUMAN SERVICES

(a)

DIVISION OF FAMILY DEVELOPMENT

Notice of Administrative Correction
Assistance Standards Handbook
Income from Eligible and Noneligible Individuals in Household
N.J.A.C. 10:82-2.3

Take notice that the Division of Family Development has discovered an error in the text of N.J.A.C. 10:82-2.3(b). Portions of the second and third sentence of that subsection were deleted as part of the adoption of amendments to that section effective December 1, 1986 (see R.1986 d.470). However, through typographic error, the change was not reflected in the adopted rule text, although it was explained in the adoption notice's Summary of Changes Subsequent to Proposal (see 18 N.J.R. 928(a) and 2388(a)). Through this notice, published pursuant to N.J.A.C. 1:30-2.7, the deleted text is removed from the Administrative Code.

Full text of the corrected rule follows (deletions indicated in brackets [thus]):

10:82-2.3 Income from eligible and noneligible individuals in the household

(a) (No change.)

(b) Noneligible individual: A noneligible individual is neither sanctioned nor required by law or regulation to be included in the eligible unit. When a noneligible individual is living in the household of an eligible unit, [an amount of $125.00 per month shall be recognized as the cost standard for that individual's share of household expenses. Only the cash amount which is over and above $125.00 shall be considered as income to the eligible unit,] the income from that living arrangement to the eligible unit shall be treated in accordance with N.J.A.C. 10:82-4.3(c), if extensive personal services are provided, or N.J.A.C. 10:82-4.12.

(c) (No change.)

INSURANCE

(b)

NEW JERSEY SMALL EMPLOYER HEALTH BENEFITS PROGRAM BOARD

Small Employer Health Benefits Program
Adopted Amendments: N.J.A.C. 11:21-1.2, 1.3, 2.2, 7.1, 7.2, 7.3, 7.5 through 7.9, 7.12, 7.13 and Exhibits, N, O, Q, R, S and T of the Appendix to N.J.A.C. 11:21
Adopted New Rules: N.J.A.C. 11:21-3A
Adopted Repeal: N.J.A.C. 11:21-7A

Proposed: July 13, 1994 in accordance with N.J.S.A. 17B:27A-51, at 26 N.J.R. 3421(a).

Adopted: September 2, 1994 by the New Jersey Small Employer Health Benefits Program Board, Maureen E. Lopes, Chair.

Filed: September 2, 1994 as R.1994 d.499, **with substantive changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 17B:27A-17 et seq., as amended by N.J.S.A. 17B:27A-51 and P.L. 1994, c.11.

Effective Date: September 2, 1994.

Expiration Date: October 15, 1998.

This amended rule was proposed and is being adopted pursuant to the procedures of P.L. 1993, c.162, section 17, as therein authorized. Accordingly, notice of the proposal was published in three newspapers of general circulation in New Jersey, and mailed to all known interested parties when submitted to the Office of Administrative Law ("OAL") for publication in the New Jersey Register. Upon expiration of a 20-day public comment period following the publication of notice of the proposal, the Board adopted the amended proposal. The Board is required by law to respond to any comments received within a reasonable period following the adoption of the proposal and to submit the Board's responses to the OAL for publication in the New Jersey Register. That report appears below.

Comments were received from the following:
Home Life Financial Assurance Corporation
New Jersey Association of Health Underwriters
Commercial Life Insurance Company
HIP Rutgers Health Plan
PFL Life Insurance Company
Blue Cross and Blue Shield of New Jersey

Summary of Public Comments and Agency Responses:

COMMENT 1: Two commenters objected to the restriction, in N.J.A.C. 11:21-7.5, on a small employer's ability to change from one standard health benefits plan to another in between anniversary dates.

RESPONSE: The amendment to the rule only clarified that the existing restrictions apply to standard health benefits plans. The restrictions contained in N.J.A.C. 11:21-7.5 were not amended by the proposal and are not, therefore, subject to comment at this time. The Board confined the application of the restrictions to standard health benefits plans because of the difficulty in comparing non-standard plans and because the Board does not wish to restrict a small employer's decision to terminate a non-standard health benefits plan and purchase a standard health benefits plan.

COMMENT 2: One commenter suggested that the use of the term "plan design" in N.J.A.C. 11:21-7.13 be clarified with respect to quarterly and annual reporting to the Board and that the breakdown by plan design only be required on an annual basis.

RESPONSE: The Board intends that information about standard and non-standard health benefits plans be reported separately. The requirement that certain information be reported "by plan design" was intended to apply to standard health benefits plans only. The numbers of employers and employees covered by non-standard plans are important to the Board, but a breakdown of such information by plan design would not be valuable because of the difficulty of comparing non-standard plans. The final rule clarifies that the term "plan design" applies to standard health benefits plans A, B, C, D, E, and HMO, and by deductible within each plan. The Board will still require this information on a quarterly basis, however, because quarterly information is the minimum necessary to evaluate the effects of reform on the small employer health insurance market. The Board intends to draft a form to make the quarterly reporting easier and uniform. That form will be sent to carriers before the first quarterly report is due.

COMMENT 3: One commenter asked whether it was the Board's intent, in N.J.A.C. 11:21-7.3(e), to allow a carrier to cover retired and part-time employees when a carrier is issuing a small employer health benefits plan for the first time to a small employer whose retired and part-time employees were covered under a previous health benefits plan issued by a different carrier.

RESPONSE: The proposal provided that a carrier could continue the practice of covering a small employer's retired and part-time employees only if that carrier were renewing or reinstating a health benefits plan that was issued prior to January 1, 1994. Therefore, a different carrier issuing coverage for the first time after January 1, 1994 could not have covered part-time or retired employees of a small employer. However, the Board believes the proposal was unnecessarily restrictive and would have locked small employers into doing business with the same carrier in order to continue to cover part-time and retired employees. The Board did not intend this result, and has amended the rule on adoption clarify that a carrier may elect to cover a small employer, or an employer that becomes a small employer, that wishes to continue the practice of covered part-time and/or retired employees. This change is a liberalization, and does not impose a burden on carriers because a carrier may elect whether to provide small employer coverage to part-time and retired employees. However, a carrier may not decide to offer such coverage to some small employers and not others. Once the carrier has made a decision to cover such employees for one small employer, the option must be offered to all small employers seeking such coverage. In addition, this "grandfathering" of allowing small employers to continue to obtain coverage for retired and part-time employees applies only

to small employers, or employers that become small employers, that covered retired and/or part-time employees under a health benefits plan issued prior to January 1, 1994.

COMMENT 4: A commenter recommended that N.J.A.C. 11:21-3A.3(b)1 include an additional reference to the effective date of the attachment to non-standard health benefits plans of the various reforms contained in the Small Employer Health Benefits Acts, N.J.S.A. 17B:27A-17 et seq, as amended.

RESPONSE: The Board has no objection to this clarification and has inserted the words "occurring on or after September 11, 1994" before the comma.

COMMENT 5: One commenter recommended that the small employer certification form, Exhibit O, be amended to contain a reference to the provision in the Individual Health Coverage Reform Act of 1992, N.J.S.A. 17B:27A-2 et seq., which provides that "an employer ... who causes another person to be covered by an individual health benefits plan which person is a participant in, or who is eligible to participate in a group health benefits plan that provides the same or similar coverages as the individual health benefits plan, shall be subject to a fine by the commissioner in an amount not less than twice the annual premium paid for the individual health benefits plan, together with any other penalties permitted by law" in order to alert employer to a potential liability. Further, the commenter suggested changing the certification form to identify those employees who waive coverage because they hold individual health insurance so that such persons are not counted toward the minimum 75 percent participation rate. The commenter included a model form to demonstrate how to identify employees covered by a spouse's group coverage versus those covered by individual health benefits plans.

RESPONSE: The Board agrees that the certification form should contain a reference to the fact that an employee or employer may be subject to penalties for an employee's holding individual coverage at the same time he or she is eligible to participate in a group health benefits plan. The Board has included a brief reference in the certification form. With respect to identifying the reason an employee is waiving group coverage, the Small Employer Health Benefits Waiver of Coverage Form already requires an explanation for waiving coverage from the employee.

COMMENT 6: One commenter suggested that N.J.A.C. 11:21-7.8(b) be amended to include self-funded health benefits arrangements among the types of prior health coverage that would allow an employee to avoid, partially or completely, the imposition of a preexisting condition limitation.

RESPONSE: At this time, the Board has decided not to amend the rule to extend this provision to self-funded arrangements. Further evaluation of the enabling legislation and legislative history must be conducted before such an extension could be considered. This would be a substantive change from the proposal, and would not be appropriate to adopt without opportunity for additional public comment.

COMMENT 7: One commenter suggested expanding N.J.A.C. 11:21-7.13 to require a carrier to report whether a standard health benefits plan was issued with a rider in order to track the market's reception of optional riders.

RESPONSE: Since an unlimited variety of optional riders may become available in the market, the Board does not believe the information that a plan had been sold with or without a rider, by itself, would prove valuable. More detailed information might be useful to the Board, with regard to how a rider changed the benefits of a given standard health benefits plan, but would at the same time be burdensome to report and analyze. At this time, no change has been made to the rule.

COMMENT 8: One commenter opposed the application of the amended rules to health benefits plans issued prior to January 1, 1994, supported the delay of mandatory conversion to standard health benefits plans, and objected to the application of rating restrictions to inforce business.

RESPONSE: The Board is not the source of the policy determination that the various reforms embodied in the Small Employer Health Benefits Act, N.J.S.A. 17B:27A-17 et seq., as amended, should apply to non-standard health benefits plans. That determination was made by the Legislature in P.L. 1994, c.11, which these rules implement. Rating restrictions and other elements of reform will only apply beginning on the anniversary date of a non-standard health benefits plan that occurs on or after September 11, 1994.

COMMENT 9: One commenter requested that N.J.A.C. 11:21-3A.3 contain a specific reference to N.J.A.C. 11:21-8 rather than a generic reference to regulations promulgated by the Commissioner of Insurance.

RESPONSE: At the time of the proposal, regulations setting forth the requirements for filing with the Commissioner of Insurance had not been promulgated. At this time, final regulations have been approved to require filing of certifications, certain riders, and rates for non-standard health benefits plans. The Board agrees that a specific reference should be included and has done so on adoption.

COMMENT 10: One commenter took exception to the statement in the Summary of the proposal that "carriers may elect to renew non-standard health benefits plans or to offer only standard plans" and asserted that a carrier must either make its non-standard health benefits plan available or withdraw them, and may not choose to merely offer non-standard plans.

RESPONSE: The commenter is correct. Renewal or reinstatement of a non-standard health benefits plan is made at the option of the small employer, not the carrier. The Summary incorrectly reflects the content of the rule. No change to the rule is necessary.

COMMENT 11: One commenter stated that the definitions of "non-standard health benefits plan" contained in N.J.A.C. 11:21-3A.2 and 7.2 vary slightly and should be reconciled.

RESPONSE: The commenter is correct. The variation between the definitions was inadvertent. The wording of N.J.A.C. 11:21-7.2 has been changed slightly to make both definitions the same.

COMMENT 12: One commenter suggested that the phrase "offer or issue" be used throughout N.J.A.C. 11:21-3A.5(c) instead of "offer and issue" where it appears.

RESPONSE: The commenter is correct that this section uses both "offer or issue" and "offer and issue." However, the distinction was intentional. The Board intended to use the phrase "offer and issue" in specific sections of the rule rather than "offer or issue." The use of the conjunctive in the provision cited is used to indicate that carriers may both "offer" and "issue" non-standard plans as provided by the regulation. Use of the disjunctive would be inaccurate.

COMMENT 13: One commenter stated that neither the Summary of the proposal nor the rule makes clear that claims for part-time and retired employees may not be included in a carrier's calculation of net losses, but that premiums received for these persons will be included for assessment purposes.

RESPONSE: The Summary of the proposal addressed the commenter's concerns, in part. The Board has determined, and will promulgate rules in the future, that carriers that choose to continue to cover part-time and retired employees as permitted under N.J.A.C. 11:21-7.3(e), (f), or (g) will not be eligible for reimbursement of losses attributable to claims by part-time and retired employees. Therefore, carriers must segregate such claims and premiums for reporting purposes. Since the proposal did not address rules with respect to assessments, the Board does not believe the rule should be amended.

COMMENT 14: One commenter recommended that the word "standard" be inserted in N.J.A.C. 11:21-7.5(b) to clarify that the provision only addresses changes from one standard health benefits plan to another.

RESPONSE: The Board does not object to the clarification and has amended the rule accordingly upon adoption.

COMMENT 15: One commenter suggested that N.J.A.C. 11:21-7.5(d) be amended to allow a carrier to refuse to issue a non-standard health benefits plan or require six months advance payment of premiums when a small employer group's previous health benefits plan was cancelled for nonpayment of premiums or fraud.

RESPONSE: The proposal inadvertently restricted the application of this provision to standard health benefits plans. The provision should apply to all health benefits plans subject to the SEH Program's rules. The word "standard" has been deleted upon adoption so that this provision remains in its current form and would apply to all health benefits plans.

COMMENT 16: One commenter suggested that N.J.A.C. 11:21-7.6 be amended to allow waivers of coverage in situations where an employee who holds two jobs is covered by another employer's health benefits plan or where an employee is covered as a retired employee by a former employer's health benefits plan, CHAMPUS or CHAMPVA.

RESPONSE: The Board believes the comment suggests substantive changes that go beyond the scope of the proposal. The waivers provided in the rule are statutory in origin. In addition, an eligible employee who worked at least 25 hours for one employer and is covered by another employer's health benefits plan, or an employee is covered as a retired employee by a former employer, CHAMPUS, or CHAMPVA, is not

prohibited from waiving coverage. The Board recognizes, however, that those employees would not be counted toward a carrier's maximum 75 percent participation requirement.

COMMENT 17: One commenter suggested that the Board adopt a standard form for reporting under N.J.A.C. 11:21-7.13.

RESPONSE: The Board agrees that a standard reporting format would simplify both the reporting and analysis of information and will take the commenter's suggestion under consideration for a future rule proposal.

Summary of Agency-Initiated Changes:

1. The Board inserted the word "offered" in N.J.A.C. 11:21-3A.5(c)(2) for clarification that no non-standard plans shall be offered after February 28, 1996.

2. The definition of "non-standard health benefits plan" was amended to clarify that the definition applies to a health benefits plan issued to one or more small employers.

Full text of the adoption follows (additions to proposal indicated in boldface with asterisks ***thus***; deletions from proposal indicated in cursive brackets *{thus}*):

11:21-1.2 Definitions

Words and terms contained in this Act, when used in this chapter, shall have the meanings as defined in the Act, unless the context clearly indicates otherwise, or as such words and terms are further defined by this chapter.

...

"Eligible employee" means a full-time employee who works a normal work week of 25 or more hours. The term includes a sole proprietor, a partner of a partnership, or an independent contractor, if the sole proprietor, partner or independent contractor is included as an employee under a health benefits plan of a small employer, but does not include employees who work less than 25 hours a week, work on a temporary or substitute basis or are participating in an employee welfare arrangement pursuant to a collective bargaining agreement.

...

"Health benefits plan" means any hospital and medical expense insurance policy or certificate; health, hospital, or medical service corporation contract or certificate; or health maintenance organization subscriber contract or certificate delivered or issued for delivery in this State by any carrier to a small employer group pursuant to section 3 of the Act (N.J.S.A. 17B:27A-19), or any other similar contract, policy or plan issued to a small employer not explicitly excluded from the definition of health benefits plan. "Health benefits plan" excludes the following plans, policies, or contracts:

1. Accident only;
2. Credit;
3. Disability;
4. Long-term care;
5. Coverage for Medicare services pursuant to a contract with the United States government;
6. Medicare supplement;
7. Dental only or vision only;
8. Insurance issued as a supplement to liability insurance;
9. Coverage arising out of a workers' compensation or similar law;
10. Hospital confinement or other supplemental limited benefit insurance coverage;
11. Automobile medical payment insurance, or personal injury protection coverage issued pursuant to P.L. 1972, c.70 (N.J.S.A. 39:6A-1 et seq.); and

...

"Multiple employer arrangement" means an arrangement established or maintained to provide health benefits to employees and their dependents of two or more employers, under an insured plan purchased from a carrier in which the carrier assumes all or a substantial portion of the risk, as determined by the commissioner and shall include, but is not limited to, a multiple employer welfare arrangement, or MEWA, multiple employer trust or other form of benefit trust.

...

"Supplemental limited benefit insurance" means insurance that is provided in addition to a health benefits plan on an indemnity nonexpense incurred basis.

...

11:21-1.3 Communication with the Board

All written communications with the SEH Board shall be submitted to the SEH Board at the following address:

New Jersey Small Employer Health Benefits
Program Board
20 West State Street
CN-325
Trenton, New Jersey 08625

...

SUBCHAPTER 2. NEW JERSEY SMALL EMPLOYER HEALTH BENEFITS PROGRAM PLAN OF OPERATION

11:21-2.2 Definitions

The words and terms used in this Plan shall have the meanings set forth at N.J.S.A. 17B:27A-17 and N.J.A.C. 11:21-1.3, or as further defined below:

...

"Eligible employee" means a full-time employee who works a normal work week of 25 or more hours. The term includes a sole proprietor, a partner of a partnership, or an independent contractor, if the sole proprietor, partner or independent contractor is included as an employee under a health benefits plan of a small employer, but does not include employees who work less than 25 hours a week, work on a temporary or substitute basis or are participating in an employee welfare arrangement established pursuant to a collective bargaining agreement.

"Health benefits plan" means any hospital and medical expense insurance policy or certificate; health, hospital, or medical service corporation contract or certificate; or health maintenance organization subscriber contract or certificate delivered or issued for delivery in this State by any carrier to a small employer group pursuant to section 3 of the Act (N.J.S.A. 17B:27A-19). For purposes of this act, "health benefits plan" excludes the following plans, policies, or contracts; accident only, credit, disability, long-term care, coverage for Medicare services pursuant to a contract with the United States government. Medicare supplement, dental only or vision only, insurance issued as a supplement to liability insurance, coverage arising out of a workers' compensation or similar law, hospital confinement or other supplemental limited benefit insurance coverage, automobile medical payment insurance, or personal injury protection coverage issued pursuant to P.L. 1972, c.70.

...

"Supplemental limited benefit insurance" means insurance that is provided in addition to a health benefits plan on an indemnity nonexpense incurred basis.

...

SUBCHAPTER 3A. NON-STANDARD HEALTH BENEFITS PLANS

11:21-3A.1 Purpose and scope

This subchapter establishes which non-standard health benefits plans may be issued, renewed, reinstated or continued pursuant to P.L. 1994, c.11, and specifies the standards which shall apply to the issuance, renewal, reinstatement or continuation of a non-standard health benefits plan.

11:21-3A.2 Definitions

Words and terms, when used in this subchapter, shall have the meanings as defined at N.J.S.A. 17B:27A-17 or N.J.A.C. 11:21-1.2 unless defined below or the context clearly indicates otherwise.

"Anniversary date" and "12-month anniversary date" means:

1. With respect to coverage of a small employer who has coverage other than as a member of an association, multiple employer arrangement or out-of-State trust holding the master policy or contract:

i. The annual 12-month renewal date following the initial effective date of coverage for that small employer under the policy or contract; or

ii. If such annual renewal date has been changed prior to April 4, 1994 and thus no longer is the same calendar date and with the initial effective date, the new annual renewal date;

2. With respect to coverage of a small employer as a member of an association, multiple employer arrangement or out-of-State trust holding the master policy or contract, wherein there is no common renewal date established for coverage of all such member small employers;

i. The annual 12-month renewal date following the initial effective date of coverage for that small employer; or

ii. If such annual renewal date has been changed prior to April 4, 1994, and thus no longer coincides with the initial effective date, the new annual renewal date; or

3. With respect to coverage of a small employer covered as a member of an association, multiple employer arrangement or out-of-State trust holding the master policy or contract, wherein there is a common renewal date established for coverage of all such small employers notwithstanding each small employer's initial effective date;

i. The common renewal date; or

ii. If the common renewal date has been changed prior to April 4, 1994, the new common renewal date.

"Non-standard health benefits plan" means a health benefits plan that was issued to cover one or more small employers by or through a carrier, association, multiple employer arrangement or out-of-State trust prior to January 1, 1994, and which was in effect on February 28, 1994.

"Standard health benefits plan" means a health benefits plan promulgated by the SEH Board and set forth at N.J.A.C. 11:21-3.1.

11:21-3A.3 Renewal of non-standard health benefits plans

(a) During the period beginning on April 4, 1994 and ending on September 10, 1994, a carrier, association, multiple employer arrangement or out-of-State trust shall renew or continue a non-standard health benefits plan, at the option of the small employer policy or contract holder, pursuant to P.L. 1994, c.11.

(b) Beginning on September 11, 1994, a carrier, association, multiple employer arrangement or out-of-State trust shall renew or continue a non-standard health benefits plan, at the option of the small employer policy or contract, subject to the following:

1. On the first anniversary date of a small employer's coverage under the non-standard health benefits plan ***occurring on or after September 11, 1994***, the non-standard health benefits plan shall comply with the provisions of N.J.S.A. 17B:27A-18, 17B:27A-19b, 17B:27A-22, 17B:27A-23, 17B:27A-24, 17B:27A-25 and 17B:27A-27.

2. A small employer shall have the option to renew or continue a non-standard health benefits plan on any anniversary occurring between February 28, 1994 and February 28, 1996. Such non-standard health benefits plan may at the employer's option remain in effect until the end of the policy or contract year that begins on the 12-month anniversary date occurring on or before February 28, 1996.

3. The non-standard health benefits plan shall not be amended or modified, except as (b)1 above may require and except for the purpose of changing deductible or copayments for the non-standard health benefits plan.

4. The carrier, association, multiple employer arrangement or out-of-State trust shall file such renewed or continued non-standard health benefits plan with the Commissioner in accordance with *****{regulations promulgated by the Department of Insurance}***** ***N.J.A.C. 11:21-8***.

11:21-3A.4 Reinstatement of non-standard health benefits plans

(a) A non-standard health benefits plan whose anniversary occurred March 1, 1994 through April 4, 1994 may be reinstated, at the option of the small employer policy or contract holder, by providing written notice to the carrier within 60 days of that anniversary date.

(b) A non-standard health benefits plan that is reinstated in accordance with subsection (a) may be renewed in accordance with and subject to the provisions of N.J.A.C. 11:21-3A.3.

11:21-3A.5 New issuance of non-standard health benefits plans

(a) A carrier shall not offer or issue a non-standard health benefits plan to a small employer except through an association, multiple employer arrangement or out-of-State trust in accordance with this section.

(b) An association, multiple employer arrangement or out-of-State trust shall not offer or issue a non-standard health benefits plan unless the non-standard health benefits plan:

1. Was available for purchase through the association, multiple employer arrangement or out-of-State trust to its members on December 31, 1993;

2. If issued during period beginning on April 4, 1994 and ending on September 10, 1994, complies with the requirements of N.J.A.C. 11:21-3A.3;

3. If issued on or after September 11, 1994, complies with the requirements of N.J.S.A. 17B:27A-18, 19b, 22, 23, 24, 25 and 27 upon the date of issue;

4. Shall not be amended or modified except as necessary to comply with (b)2 and 3 above, or for the purpose of changing deductible or copayments;

5. Shall remain available for renewal, at the option of the small employer through the 12-month anniversary date which occurs on or before February 28, 1996; and

6. If issued or renewed on or before February 28, 1996, shall, at the option of the small employer, remain in effect until the 12-month anniversary date which occurs on or before February 28, 1997.

(c) An association, multiple employer arrangement or out-of-State trust may offer and issue a non-standard health benefits plan pursuant to (b) above, if the association, multiple employer arrangement or out-of-State trust complies with the following:

1. The non-standard health benefits plan shall be offered and issued only to a small employer, as defined in N.J.S.A. 17B:27A-17 and rules promulgated pursuant to the Act, that is a member of that association, multiple employer arrangement or out-of-State trust;

2. No non-standard health benefits plan shall be ***offered,*** issued or renewed after February 28, 1996;

3. An association, multiple employer arrangement or out-of-State trust also shall offer and, if accepted, issue standard health benefits plans to all of its small employer members; and

4. An employee's actual or expected health status shall not be used in determining whether to offer or issue a non-standard health benefits plan to any member small employer or to offer or issue coverage to employees, or their dependents, of any small employer.

(d) A carrier, association, multiple employer arrangement or out-of-State trust may offer or issue coverage under a non-standard health benefits plan to new employees of a small employer that was covered under a non-standard health benefits plan on February 28, 1994, and remain covered under such a non-standard health benefits plan, subject to the following:

1. A carrier, association, multiple employer arrangement or out-of-State trust shall not discriminate between small employers in making the offer or issue; and

2. A carrier, association, multiple employer arrangement or out-of-State trust shall not discriminate between a small employer's eligible employees in making the offer or issue.

11:21-3A.6 Cessation of issuance, renewal or continuation of non-standard health benefits plans; conversion to small employer health benefits plans

No non-standard health benefits plan may be issued or renewed in accordance with this subchapter after February 28, 1996. No non-standard health benefits plan issues, renewed or continued in accordance with this subchapter may remain in effect after the 12-month anniversary date which occurs on or before February 28, 1997. At least 60 days prior to the non-standard health benefits plan's final 12-month anniversary date, the carrier shall provide to the small employer notice that the existing policy or contract will be cancelled

on its anniversary date. The carrier shall give the small employer an outline of the standard health benefits plans and the premium cost for the standard health benefits plan which is most equivalent to that policy or contract which will be cancelled. Upon request of the small employer, the small employer carrier shall provide the premium costs with respect to the other standard health plans pursuant to N.J.A.C. 11:21-7.10.

11:21-3A.7 Penalties

A carrier, association, multiple employer arrangement or out-of-State trust that violates any provision of this subchapter shall be subject to penalty and fine available under law.

SUBCHAPTER 7. PROGRAM COMPLIANCE

11:21-7.1 Purpose and scope

This subchapter sets forth the standards all carriers must meet in offering, issuing and renewing all health plans to any small employer, the small employer's eligible employees, and the dependents of those eligible employees on or after January 1, 1994.

11:21-7.2 Definitions

All words and terms used in this subchapter shall have the meanings as set forth in the Act, N.J.A.C. 11:21-1.2 or as further defined below, unless the context clearly indicates otherwise.

...

"Health benefits plan" includes:

1. A standard health benefits plan;

2. From September 11, 1994 until the third anniversary date following February 28, 1994, a non-standard health benefits plan renewed, reinstated or continued in accordance with N.J.A.C. 11:21-3A.3 or 11:21-3A.4; and

3. From September 11, 1994 until the 12-month anniversary date which occurs on or before February 28, 1997, a non-standard health benefits plan issued in accordance with N.J.A.C. 11:21-3A.5.

"Non-standard health benefits plan" means only a health benefits plan that was issued to *{a}* ***cover one or more*** small employer***s*** by or through a carrier, association, multiple employer arrangement or out-of-State trust prior to January 1, 1994, and which was in effect on February 28, 1994.

"Standard health benefits plan" means a health benefits plan promulgated by the SEH Board subject to the review and approval of the Commissioner, whether or not modified by rider.

...

11:21-7.3 Eligibility and issuance

(a) Except as may otherwise be provided in N.J.A.C. 11:21-3A.1 et seq. with respect to non-standard health benefits plans, a small employer carrier shall issue a health benefits plan to any small employer which requests it, pays the premiums therefor and meets the contribution and participation requirements, if any, of the small employer carrier. All standard health benefits plan that are issued or renewed on or after January 1, 1994, and all non-standard health benefits plans that are renewed or issued in accordance with N.J.A.C. 11:21-3A.3 or 11:21-3A.5, respectively, on or after September 11, 1994, shall provide coverage for all eligible employees and their dependents who elect to participate regardless of their health and without exclusionary riders.

1.-2. (No change.)

3. Every small employer carrier, except small employer carriers that are HMOs, shall, as a condition of transacting business in this State, actively offer to small employers the five standard health benefits plans, including all riders it writes, except as such riders may be restricted to specific standard health benefits plans. Small employer carriers that are HMOs shall, as a condition of transacting business in this State, actively offer to small employers every standard health benefits plan it writes, including all riders it writes, except as such riders may be restricted to specific standard health benefits plans.

4.-5. (No change.)

(b) Except as otherwise provided in N.J.A.C. 11:21-3A.5 with respect to the issuance of non-standard health benefits plans, a small employer carrier shall issue only standard health benefits plans to an association, trust or multiple employer arrangement to provide coverage to member small employers or to two or more eligible employees of a member small employer.

1. No carrier shall issue a health benefits plan to any association, trust or multiple employer arrangement which bases membership criteria of any small employer or employee of the small employer, in whole or in part, upon the health status or claims experience of the employer or employee.

2. Every small employer member of an association, trust or multiple employer arrangement shall be offered coverage under every health benefits plan issued to the association.

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

(e) A small employer carrier *{providing}* ***may elect to provide*** coverage to a small employer's ***part-time*** employees ***(that is,*** working fewer than 25 hours per week***),*** ***if the small employer covered part-time employees*** under a health benefits plan issued prior to January 1, 1994, *{may continue to cover part-time employees, including persons who become part-time employees after January 1, 1994,}* when the carrier renews or reinstates the plan in accordance with N.J.A.C. 11:21-3A.3 or 11:21-3A.4 and/or when the carrier converts the small employer to a standard health benefits plan, provided that;

1. *{If continuing to cover part-time employees, the}* ***The*** small employer carrier shall offer to *{continue coverage for}* ***cover*** all part-time employees of all such small employers so renewing or reinstating such health benefits plan***s*** and/or converting to *{a}* standard health benefits plan***s***, and, in the latter case, shall do so without regard to the standard health benefits plan to which *{the}* ***a*** small employer converts.

2. (No change.)

(f) A small employer carrier *{providing}* ***may elect to provide*** coverage to a small employer's retired employees***, if the small employer's retired employees were covered*** under a health benefits plan issued prior to January 1, 1994, *{may continue to cover retired employees, including individuals who thereafter become retired employees,}* when the carrier renews or reinstates the plan in accordance with N.J.A.C. 11:21-3A.3 or 3A.4 and/or when the carrier converts the small employer to a standard health benefits plan, *{subject to the requirements of (e)1 and 2 above with respect to such covered retired employees.}* ***provided that:***

1. The small employer carrier shall offer to cover all retired employees of all such employers so renewing or reinstating such health benefits plans and/or converting to standard health benefits plans, and, in the latter case, shall do so without regard to the standard health benefits plan to which a small employer converts; and

2. Such covered retired employees shall not be considered in determining whether an employer is a small employer, nor for determining whether the small employer meets the requisite participation requirements.*

(g) A small employer carrier *{covering}* ***may elect to provide coverage to*** retired employees and/or ***part-time*** employees *{working fewer than 25 hours per week}* of an employer that becomes a small employer subsequent to January 1, 1994 *{may continue to cover retired employees and/or part-time employees, including individuals who thereafter become retired employees or part-time employees}***, if the employer covered retired and/or part-time employees under a group health plan issued prior to January 1, 1994***, under a health benefits plan renewed or reinstated by the carrier in accordance with N.J.A.C. 11:21-3A.3 or 3A.4, or a standard health benefits plan issued to the small employer by the carrier, subject to the requirements of (e)1 and 2 ***and (f)1 and 2*** above.

...

11:21-7.5 Restrictions on replacement of health benefits plans

(a) A small employer who purchases a standard health benefits plan or rider pursuant to the Act shall not be permitted to purchase a standard health benefits plan or rider with a greater actuarial value until the first anniversary date of the small employer's existing standard health benefits plan.

(b) When a small employer replaces a standard health benefits plan or rider with a standard health benefits plan or rider of greater

actuarial value, the small employer shall not be permitted to change the ***standard*** health benefits plan or rider to one of less actuarial value until the anniversary date of the small employer's standard health benefits plan.

(c) A small employer who has purchased a standard health benefits plan or rider pursuant to the Act may purchase a standard health benefits plan or rider of lesser actuarial value prior to the anniversary date of the existing standard health benefits plan or rider, provided that the existing standard health benefits plan or rider was purchased at least 12 months prior to the latest anniversary date of the standard health benefits plan or rider.

(d) In the event that the previous standard health benefits plan of a small employer group was cancelled for nonpayment of premiums or fraud, a small employer carrier may:

1. Refuse to issue a standard health benefits plan to the small employer group for one year from the last date of coverage of the previous plan; or

2. Require the small employer group to pay up to six months of premiums in advance of the issuance of a standard health benefits plan.

11:21-7.6 Participation requirements

(a) A small employer carrier shall require a minimum participation under the small employer's health benefits plan of 75 percent of eligible employees except as set forth in (b) below. This participation requirement shall be applied by the small employer carrier uniformly among all health benefits plans and all small employers. An eligible employee who is not covered under the small employer's health benefits plan because the employee is covered as a dependent under a spouse's health benefits plan, or is covered under an indemnity plan or any HMO plan offered by the small employer, shall be counted as covered under the small employer's health benefits plan for the purpose of satisfying participation requirements.

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

11:21-7.7 Contribution requirements

(a) A small employer carrier shall not require a minimum small employer contribution of more than 10 percent of the annual cost of the small employer's health benefits plan. This contribution requirement shall be applied by the small employer carrier uniformly among all health benefits plans and all small employers.

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

11:21-7.8 Preexisting condition standards

(a) A health benefits plan covering five or fewer eligible employees, as determined on the effective date of each subsequent policy anniversary, shall not deny, exclude or limit benefits, for a covered individual for losses incurred more than 180 days following the effective date of the individual's coverage due to a preexisting condition. A preexisting condition is an illness or injury which manifests itself in the six months before a covered individual's coverage under the health benefits plan becomes effective and for which: the individual received medical care, treatment, or took prescribed drugs; or, an ordinarily prudent person would have sought medical advice, care or treatment in the six months before the individual's coverage starts. A pregnancy which exists on the date an individual's coverage becomes effective is also a preexisting condition.

(b) A small employer carrier shall waive any time period applicable to a preexisting condition limitation period for the period of time an individual was covered under any previous hospital and medical expense insurance policy or certificate; or health, hospital or medical service corporation contract or certificate; or health maintenance organization subscriber contract or certificate delivered or issued for delivery in the United States, that provided benefits with respect to such condition, provided that the qualifying previous coverage was continuous to a date not more than 90 days prior to the effective date of the new coverage. The period of continuous coverage shall not include any waiting period for the effective date of the new coverage applied under the terms of the health benefits plan.

(c) The standards set forth in (a) above shall also apply to a late enrollee under a health benefits plan, unless ten or more late enrollees request enrollment during any 30 day enrollment period.

11:21-7.9 Effective date of coverage

(a) A small employer carrier, prior to issuing a health benefits plan, may require the following:

1.-2. (No change.)

3. An advance premium payment not to exceed one month's premium, except as provided in N.J.A.C. 11:21-7.5(d)2, which shall be refunded to the employer if the health benefits plan is not issued by the small employer carrier.

(b) A small employer carrier shall provide notice to the employer within 15 working days of receipt by the small employer carrier of the information set forth in (a) above whether the small employer carrier approves or disapproves the employe's application for the health benefits plan. If approved, the effective date of coverage under the health benefits plan shall be no later than the first day of the month following the date of notice of such approval by the small employer carrier unless the small employer has requested a later effective date which is agreed to by the small employer carrier.

(c)-(e) (No change.)

11:21-7.12 Guaranteed renewal

(a) All health benefits plans that are issued or renewed on or after January 1, 1994, must be guaranteed renewable at the option of the small employer, except for the following reasons:

1.-2. (No change.)

3. The number of employees covered under the health benefits plan is less than the percentage of eligible employees required by participation requirements under the plan;

4.-5. (No change.)

6. The number of employees covered under the health benefits plan is less than two;

7. A small employer ceases its membership in an association or trust of employers where the health benefits plan was issued in connection with such membership; or

8. (No change.)

11:21-7.13 Reporting requirements

(a) Effective January 1, 1995, a small employer carrier shall file with the Board, annually no later than March 15, the following information reported separately with respect to standard and nonstandard health benefits plans:

1. The number of small employers, covered employees and dependent units that were issued health benefits plans in the previous calendar year, separately as to newly issued plans and renewals, and *{by plan design}* ***separately for standard health benefits plans A, B, C, D, E, and HMO***;

2. The number of health benefits plans in force by three digit zip code and by two digit Major Group of the Standard Industrial Classification as of December 31 of the previous calendar year;

3. The number of health benefits plans that were voluntarily cancelled by small employers in the previous calendar year;

4. The number of health benefits plans that were cancelled or nonrenewed by the carrier in the previous calendar year, and the reason for such cancellation or nonrenewal; and

5. The number of small employers, covered employees and dependents that were issued health benefits plans in the previous calendar year that were uninsured for at least the three months prior to issue.

(b) Effective on the fiscal quarter ending on September 30, 1994, a small employer carrier shall file with the Board, quarterly no later than 45 days after the end of the fiscal quarter, the following information reported separately with respect to standard and nonstandard health benefits plans:

1. The number of small employers, covered employees and dependents that were issued health benefits plans in the previous calendar quarter, reported separately *{by plan design}* ***as to newly issued plans and renewals and separately for each standard health benefits plan A, B, C, D, E, and HMO***;

2. The total number of health benefits plans in force at the end of the quarter, and the total number of employees and dependents

covered, reported separately *{by plan design}* ***for each standard health benefits plan A, B, C, D, E, and HMO***;

3. The number of small employers, covered employees and dependents that were issued health benefits plans in the previous calendar quarter and were uninsured for at least the three months prior to issue.

(c) Annual and quarterly reports shall be filed at the address listed in N.J.A.C. 11:21-1.3.

EXHIBIT N

[Carrier]

APPLICATION FOR A SMALL EMPLOYER HEALTH BENEFITS POLICY

Please print or type Policy number: ([Carrier] Use Only)

☐ New Policy ☐ Change in Policy Requested Effective Date: _____

SECTION I: POLICYHOLDER INFORMATION

1. Policyholder (full legal name of company): _____

2. Tax Identification Number: _____

3. Main Address: _____
Street *City* *State* *Zip*

Mailing Address: _____
Street *City* *State* *Zip*

Telephone: ( ) _____ Fascimile: ( ) _____

4. Name of Correspondent: _____ Title: _____

5. Type of organization: ☐ Corporation ☐ Partnership ☐ Proprietorship ☐ Other (explain): _____

6. Nature of business (specify): _____ SIC Code: _____

7. Number of eligible employees in your company: _____
*{(Eligible employees are those who work at least **25** hours per week)}*

Refer to the New Jersey Small Employer Certification for the definition of an eligible employee

8. Number of eligible employees to be insured: _____

9. Class or classes to be excluded: _____

10. Insurance Requested For: ☐ Employees Only ☐ Employees and Dependents

11. Are you subject to the requirements of COBRA? ☐ Yes ☐ No

12. Waiting period before employees become insured: (may not exceed 6 months)

Present employees: _____ New Employees _____

13. What percentage of the premium will the employer pay? _____

14. Deposit $ _____

Premium Paid: ☐ Monthly ☐ Quarterly [☐ Automatic checking withdrawal]
Premium will be due as of the effective date. The premium for the first month of coverage must be attached.

Affiliates, subsidiaries or branches (Must be included for purposes of participation)

Legal Name & Location	No. eligible ees in this company	No. eligible ees to be insured	[Type of organization]	[Nature of business]

SECTION II: SPECIFICATIONS FOR COVERAGE

[HEALTH BENEFITS

☐ Wraparound (Hospital Base Plan _____ days)

Plan: ☐ A ☐ B ☐ C ☐ D ☐ E ☐ HMO

Deductible (Options for plans B, C and D only): ☐ $250 ☐ $500 ☐ $1,000

Co-Payment (Options for HMO Plans Only) ☐ $5 ☐ $10 ☐ $15 ☐ $20

Managed Care Delivery System: ☐ PPO ☐ POS ☐ None

PRESCRIPTION DRUG BENEFITS

Program Type: ☐ Card ☐ Mail Order ☐ Card/Mail Order

MENTAL AND NERVOUS CONDITIONS AND SUBSTANCE ABUSE BENEFITS

Co-Payment Option ☐ $5 ☐ $10 ☐ $15 ☐ $20]

SECTION III: ALL QUESTIONS MUST BE ANSWERED

1a. Is there any insurance plan:

- now inforce and to be continued? ☐ Yes ☐ No
- currently being applied for? ☐ Yes ☐ No

If "Yes" give a description of the plan and name of insurance carrier(s) _____

b. Name of present or prior group carrier _____

Effective date of prior coverage: _____ Cancellation/termination date: _____

Is the coverage applied for in this application replacing other group insurance? ☐ Yes ☐ No

If "Yes", give reason _____

Plan being replaced: ☐ A ☐ B ☐ C ☐ D ☐ E ☐ HMO ☐ Other _____

c. Has your firm been uninsured for 3 or more months prior to application? ☐ Yes ☐ No

4. What forms of insurance are now or were inforce? ☐ Health Benefits ☐ Prescription Drugs (Attach copies of Booklet/Certificate and most recent Billing Statement)

5. Are extended benefits provided in case of termination of health benefits? ☐ Yes ☐ No

6. To the best of your knowledge are there any current or former employees or their eligible dependents whose health insurance is being continued? ☐ Yes ☐ No

Please provide the following information for each current/former employee or dependent on health continuations.

Name of Employee/Dependent	Date of Birth	Type of Continuation State/Federal/ Extended Benefits	Reason for Termination Disability/Other	Continuation Dates Start	End

If additional space is needed, attach a separate sheet, signed and dated.

7. To the best of your knowledge

a. Are any employees or dependents presently incapacitated? ☐ Yes ☐ No
b. Are any dependent children incapable of self-support due to a physical or mental disability? ☐ Yes ☐ No

Additional space to explain if items 1, 2 or 3 were answered "Yes". Refer to the question number, and give details including names, where appropriate.

SECTION IV: AGENT/PRODUCER INFORMATION

[To be supplied by Carrier]

SECTION V: SIGNATURE

[It is understood that no individual shall become insured while not actively at work on a full-time basis, and only full-time employees are eligible. A full-time employee is one who regularly works at least 25 hours per week at his employer's place of business.] It is further understood that no agent has power on behalf of [Carrier] to make or modify any request or application for insurance or to bind [Carrier] by making any promise or representation or by giving or receiving any information.

It is further understood that no insurance will be effective unless and until the application is accepted in writing by [Carrier]. No contract of insurance is to be implied in any way on the basis of the completion and/or submission of this application.

Any person who knowingly files a statement of claim, application for insurance, enrollment form, or certification containing any false or misleading information may be subject to criminal and civil penalties.

Dated at _____ on _____

Print name of Officer, Partner or Proprietor

Signature of Officer, Partner or Proprietor

Witness to Signature

Note: If there are any modifications to the statements and answers given in this application (i.e. crossed out, whited-out, erased information), the applicant must attest to the modifications) by giving a complete signature in the margin near the modification.

EXPLANATION OF BRACKETS AND TEXT
APPLICATION FOR A SMALL EMPLOYER HEALTH BENEFITS POLICY

1. The terms Policyholder and Policy may be replaced with Contractholder or Planholder and Contract or Plan, as appropriate.

2. The terms insurance and insured may be replaced with coverage and covered, as appropriate.

3. The reference to Automatic Checking Withdrawal may be deleted if Carrier does not offer such options.

4. The text of the Health Benefits section may vary to accommodate the options a Carrier will offer. For example, if a Carrier does not offer HMO plans, such text may be deleted.

5. Agent/Producer Information may be consistent with a Carrier's usual procedures.

6. If benefits are to be issued through a Multiple Employer Trust, a Carrier may include text which specifies that the employer is requesting participation in a Trust.

7. If a Carrier provided coverage to a small employer's employees working fewer than 25 hours per week and/or retirees under a health benefits plan issued prior to January 1, 1994, and such Carrier elects to continue to cover part-time employees and/or retirees after January 1, 1994, under the terms and conditions outlined in N.J.A.C. 11:21.7.3 (e) and (f), the text of the first 2 sentences of the Signature section may be adjusted to reflect the expanded eligibility.

EXHIBIT O

NEW JERSEY SMALL EMPLOYER CERTIFICATION

For a policy of Group Health Benefits Insurance

Employer Name _____ Group Policy No. _____

Address _____ Street _____ City _____ State _____ Zip _____

EMPLOYEE CENSUS INFORMATION

Please include the following persons in the following list:

a. employees, owners, partners, officers, and independent contractors who are actively working for the employer on a regular basis, whether or not they are eligible to be covered under the policy.

b. employees, owners, partners, officers, and independent contractors who are not working, but who are currently covered under the employer's health benefits plan for reasons such as continuation of coverage or total disability.

Please use the following letters to indicate Status:

F: Full-time employee who works 25 or more hours per week
P: Part-time employee who works less than 25 hours per week
T: Temporary employee
I: Independent Contractor
D: Totally Disabled employee
C: Continuee under state or federal law
U: Employee participating in an employee welfare arrangement established pursuant to a collective bargaining agreement

Name	**Job Title**	Date of Employment	Hours worked per week	Status	**Work Location (State)**
1.					
2.					
3.					
4.					
5.					
6.					
7.					
8.					
9.					
10.					
11.					
12.					
13.					
14.					
15.					

If additional space is needed, attach a separate sheet.

{SEH-SEC-11/93-2} **SEH-SEC-6/94-1**

CERTIFICATION AS A SMALL EMPLOYER IN THE STATE OF NEW JERSEY IN ACCORDANCE WITH NEW JERSEY CH. 162

Group Health Benefits Policy Participation (All Questions Must Be Answered)

An Eligible Employee is one who works on a full-time basis with a normal work week of 25 or more hours. An employee who works less than 25 hours per week (or), on a temporary or substitute basis, or an employee participating in an employee welfare arrangement established pursuant to a collective bargaining agreement is not an eligible employee.

Total # Eligible Employees _____

Total # Eligible Employees applying for health benefits coverage _____

Total # Eligible Employees waiving health benefits coverage under this policy with coverage elsewhere _____

Total # Eligible Employees waiving health benefits coverage under this policy without coverage elsewhere _____

Total # Eligible Employees with Eligible Dependents _____

Total # Eligible Employees applying for Dependent health benefits coverage _____

Total # Eligible Employees waiving Dependent health benefits coverage under this policy with coverage elsewhere _____

Total # Eligible Employees waiving Dependent health benefits coverage under this policy without coverage elsewhere _____

CERTIFICATION

(Please sign and date appropriate section indicating whether or not you meet the definition of a small employer)

A Small Employer is any person, firm, corporation, partnership or association actively engaged in business who during at least fifty percent of its working days in the preceding CALENDAR YEAR/QUARTER, employed NO MORE THAN FORTY-NINE eligible employees and NO LESS THAN TWO eligible employees, the majority of whom were employed in the State of New Jersey. In determining the number of eligible employees, companies which are affiliated companies shall be considered one employer.

I certify that I qualify as a Small Employer in the State of New Jersey.

I certify that the information provided to [Carrier] is true and complete. I understand that if the above information is not complete or is not provided to [Carrier] in a timely manner, then health benefits coverage does not have to be offered or continued. I further understand that incomplete or untrue information may void health benefits coverage.

I understand that I and my employees are subject to fines if an employee who is a resident of New Jersey and is eligible for coverage under this group health benefits plan is enrolled in an individual health benefits plans.

Any person who knowingly files a statement of claim, application for insurance, enrollment form, or certification containing any false or misleading information, may be subject to criminal and civil penalties.

_____

Signature of Officer, Partner, or Owner Title Date

_____

Print Name of Officer, Partner, or Owner

_____

Signature of Witness Date

I certify that I am not a Small Employer in the State of New Jersey, as defined above.

_____

Signature of Officer, Partner, or Owner Title Date

_____

Print Name of Officer, Partner, or Owner

_____

Signature of Witness Date

(SEH-APP-6/93-4) **SEH-SEC-6/94-2**

EXHIBIT Q

[CARRIER]

SMALL GROUP EMPLOYER BENEFITS ENROLLMENT FORM [AND (HEALTH) PRE-EXISTING CONDITIONS STATEMENT]

[Policyholder] (full legal name of company): _____ [Policy] No. _____

[Policyholder] Address: _____
Street City State Zip Code

SECTION I: EMPLOYEE INFORMATION

Name: _____ [Telephone: _____]
Last First Middle Initial

[Home Address:] _____
Street City State Zip Code

Occupation: _____ Title: _____

Date of Employment: _____ Hours worked per week: _____

Are you actively at work? ☐ Yes ☐ No If "No", explain _____

Marital Status: ☐ Single ☐ Married ☐ Widowed ☐ Divorced

[*Reason for Enrollment (Please check appropriate boxes)*

☐ I am an employee of an organization which is applying for coverage.
☐ I am now eligible for coverage.
☐ I had previous coverage during the past 90 days.
Name of previous carrier _____ Plan # _____
How long were you covered? _____
☐ I previously refused/waived coverage
☐ I am applying for coverage during my organization's HMO open enrollment period. Open enrollment date: _____
☐ I am continuing coverage under state or federal law.
☐ I am adding [deleting] dependent(s)
☐ other (specify) _____]

SECTION II: COVERAGE INFORMATION

1. Persons to be covered: ☐ Employee Only ☐ Employee & Child(ren) ☐ Employee & Spouse ☐ Employee, Spouse & Child(ren)

2. Please provide all information for each person to be covered.

Full Name Last, First, MI	Sex	Social Security #	[Place of Birth]	Birthdate	[Height]	[Weight]
Employee						
Spouse						
Child						
Child						
Child						
Child						

3. Indicate whether you and/or your spouse, if any, are enrolled under Part A and/or Part B of Medicare

	Plan A	Plan B	Medicare ID. #
Employee	☐ Yes ☐ No	☐ Yes ☐ No	_____
Spouse	☐ Yes ☐ No	☐ Yes ☐ No	_____

4. Which coverage have you selected to be primary in the event expenses are incurred as a result of an automobile related injury?
☐ Auto ☐ Medical

[5. Name(s) of Primary Care Physician(s) _____]

SEH-ENROLL-(8/93)**6/94-1**

SECTION IV: DECLARATION AND AUTHORIZATION

I hereby apply for the group coverage for which I am or may become entitled. I authorize deductions from my pay for my share of the cost, if any.

I represent to the best of my knowledge and belief, that the statements and answers given above are true and complete. I understand that the information, [other than the {health} Pre-Existing Conditions Statement information,] shall form the basis upon which I may be included for coverage under the group plan.

I understand that:

a. the coverage applied for will not take effect unless:

- the first premium has been paid to [Carrier]; and
- I am actively at work for full pay on a full time basis on the date coverage is to take effect.

b. no person, except an officer of [Carrier], has authority to: determine whether any certificate shall be issued on the basis of this Enrollment Form and {Health} Pre-Existing Conditions Statement; waive or modify any of the provisions of the Enrollment Form [and {Health} Pre-Existing Conditions Statement] or any of [Carrier's] requirements; to bind [Carrier] by any statement or promise pertaining to any certificate signed or to be issued on the basis of this Enrollment [and {Health} Pre-Existing Conditions Statement;] or accept any information or representation not contained in the written Enrollment Form [and {Health} Pre-Existing Conditions Statement.]

c. the Employer is hereby designated my representative for the purpose of receiving {premiums} contributions and remitting them to [Carrier].

[d. I understand that [Carrier] does not pay benefits for charges for Pre-Existing Conditions until a person covered under the Policy has been continuously covered under the Policy for 180 days. I understand that the following are Pre-Existing Conditions:

- an illness or injury which manifests itself during the 6 months prior to the date a person's coverage takes effect and for which: a. the person sees a Practitioner, takes prescribed drugs, receives other medical care or treatment or had medical care or treatment recommended by a Practitioner in the 6 months before coverage takes effect; or b. an ordinarily prudent person would have sought medical advice, care, or treatment in the 6 months before coverage starts

- a pregnancy which exists on the date a person's coverage takes effect.]

Note: Any person who knowlingly files a statement of claim, application for insurance, enrollment form [or {health} Pre-Existing Conditions statement], containing any false or misleading information may be subject to criminal and civil penalties.

AUTHORIZATION

1. I authorize the sources stated below to give to [Carrier], or any consumer reporting agency acting on its behalf, information about me and my minor children, if applying for insurance. Such information will pertain to employment; other insurance coverage; and medical care, advice, treatment or supplies for any physical or mental condition. Authorized sources are: any physician or medical professional; any hospital, clinic or other medical care institution; any insurer; {the Medical Information Bureau;} any consumer reporting agency; any employer.

2. I understand that I may revoke this authorization at any time. I agree that such revocation will not affect any action which [Carrier] has taken in reliance on the authorization. I understand that this authorization will not be valid after 30 months, if not revoked earlier.

3. I know that I have the right to receive a copy of this authorization if I request one.

4. I agree that a photocopy of this authorization is as valid as the original.

(Date Signed)	(Signature of Employee)
[(Date Signed)	(Signature of Spouse, if {giving a statement of health} providing information on the pre-existing conditions statement
(Date Signed)	(Signature of Child Who is age 18 or older, if {giving a statement of health} providing information on the pre-existing conditions statement]

SEH-ENROLL-6/94-3

SECTION IV: DECLARATION AND AUTHORIZATION (Continued)

- - - -

EXHIBIT Q

EXPLANATION OF BRACKETS
SMALL EMPLOYER HEALTH BENEFITS

Enrollment Form, and [Health] **Pre-Existing Conditions** Statement and Waiver Form

1. The terms Policyholder and Policy may be replaced with Contractholder or Planholder and Contractor Plan, as appropriate.

2. If Carrier does not need to capture the telephone number, such item may be deleted.

3. Home Address may be replaced with Primary Residence Address.

4. If the carrier uses administrative forms for some of the actions identified in the Reasons for Enrollment section, all or parts of the text may be deleted.

5. Additional lines for Child Data may be included.

6. The space for Names of Primary Care Physicians may be deleted if Carrier does not offer plans which rely upon Primary Care Physicians. If the item is included, it may be expanded to request the name of the Primary Care Physician for each person to be covered.

7. If the Carrier does not elect to use health information [for the purpose of rating or] to assist with establishing the existence of a pre-existing condition, the [health] **pre-existing conditions statement** should not be included.

[8. If the Carrier does not use MIB information, the reference to MIB in the Authorization may be deleted. The Disclosure may be also deleted.]

[9] 8. Item d. of the Declaration and Authorization may always be deleted or Carrier may include the text only when the Pre-Existing Conditions provisions may be applicable.

[10] 9. Carrier may elect to produce the Enrollment Form, [Health] Pre-Existing Conditions Statement, if used, and Waiver Form as a single form.

EXHIBIT R

. . .

[6. {HEALTH} PRE-EXISTING CONDITIONS STATEMENT

Note: This information {will not be used for any purpose prohibited by law.} may only be used to determine if a condition is a Pre-Existing Condition. You must not be denied coverage under the health benefits plan on the basis of accurate responses to the following questions, but benefits for treatment and services of Pre-Existing Conditions may be limited for up to 180 days. This form and restriction of benefits applies only to employers with 2-5 employees. Answer each question by checking the "Yes" or "No" box as it applies. If "Yes" is checked, provide details below. Have you or any dependent to be covered {ever} in the 6 months prior to the date of your coverage under the group contract will take effect had or been diagnosed as having:

		Yes	No
1.	a. Alcoholism, Drug Abuse	☐	☐
	b. Arthritis	☐	☐
	c. Back or Neck Disorder, Injury or Pain	☐	☐
	d. Blood Disorder	☐	☐
	e. Cancer or Tumors	☐	☐
	f. Diabetes	☐	☐
	g. Gastro or Intestinal Disorder	☐	☐
	h. Heart Disorder or Condition or Chest Pain	☐	☐
	i. High Blood Pressure	☐	☐
	j. Kidney or Liver Disorder	☐	☐
	k. Lung or Respiratory Disorder	☐	☐
	l. Mental or Nervous Disorder	☐	☐
	m. Paralysis, Stroke or Epilepsy	☐	☐
	n. Does Pregnancy Exist	☐	☐
	Expected Due Date:	☐	☐

{2. Have you or any dependent to be covered been diagnosed by a member of the medical profession as have AIDS or HIV+ (positive)?} ☐ ☐

{3.} 2. In the {past five (5) years} six months prior to the date your coverage under the group contract will take effect, have you or any dependent to be covered:

	Yes	No
a. been examined or treated by a physician or other health care provider for any condition, illness or injury, other than as stated above?	☐	☐
b. been advised to have treatment or surgery or testing that has not been done?	☐	☐
c. been admitted to a hospital or other health care facility as an inpatient?	☐	☐
d. taken prescribed medication(s)?	☐	☐
{e. used tobacco products?}		

{4. Please indicate your height.

5. Please indicate your weight. _____ lbs. }

Please give details for any "Yes" answers to any parts of questions 1, 2 {or 3} Attach a separate sheet if more space is needed for answers. The separate sheet should be signed and dated.

Question # and Letter	Name of Person	Condition	Duration of Symptoms, Treatment Degree of Recovery	Date	Name and Address of Hospitals, Practitioners

. . .

EXHIBIT S

[SECTION III: [HEALTH] PRE-EXISTING CONDITIONS STATEMENT

Note: This information {will **not** be used for any purpose prohibited by law} may only be used to determine if a condition is a Pre-Existing Condition. You may not be denied coverage under the health benefits plan on the basis of accurate responses to the following questions, but benefits for treatment and services of Pre-Existing Conditions may be limited for up to 180 days. This form and restriction of benefits apply only to employers with 2-5 employees.

Answer each question by checking the "Yes" or "No" box, as it applies. If "Yes" is checked, provide details below.

[In the six (6) months prior to the date of your coverage under the group policy will take effect, have you or any dependent to be covered {ever} had or been diagnosed as having:

	Yes	No
1. a. Alcoholism, Drug Abuse	☐	☐
b. Arthritis	☐	☐
c. Back or Neck Disorder, Injury or Pain	☐	☐
d. Blood Disorder	☐	☐
e. Cancer or Tumors	☐	☐
f. Diabetes	☐	☐
g. Gastro or Intestinal Disorder	☐	☐
h. Heart Disorder or Condition or Chest Pains	☐	☐
i. High Blood Pressure	☐	☐
j. Kidney or Liver Disorder	☐	☐
k. Lung or Respiratory Disorder	☐	☐
l. Mental or Nervous Disorder	☐	☐
m. Paralysis, Stroke or Epilepsy	☐	☐
n. Does Pregnancy Exist	☐	☐
Expected Due Date: _____]		
[2. Have you or any dependent to be covered been diagnosed by a member of the medical profession as having AIDS or HIV+ (positive)?	☐	☐]
{3.} [2.] In the {past five (5) years} six (6) months prior to the date your coverage under the group policy will take effect, have you or any dependent to be covered:		
a. been examined or treated by a physician or other health care provider for any condition, illness or injury, other than as stated above?	☐	☐
b. been advised to have treatment or surgery or testing that has not been done?	☐	☐
c. been admitted to a hospital or other health care facility as an inpatient?	☐	☐
d. taken prescribed medication(s)?	☐	☐
{e. used tobacco products?	☐	☐}

Please give details for any "Yes" answers to any parts of questions 1 or 2. Attach a separate sheet if more space is needed for answers. The separate sheet should be signed and dated.

Question # and Letter	*Name of Person*	*Condition*	*Duration of Symptoms, Treatment Degree of Recovery*	*Date*	*Name and Address of Hospitals, Practitioners*

SEH-ENROLL-(8/93)6/94-2]

EXHIBIT T

[CARRIER]

SMALL EMPLOYER HEALTH BENEFITS WAIVER OF COVERAGE

Group Policy No. _____

Policyholder Name: _____

Employee Name: _____ Social Security #_____
Last First MI

Marital Status: ☐ Single ☐ Married ☐ Widowed ☐ Divorced

Date of Employment: _____ Date of Birth _____

I was given the opportunity to enroll in this plan of group health benefits offered by my employer and insured by [Carrier]. I *refuse* the following:

☐ Employee, Spouse and Child(ren) coverage

☐ Spouse coverage

☐ Child(ren) coverage

Reason for Refusal (Please check all appropriate boxes.)

☐ other group coverage sponsored by my employer

☐ other group coverage sponsored by my spouse's employer

☐ other group coverage sponsored by another organization

☐ other reasons (please explain) _____

Please provide name of carrier and policy number: _____

I understand that if I later wish to enroll for any of the coverage(s) refused, I will be required to submit an Enrollment Form [and (Health) **Pre-Existing Conditions** Statement], and coverage may be subject to a preexisting conditions exclusion.

_____ _____
Signature of Employee Date

_____ _____
Signature of Witness Date

SEH-WAIV-(8/93)**6/94**

(a)

SMALL EMPLOYER HEALTH BENEFITS PROGRAM BOARD

Small Employer Health Benefits Program

Adopted Amendments: N.J.A.C. 11:21 Appendix, Exhibits A, B, C, F, G through J, V, W, Y, Z, and AA

Proposed: June 8, 1994 in accordance with N.J.S.A. 17B:27A-51, at 26 N.J.R. 2843(a).

Adopted: September 1, 1994 by the New Jersey Small Employer Health Benefits Program Board, Maureen Lopes, Chair.

Filed: September 2, 1994 as R.1994 d.498, **with substantive changes** not requiring additional notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 17B:27A-17 et seq., as amended by N.J.S.A. 17B:27A-51, P.L. 1994, c.11, and P.L. 1994, c.97.

Effective Date: September 2, 1994.

Expiration Date: October 15, 1998.

This amended rule was proposed and is being adopted pursuant to the procedures of P.L. 1993, c.162, section 17, as therein authorized. Accordingly, notice of the proposal was published in three newspapers of general circulation in New Jersey, and mailed to all known interested parties when submitted to the Office of Administrative Law ("OAL") for publication in the New Jersey Register. Upon expiration of a 20-day public comment period following the publication of notice of the proposal, and upon approval by the Commissioner of Insurance, the proposed amended policy forms were adopted. The Board is required by law to respond to any comments received within a reasonable period following the adoption of the proposal and submit the Board's responses to the OAL for publication in the New Jersey Register.

No comments were received.

Summary of Agency-Initiated Changes:

The Board has amended policy forms A, B, C, D, and E (Appendix Exhibits A, F, V and W) as follows: the definition of "dependent" which appears in the "Definitions" section and the section titled "Eligible Dependents for Dependent Health Benefits" to provide that a dependent is not a person who is "insured" for coverage under the contract. Subsequent to the proposal of the amendments to the policy forms, it came to the Board's attention that, due to an error in the definition of "dependent" in policy forms A, B, C, D, and E, a husband and wife who work for the same employer would be required to enroll separately, one as an employee and the other as an employee and child, rather than as a family (employee and dependents). The definition provided that a "dependent" was not a person who was eligible for coverage under the health benefits plan as an employee. The board never intended to force spouses employed by the same employer to enroll separately, rather, the intent was to insure that no employee received double coverage as both an employee and a dependent of an employee. The HMO policy form does not contain this error. That form correctly excludes from the definition of dependent only a dependent who is insured under the contract as an employee.

The SEH Board has changed the word "eligible" to "insured" on adoption, so that this provision would prohibit covering the same person twice in the same group coverage contract, as both an employee and a dependent. This change brings policy forms A, B, C, D, and E into conformance with the HMO policy form, the original intent of the Board, and practice in the market generally. The change will not enlarge or curtail who or what will be affected by the proposed rule. Although the change affects what is being prescribed in the rule, there is evidence of only one carrier that was following the letter of the rule, due to a general understanding from the Board's deliberations and prior practice in the industry that spouses working for the same employer should be allowed to enoll in a group plan as an employee and dependent, just as they would be allowed if employed by different employers. In addition, the rule as originally adopted would have negatively affected all concerned: carriers, employers and employees. The amendment does not enlarge or curtail the scope of the proposed rule or the burden it imposes on those affected. On the contrary, the Board believes that not making the change on adoption would have continued to impose a burden on those affected.

Full text of the adoption follows (additions to proposal indicated in boldface with asterisks ***thus***; deletions from proposal indicated in cursive brackets with asterisks *[thus]*):

APPENDIX
EXHIBIT A

PLAN A

[Carrier]

SMALL GROUP HEALTH BENEFITS BASIC POLICY

...

SCHEDULE OF INSURANCE AND PREMIUM RATES PLAN A

...

SCHEDULE OF INSURANCE AND PREMIUM RATES EXAMPLE: PLAN A PPO

This Policy's classification, and the insurance coverages and amounts which apply to each class are shown below:

CLASS

[All eligible employees]

EMPLOYEE AND DEPENDENT HEALTH BENEFITS

Calendar Year Cash Deductible:

• for Hospital Confinement	None (Note: See Hospital Confinement Co-Payment)
• for Preventive Care	None
• for All Other Charges	
—per Covered Person	$250
—per Covered Family	$500 Note: Must be individually satisfied by 2 separate Covered Persons

Medicare Alternate Deductible

For a Covered Person who is eligible for Medicare by reason of a disability, but is not insured by both Parts A and B, the Medicare Alternate Deductible is equal to the Cash Deductible **plus** what Parts A and B of Medicare would have paid had the Covered Person been so insured.

After the 18th month period described in **Medicare as Secondary Payor,** ends with respect to a Covered Person who is eligible for Medicare solely on the basis of End Stage Renal Disease, but is not insured by both Parts A and B, the Medicare Alternate Deductible is equal to the Cash Deductible plus what Parts A and B of Medicare would have paid had the Covered Person been so insured.

Hospital Confinement Co-Payment

—per day	$250
—maximum Co-Payment per Period of Confinement	$1,250
—maximum Co-Payment per Covered Person per Calendar Year	$2,500

Co-Insurance

Co-Insurance is the percentage of a Covered Charge that must be paid by a Covered Person. However, [Carrier] will waive the Co-Insurance requirement once Coinsured Charge Limit has been reached. This Policy's Co-Insurance, as shown below, does not include penalties incurred under this Policy's Utilization Review provisions, or any other Non-Covered Charge.

	If treatment, services or supplies are given by: a Network Provider	**an Out-Network Provider**
The **Co-Insurance** for this Policy is as follows:		
• for Preventive Care	None	None
• for Facility charges made by:		
—a Hospital	None	20%
—an Ambulatory Surgical Center	None	20%
—a Birthing Center	None	20%
—an Extended Care Center or Rehabilitation Center	None	20%
—a Hospice	None	20%

• for the following Covered Charges incurred while the Covered Person is an Inpatient in a Hospital:		
—Prescription Drugs	None	20%
—Blood Transfusions	None	20%
—Infusion Therapy	None	20%
—Chemotherapy	None	20%
—Radiation Therapy	None	20%
• for all other Covered Charges	70%	50%

The **Coinsured Charge Limit** means the amount of Covered Charges a Covered Person must incur **each Calendar Year** before no Co-Insurance is required.

Coinsured Charge Limit: $10,000

Daily Room and Board Limits

...

GENERAL PROVISIONS

...

PREMIUM RATE CHANGES

The premium rates in effect on the Effective Date are shown in this Policy's Schedule. [Carrier] has the right to change premium rates as of any of these dates:

a. Any premium due date.
b. Any date that an Employer becomes, or ceases to be, an Affiliated Company.
c. Any date that the extent or nature of the risk under this Policy is changed:
   • by amendment or this Policy; or
   • by reason of any provision of law or any government program or regulation; or
   • if this Policy supplements or coordinates with benefits provided by another insurer, non-profit hospital or medical service plan, or health maintenance organization, on any date [Carrier's] obligation under this Policy is changed because of a change in such other benefits.
d. At the discovery of a clerical error or misstatement as described below.

[Carrier] will give the Policyholder 30 days advance written notice when a change in the premium rates is made.

PARTICIPATION REQUIREMENTS

...

CLERICAL ERROR—MISSTATEMENTS

Neither clerical error by the Policyholder, nor the [Carrier] in keeping any records pertaining to coverage under this Policy, nor delays in making entries thereon, will not invalidate coverage which would otherwise be in force, or continue coverage which would otherwise be validly terminated. However, upon discovery of such error or delay, an equitable adjustment of premiums will be made.

Premium adjustments involving return of unearned premium to the Policyholder will be limited to the period of 12 months preceding the date of [Carrier's] receipt of satisfactory evidence that such adjustments should be made.

If the age of an Employee, or any other relevant facts, are found to have been misstated, and the premiums are thereby affected, an equitable adjustment of premiums will be made. If such misstatement involves whether or not the person's coverage would have been accepted by [Carrier], subject to this Policy's **Incontestability** section, the true facts will be used in determining whether coverge is in force under the terms of this Policy.

TERMINATION OF THE POLICY—RENEWAL PRIVILEGE

...

The Employer must certify to [Carrier] the Employer's status as a Small Employer every year. Certification must be given to [Carrier] within 10 days of the date [Carrier] requests it. If Employer fails to do this, [Carrier] retains the right to take the action described above as of the Employer's Policy Anniversary.

...

DEFINITIONS

...

Dependent means an Employee's:

a. legal spouse;
b. unmarried Dependent child who is under age 19; and
c. unmarried Dependent child from age 19 until his or her 23rd birthday, who is enrolled as a full-time student at an accredited school. Full-time students status will be as defined by the accredited school.

A Dependent is not a person who is:

a. on active duty in any armed forces of any country; or
b. *{eligible}* ***insured*** for coverage under this Policy as an Employee.

Under certain circumstances, an incapacitated child is also a Dependent. See the **Dependent Coverage** section of this Policy.

An Employee's "unmarried Dependent child" includes:

a. his or her legally adopted children.
b. his or her step-children if such step children depend on the Employee for most of their support and maintenance, and
c. children under a court appointed guardianship.

[Carrier] treats a child as legally adopted from the time the child is placed in the home for purpose of adoption. [Carrier] treats such a child this way whether or not a final adoption order is ever issued.

...

Employee means a Full-Time Employee (25 hours per week) of the Employer. Partners, Proprietors, and independent contractors will be treated like Employees, if they meet all of this Policy's conditions of eligibility. Employees who work on a temporary or substitute basis **or who are participating in an employee welfare arrangement established pursuant to a collective bargaining agreement** are not considered to be Employees for the purpose of this Policy.

Employee's Eligibility Date means the later of:

a. the date of employment; or
b. the day after any applicable waiting period ends.

Employer means [ABC Company].

Experimental or Investigational means [Carrier] determines a service or supply is:

a. not of proven benefit for the particular diagnosis or treatment of a particular condition; or
b. not generally recognized by the medical community as effective or appropriate for the particular diagnosis or treatment of a particular condition; or
c. provided or performed in special settings for research purposes or under a controlled environment or clinical protocol.

Unless otherwise required by law with respect to drugs which have been prescribed for the treatment of a type of cancer for which the drug has not been approved by the United States Food and Drug Administration (FDA), [Carrier] will not cover any services or supplies, including treatment, procedures, drugs, biological products or medical devices or any hospitalizations in connection with Experimental or Investigational services or supplies.

[Carrier] will also not cover any technology or any hospitalization primarily to receive such technology if such technology is obsolete or ineffective and is not used generally by the medical community for the particular diagnosis or treatment of a particular condition.

Governmental approval of technology is not necessarily sufficient to render it of proven benefit or appropriate or effective for a particular diagnosis or treatment of a particular condition, as explained below.

[Carrier] will apply the following five criteria in determining whether services or supplies are Experimental or Investigational:

a. Any medical device, drug, or biological product must have received final approval to market by the FDA for the particular diagnosis or condition. Any other approval granted as an interim step in the FDA regulatory process, e.g., an Investigational Device Exemption or an Investigational New Drug Exemption, is not sufficient. Once FDA approval has been granted for a particular diagnosis or condition, use of the medical device, drug or biological product for another diagnosis or condition will require that one or more of the following established reference compendia:
   1. The American Medical Association Drug Evaluations;

2. The American Hospital Formulary Service Drug Information; or
3. The United States Pharmacopeia Drug Information

recognize the usage as appropriate medical treatment. As an alternative to such recognition in one or more of the compendia, the usage of the drug will be recognized as appropriate if it is recommended by a clinical study and recommended by a review article in a major peer-reviewed professional journal. A medical device, drug, or biological product that meets the above tests will not be considered Experimental or Investigational.

In any event, any drug which the Food and Drug Administration has determined to be contraindicated for the specific treatment for which the drug has been prescribed will be considered Experimental or Investigational.

b. Conclusive evidence from the published peer-reviewed medical literature must exist that the technology has a definite positive effect on health outcomes; such evidence must include well-designed investigations that have been reproduced by non affiliated authoritative sources, with measurable results, backed up by the positive endorsements of national medical bodies or panels regarding scientific efficacy and rationale;
c. Demonstrated evidence as reflected in the published peer-reviewed medical literature must exist that over time the technology leads to improvement in health outcomes, i.e., the beneficial effects outweigh any harmful effects;
d. Proof as reflected in the published peer-reviewed medical literature must exist that the technology is at least as effective in improving health outcomes as established technology, or is usable in appropriate clinical contexts in which established technology is not employable; and
e. Proof as reflected in the published peer-reviewed medical literature must exist that improvements in health outcomes; as defined in item c. above, is possible in standard conditions of medical practice, outside clinical investigatory settings.

...

Health Benefits Plan means any hospital and medical expense insurance policy or certificate; health, hospital, or medical service corporation contract or certificate; or health maintenance organization subscriber contract or certificate delivered or issued for delivery in New Jersey by any carrier to a Small Employer group pursuant to section 3 of P.L. 1992, c.162 (C. 17B:27A-19). Health Benefits Plan excludes the following plans, policies, or contracts: accident only, credit, disability, long term care, coverage for Medicare services pursuant to a contract with the United States government, Medicare supplement, dental only, or vision only, insurance issued as a supplement to liability insurance, coverage arising out of a workers' compensation or similar law, hospital confinement or other Supplemental Limited Benefit Insurance coverage, automobile medical payment insurance, or personal injury protection coverage issued pursuant to P.L. 1972, c.70 (C. 39:6A-1 et seq.).

...

Preventive Care means charges for routine physical examinations, including related laboratory tests and x-rays, immunizations and vaccines, well baby care, pap smears, mammography and screening tests.

...

Supplemental Limited Benefit Insurance means insurance that is provided in addition to a Health Benefits Plan on an indemnity non-expense incurred basis.

...

DEPENDENT COVERAGE

Eligible Dependents for Dependent Health Benefits

An Employee's eligible Dependents are the Employee's:
a. legal spouse;
b. unmarried Dependent children who are under age 19; and
c. unmarried Dependent children, from age 19 until their 23rd birthday, who are enrolled as full-time students at accredited schools. Full-time students will be as defined by the accredited school.

A Dependent is not a person who is:
a. on active duty in any armed forces of any country; or
b. *[eligible]* ***insured*** for coverage under this Policy as an Employee.

Under certain circumstances, an incapacitated child is also a Dependent. See the **Incapacitated Children** section of this Policy.

An Employee's "unmarried Dependent child" includes:
a. his or her legally adopted children,
b. his or her step-children if such step-children depend on the Employee for most of their support and maintenance, and
c. children under a court appointed guardianship.

[Carrier] treats a child as legally adopted from the time the child is placed in the home for purpose of adoption. [Carrier] treats such a child this way whether or not a final adoption order is ever issued.

...

HEALTH BENEFITS INSURANCE

This health benefits insurance will pay many of the medical expenses incurred by a Covered Person.

Note: [Carrier] payments will be reduced or eliminated if a Covered Person does not comply with the Utilization Review and Pre-Approval requirements contained in this Policy.

BENEFIT PROVISION

The Cash Deductible

...

[Coinsured Charge Limit

The Coinsured Charge Limit is the amount of Covered Charges a Covered Person must incur each Calendar Year before no Co-Insurance is required.]

...

If This Plan Replaces Another Plan

The Employer who purchased this Policy may have purchased it to replace a plan the Employer had with some other insurer.

The Covered Person may have incurred charges for covered expenses under the Employer's old plan before it ended. If so, these charges will be used to meet this Policy's Cash Deductible if:
a. the charges were incurred during the Calendar Year in which this Policy starts;
b. this Policy would have paid benefits for the charges, if this Policy had been in effect;
c. the Covered Person was covered by the old plan when it ended and enrolled in this Policy on its Effective Date; and
d. this Policy starts right after the old plan ends.

The Covered Person may have satisfied part of the eligibility waiting period under the Employer's old plan before it ended. If so, the time satisfied will be used to satisfy this Policy's eligibility waiting period if:
a. the Employee was employed by the Employer on the date the Employer's old plan ended; and
b. this Policy starts right after the old plan ends.

...

COORDINATION OF BENEFITS

Purpose Of This Provision

A Covered Person may be covered for health expense benefits by more than one plan. For instance, he or she may be covered by this Policy as an Employee and by another plan as a Dependent of his or her spouse. If he or she is, the provision allows [Carrier] to coordinate what [Carrier] pays with what another plan pays. [Carrier] does this so the Covered Person does not collect more in benefits than he or she incurs in charges.

DEFINITIONS

"Plan" means any of the following that provide health expense benefits or services:
a. group or blanket insurance plans;
b. group hospital or surgical plans, or other service or prepayment plans on a group basis;
c. union welfare plans, Employer plan, Employee benefits plans, trusteed labor and management plans, or other plans for members of a group;
d. programs or coverages required by law; or
e. Medicare or other government programs which [Carrier] is allowed to coordinate with by law.

"Plan" does not include:
a. Medicaid or any other government program or coverage which [Carrier] is not allowed to coordinate with by law;
b. school accident type coverages written on either a blanket, group, or franchise basis;
c. any group or group-type hospital indemnity benefits;
d. Supplemental Limited Benefits Insurance; nor
e. any plan [Carrier] says [Carrier] supplements, as named in the Schedule.

...

EXHIBIT B

SCHEDULE OF INSURANCE AND PREMIUM RATES [PLAN B]

...

Daily Room and Board Limits

...

- **During a Confinement In An Extended Care Center Or Rehabilitation Center**

[Carrier] will cover the lesser of:
a. the center's actual daily room and board charge; or
b. 50% of the covered daily room and board charge made by the Hospital during the Covered Person's preceding Hospital confinement, for semi-private accommodations.

Pre-Approval is required for charges incurred in connection with:
- Durable Medical Equipment
- Extended Care and Rehabilitation
- Home Health Care
- Hospice Care
- Infusion Therapy
- Prosthetic Devices
- **Autologous Bone Marrow Transplant and Associated High Dose Chemotherapy for treatment of breast cancer**

...

DEFINITIONS

...

Preventive Care means charges for routine physical examinations, including related laboratory tests and x-rays, immunizations and vaccines, well baby care, pap smears, mammography and screening tests.

...

EXHIBIT C

SCHEDULE OF INSURANCE AND PREMIUM RATES [PLAN C] [PLANS C, D, E]

...

Daily Room and Board Limits

...

- **During a Confinement In An Extended Care Center Or Rehabilitation Center**

[Carrier] will cover the lesser of:
a. the center's actual daily room and board charge; or
b. 50% of the covered daily room and board charge made by the Hospital during the Covered Person's preceding Hospital confinement, for semi-private accommodations.

Pre-Approval is required for charges incurred in connection with:
- Durable Medical Equipment
- Extended Care and Rehabilitation
- Home Health Care
- Hospice Care
- Infusion Therapy
- Prosthetic Devices
- **Autologous Bone Marrow Transplant and Associated High Dose Chemotherapy for treatment of breast cancer**

...

DEFINITIONS

...

Preventive Care means charges for routine physical examinations, including related laboratory tests and x-rays, immunizations and vaccines, well baby care, pap smears, mammography and screening tests.

...

EXHIBIT F

PLANS B, C, D, E

[Carrier]

SMALL GROUP HEALTH BENEFITS POLICY

...

SCHEDULE OF INSURANCE AND PREMIUM RATES EXAMPLE PPO (without Co-Payment)

This Policy's classification, and the insurance coverages and amounts which apply to each class are shown below:

CLASS

[All eligible employees]

EMPLOYEE AND DEPENDENT HEALTH BENEFITS

...

Co-Insurance

Co-Insurance is the percentage of a Covered Charge that must be paid by a Covered Person. However, [Carrier] will waive the Co-Insurance requirement once the Coinsured Charge Limit has been reached. This Policy's Co-Insurance, as shown below, does not include penalties incurred under this Policy's Utilization Review provisions, or any other Non-Covered Charge.

The **Co-Insurance** for this Policy is as follows:
- if treatment, services or supplies are given by a Network Provider 20%
- if treatment, services or supplies are given by an Out-Network Provider 40%

The **Coinsured Charge Limit** means the amount of Covered Charges a Covered Person must incur **each Calendar Year** before no Co-Insurance is required, **except as stated below.**

Exception: Charges for Mental and Nervous Conditions and Substance Abuse treatment are not subject to or eligible for the **Coinsured Charge Limit.**

Coinsured Charge Limit: $10,000

SCHEDULE OF INSURANCE AND PREMIUM RATES EXAMPLE PPO (with Co-Payment)

This Policy's classification, and the insurance coverages and amounts which apply to each class are shown below:

CLASS

[All eligible employees]

EMPLOYEE AND DEPENDENT HEALTH BENEFITS

...

Co-Insurance

Co-Insurance is the percentage of a Covered Charge that must be paid by a Covered Person. However, [Carrier] will waive the Co-Insurance requirement once the Coinsured Charge Limit has been reached. This Policy's Co-Insurance, as shown below, does not include penalties incurred under this Policy's Utilization Review provisions, or any other Non-Covered Charge.

The **Co-Insurance** for this Policy is as follows:
- if treatment, services or supplies are given by a Network Provider None
- if treatment, services or supplies are given by an Out-Network Provider 30%

The **Coinsured Charge Limit** means the amount of Covered Charges a Covered Person must incur **each Calendar Year** before no Co-Insurance is required, **except as stated below.**

Exception: Charges for Mental and Nervous Conditions and Substance Abuse treatment are not subject to or eligible for the **Coinsured Charge Limit.**

Coinsured Charge Limit: $10,000

SCHEDULE OF INSURANCE AND PREMIUM RATES EXAMPLE POS

This Policy's classification, and the insurance coverages and amounts which apply to each class are shown below:

CLASS

[All eligible employees]

EMPLOYEE AND DEPENDENT HEALTH BENEFITS

. . .

Co-Insurance

Co-Insurance is the percentage of a Covered Charge that must be paid by a Covered Person. However, [Carrier] will waive the Co-Insurance requirement once the Coinsured Charge Limit has been reached. This Policy's Co-Insurance, as shown below, does not include penalties incurred under this Policy's Utilization Review provisions, or any other Non-Covered Charge.

The **Co-Insurance** for this Policy is as follows:

- if treatment, services or supplies are given by the PCP — None, **except as stated below**
- if treatment, services or supplies are given or referred by a non-referred Provider — 20%, **except as stated below**

Exception: for Mental and Nervous and Substance Abuse charges

- if treatment, services or supplies are given or referred by the PCP — 5%
- if treatment, services or supplies are given by a non-referred Provider — 25%

The **Coinsured Charge Limit** means the amount of Covered Charges a Covered Person must incur **each Calendar Year** before no Co-Insurance is required, **except as stated below.**

Exception: Charges for Mental and Nervous Conditions and Substance Abuse treatment are not subject to or eligible for the **Coinsured Charge Limit.**

Coinsured Charge Limit: $10,000

. . .

PREMIUM RATE CHANGES

The premium rates in effect on the Effective Date are shown in this Policy's Schedule. [Carrier] has the right to change premium rates as of any of these dates:

a. Any premium due date.
b. Any date that an Employer becomes, or ceases to be, an Affiliated Company.
c. Any date that the extent or nature of the risk under this Policy is changed:
   - by amendment or this Policy; or
   - by reason of any provision of law or any government program or regulation; or
   - if this Policy supplements or coordinates with benefits provided by another insurer, non-profit hospital or medical service plan, or health maintenance organization, on any date [Carrier's] obligation under this Policy is changed because of a change in such other benefits.
d. At the discovery of a clerical error or misstatement as described below.

[Carrier] will give the Policyholder 30 days advance written notice when a change in the premium rates is made.

. . .

CLERICAL ERROR—MISSTATEMENTS

Neither clerical error by the Policyholder, nor the [Carrier] in keeping any records pertaining to coverage under this Policy, nor delays in making entries thereon, will not invalidate coverage which would otherwise be in force, or continue coverage which would otherwise be validly terminated. However, upon discovery of such error or delay, an equitable adjustment of premiums will be made.

Premium adjustments involving return of unearned premium to the Policyholder will be limited to the period of 12 months preceding the date of [Carrier's] receipt of satisfactory evidence that such adjustments should be made.

If the age of an Employee, or any other relevant facts, are found to have been misstated, and the premiums are thereby affected, an equitable adjustment of premiums will be made. If such misstatement involves whether or not the person's coverage would have been accepted by [Carrier], subject to this Policy's **Incontestability** section, the true facts will be used in determining whether coverge is in force under the terms of this Policy.

TERMINATION OF THE POLICY—RENEWAL PRIVILEGE

. . .

The Employer must certify to [Carrier] the Employer's status as a Small Employer every year. Certification must be given to [Carrier] within 10 days of the date [Carrier] requests it. If Employer fails to do this, [Carrier] retains the right to take the action described above as of the Employer's Policy Anniversary.

. . .

DEFINITIONS

. . .

Dependent means an Employee's:

a. legal spouse;
b. unmarried Dependent child who is under age 19; and
c. unmarried Dependent child from age 19 until his or her 23rd birthday, who is enrolled as a full-time student at an accredited school. Full-time students status will be as defined by the accredited school.

A Dependent is not a person who is:

a. on active duty in any armed forces of any country; or
b. *{eligible}* ***insured*** for coverage under this Policy as an Employee.

Under certain circumstances, an incapacitated child is also a Dependent. See the **Dependent Coverage** section of this Policy.

An Employee's "unmarried Dependent child" includes:

a. his or her legally adopted children.
b. his or her step-children if such step children depend on the Employee for most of their support and maintenance, and
c. children under a court appointed guardianship.

[Carrier] treats a child as legally adopted from the time the child is placed in the home for purpose of adoption. [Carrier] treats such a child this way whether or not a final adoption order is ever issued.

. . .

Employee means a Full-Time Employee (25 hours per week) of the Employer. Partners, Proprietors, and independent contractors will be treated like Employees, if they meet all of this Policy's conditions of eligibility. Employees who work on a temporary or substitute basis **or who are participating in an employee welfare arrangement established pursuant to a collective bargaining agreement** are not considered to be Employees for the purpose of this Policy.

Employee's Eligibility Date means the later of:

a. the date of employment; or
b. the day after any applicable waiting period ends.

Employer means [ABC Company].

Experimental or Investigational means [Carrier] determines a service or supply is:

a. not of proven benefit for the particular diagnosis or treatment of a particular condition; or
b. not generally recognized by the medical community as effective or appropriate for the particular diagnosis or treatment of a particular condition; or
c. provided or performed in special settings for research purposes or under a controlled environment or clinical protocol.

Unless otherwise required by law with respect to drugs which have been prescribed for the treatment of a type of cancer for which the drug has not been approved by the United States Food and Drug Administration (FDA), [Carrier] will not cover any services or supplies, including treatment, procedures, drugs, biological products or medical devices or any hospitalizations in connection with Experimental or Investigational services or supplies.

[Carrier] will also not cover any technology or any hospitalization primarily to receive such technology if such technology is obsolete or ineffective and is not used generally by the medical community for the particular diagnosis or treatment of a particular condition.

Governmental approval of technology is not necessarily sufficient to render it of proven benefit or appropriate or effective for a particular diagnosis or treatment of a particular condition, as explained below.

[Carrier] will apply the following five criteria in determining whether services or supplies are Experimental or Investigational:

a. Any medical device, drug, or biological product must have received final approval to market by the FDA for the particular diagnosis or condition. Any other approval granted as an interim step in the FDA regulatory process, e.g., an Investigational Device Exemption or an Investigational New Drug Exemption, is not sufficient. Once FDA approval has been granted for a particular diagnosis or condition, use of the medical device, drug or biological product for another diagnosis or condition will require that one or more of the following established reference compendia:
   1. The American Medical Association Drug Evaluations;
   2. The American Hospital Formulary Service Drug Information; or
   3. The United States Pharmacopeia Drug Information

   recognize the usage as appropriate medical treatment. As an alternative to such recognition in one or more of the compendia, the usage of the drug will be recognized as appropriate if it is recommended by a clinical study and recommended by a review article in a major peer-reviewed professional journal. A medical device, drug, or biological product that meets the above tests will not be considered Experimental or Investigational.

In any event, any drug which the Food and Drug Administration has determined to be contraindicated for the specific treatment for which the drug has been prescribed will be considered Experimental or Investigational.

b. Conclusive evidence from the published peer-reviewed medical literature must exist that the technology has a definite positive effect on health outcomes; such evidence must include well-designed investigations that have been reproduced by non affiliated authoritative sources, with measurable results, backed up by the positive endorsements of national medical bodies or panels regarding scientific efficacy and rationale;

c. Demonstrated evidence as reflected in the published peer-reviewed medical literature must exist that over time the technology leads to improvement in health outcomes, i.e., the beneficial effects outweigh any harmful effects;

d. Proof as reflected in the published peer-reviewed medical literature must exist that the technology is at least as effective in improving health outcomes as established technology, or is usable in appropriate clinical contexts in which established technology is not employable; and

e. Proof as reflected in the published peer-reviewed medical literature must exist that improvements in health outcomes; as defined in item c. above, is possible in standard conditions of medical practice, outside clinical investigatory settings.

...

Health Benefits Plan means any hospital and medical expense insurance policy or certificate; health, hospital, or medical service corporation contract or certificate; or health maintenance organization subscriber contract or certificate delivered or issued for delivery in New Jersey by any carrier to a Small Employer group pursuant to section 3 of P.L. 1992, c.162 (C. 17B:27A-19). Health Benefits Plan excludes the following plans, policies, or contracts: accident only, credit, disability, long term care, coverage for Medicare services pursuant to a contract with the United States government, Medicare supplement, dental only, or vision only, insurance issued as a supplement to liability insurance, coverage arising out of a workers' compensation or similar law, hospital confinement or other Supplemental Limited Benefit Insurance coverage, automobile medical payment insurance, or personal injury protection coverage issued pursuant to P.L. 1972, c.70 (C. 39:6A-1 et seq.).

...

Supplemental Limited Benefit Insurance means insurance that is provided in addition to a Health Benefits Plan on an indemnity non-expense incurred basis.

...

DEPENDENT COVERAGE

Eligible Dependents for Dependent Health Benefits

An Employee's eligible Dependents are the Employees:

a. legal spouse;
b. unmarried Dependent children who are under age 19; and
c. unmarried Dependent children, from age 19 until their 23rd birthday, who are enrolled as full-time students at accredited schools. Full-time students will be as defined by the accredited school.

A Dependent is not a person who is:

a. on active duty in any armed forces of any country; or
b. *{eligible}* ***insured*** for coverage under this Policy as an Employee.

Under certain circumstances, an incapacitated child is also a Dependent. See the **Incapacitated Children** section of this Policy.

An Employee's "unmarried Dependent child" includes:

a. his or her legally adopted children,
b. his or her step-children if such step children depend on the Employee for most of their support and maintenance, and
c. children under a court appointed guardianship.

[Carrier] treats a child as legally adopted from the time the child is placed in the home for purpose of adoption. [Carrier] treats such a child this way whether or not a final adoption order is ever issued.

...

HEALTH BENEFITS INSURANCE

This health benefits insurance will pay many of the medical expenses incurred by a Covered Person.

Note: [Carrier] payments will be reduced or eliminated if a Covered Person does not comply with the Utilization Review and Pre-Approval requirements contained in this Policy.

BENEFIT PROVISION

...

[Coinsured Charge Limit

The Coinsured Charge Limit is the amount of Covered Charges a Covered Person must incur each Calendar Year before no Co-Insurance is required, except as stated below.

Exception: Charges for Mental and Nervous Conditions, and Substance Abuse Treatment are not subject to or eligible for the **Coinsured Charge Limit.**]

...

If This Plan Replaces Another Plan

The Employer who purchased this Policy may have purchased it to replace a plan the Employer had with some other insurer.

The Covered Person may have incurred charges for covered expenses under the Employer's old plan before it ended. If so, these charges will be used to meet this Policy's Cash Deductible if:

a. the charges were incurred during the Calendar Year in which this Policy starts;
b. this Policy would have paid benefits for the charges, if this Policy had been in effect;
c. the Covered Person was covered by the old plan when it ended and enrolled in this Policy on its Effective Date; and
d. this Policy starts right after the old plan ends.

The Covered Person may have satisfied part of the eligibility waiting period under the Employer's old plan before it ended. If so, the time satisfied will be used to satisfy this Policy's eligibility waiting period if:

a. the Employee was employed by the Employer on the date the Employer's old plan ended; and
b. this Policy starts right after the old plan ends.

...

Prescription Drugs

[Carrier] covers drugs to treat an Illness or Injury which require a Practitioner's prescription. But [Carrier] only covers drugs which are:

a. approved for treatment of the Covered Person's Illness or Injury by the Food and Drug Administration;
b. approved by the Food and Drug Administration for the treatment of a particular diagnosis or condition other than the

Covered Person's and recognized as appropriate medical treatment for the Covered Person's diagnosis or condition in one or more of the following established reference compendia:

1. The American Medical Association Drug Evaluations;
2. The American Hospital Formulary Service Drug Information;
3. The United States Pharmacopeia Drug Information; or

c. recommended by a clinical study and recommended by a review article in a major peer-reviewed professional journal.

Coverage for the above drugs also includes medically necessary services associated with the administration of the drugs.

In no event will [Carrier] pay for:

a. drugs labeled: "Caution—Limited by Federal Law to Investigational Use"; or
b. any drug which the Food and Drug Administration has determined to be contraindicated for the specific treatment for which the drug has been prescribed.

And [Carrier] excludes drugs that can be bought without a prescription, even if a Practitioner orders them.

[Carrier] does not cover drugs to treat Mental and Nervous Conditions and Substance Abuse as part of the Prescription Drugs Covered Charge. Drugs for such treatment are subject to the Mental and Nervous Conditions and Substance Abuse section of this Policy.

...

COORDINATION OF BENEFITS

Purpose Of This Provision

A Covered Person may be covered for health benefits by more than one plan. For instance, he or she may be covered by this Policy as an Employee and by another plan as a Dependent of his or her spouse. If he or she is, the provision allows [Carrier] to coordinate what [Carrier] pays with what another plan pays. [Carrier] does this so the Covered Person does not collect more in benefits than he or she incurs in charges.

DEFINITIONS

"Plan" means any of the following that provide health expense benefits or services:

a. group or blanket insurance plans;
b. group hospital or surgical plans, or other service or prepayment plans on a group basis;
c. union welfare plans, Employer plan, Employee benefits plans, trusteed labor and management plans, or other plans for members of a group;
d. programs or coverages required by law; or
e. Medicare or other government programs which [Carrier] is allowed to coordinate with by law.

"Plan" does not include:

a. Medicaid or any other government program or coverage which [Carrier] is not allowed to coordinate with by law;
b. school accident type coverages written on either a blanket, group, or franchise basis;
c. any group or group-type hospital indemnity benefits;
d. Supplemental Limited Benefits Insurance; nor
e. any plan [Carrier] says [Carrier] supplements, as named in the Schedule.

...

EXHIBIT G

HMO PLAN

[Carrier]

SMALL GROUP HEALTH MAINTENANCE ORGANIZATION CONTRACT

...

I.-II. (No change.)

III. DEFINITIONS

...

EMPLOYEE. A Full-Time Employee (25 hours per week) of the Employer. **Employees who work on a temporary or substitute basis or who are participating in an employee welfare arrangement established pursuant to a collective bargaining agreement are not considered to be Employees for the purpose of this Contract.** Partners, Proprietors, and independent contractors will be treated like Employees, if they meet all of this Contract's conditions of eligibility.

EMPLOYEE'S ELIGIBILITY DATE.

a. the date of employment; or
b. the day after any applicable waiting period ends.

EMPLOYER. [ABC Company].

EXPERIMENTAL OR INVESTIGATIONAL.

Services or supplies which We Determine are:

a. not of proven benefit for the particular diagnosis or treatment of a Member's particular condition; or
b. not generally recognized by the medical community as effective or appropriate for the particular diagnosis or treatment of a Member's particular condition; or
c. provided or performed in special settings for research purposes or under a controlled environment or clinical protocol.

Unless otherwise required by law with respect to drugs which have been prescribed for the treatment of a type of cancer for which the drug has not been approved by the United States Food and Drug Administration (FDA), We will not cover any services or supplies, including treatment, procedures, drugs, biological products or medical devices or any hospitalizations in connection with Experimental or Investigational services or supplies.

We will also not cover any technology or any hospitalization in connection with such technology if such technology is obsolete or ineffective and is not used generally by the medical community for the particular diagnosis or treatment of a Member's particular condition.

Governmental approval of a technology is not necessarily sufficient to render it of proven benefit or appropriate or effective for a particular diagnosis or treatment of a Member's particular condition, as explained below.

We will apply the following five criteria in Determining whether services or supplies are Experimental or Investigational:

1. any medical device, drug, or biological product must have received final approval to market by the United States Food and Drug Administration (FDA) for the particular diagnosis or condition. Any other approval granted as an interim step in the FDA regulatory process, e.g., an Investigational Device Exemption or an Investigational New Drug Exemption, is not sufficient. Once FDA approval has been granted for a particular diagnosis or condition, use of the medical device, drug or biological product for another diagnosis or condition will require that one or more of the following established reference compendia:
   I. The American Medical Association Drug Evaluations;
   II. The American Hospital Formulary Service Drug Information; or
   III. The United States Pharmacopeia Drug Information.

   recognize the usage as appropriate medical treatment. As an alternative to such recognition in one or more of the compendia, the usage of the drug will be recognized as appropriate if it is recommended by a clinical study and recommended by a review article in a major peer-reviewed professional journal. A medical device, drug, or biological product that meets the above tests will not be considered Experimental or Investigational.

In any event, any drug which the Food and Drug Administration has determined to be contraindicated for the specific treatment for which the drug has been prescribed will be considered Experimental or Investigational.

2. conclusive evidence from the published peer-reviewed medical literature must exist that the technology has a definite positive effect on health outcomes; such evidence must include well-designed investigations that have been reproduced by nonaffiliated authoritative sources, with measurable results, backed up by the positive endorsements of national medical bodies or panels regarding scientific efficacy and rationale;
3. demonstrated evidence as reflected in the published peer-reviewed medical literature must exist that over time the technology leads to improvement in health outcomes, i.e., the beneficial effects outweigh any harmful effects;
4. proof as reflected in the published peer-reviewed medical literature must exist that the technology is at least as effective in improving health outcomes as established technology, or is usable in appropriate clinical contexts in which established technology is not employable; and

5. proof as reflected in the published peer-reviewed medical literature must exist that improvements in health outcomes, as defined in paragraph 3, is possible in standard conditions of medical practice, outside clinical investigatory settings.

FULL-TIME. A normal work week of 25 or more hours. Work must be at the Employer's regular place of business or at another place to which an Employee must travel to perform his or her regular duties for his or her full and normal work hours.

HEALTH BENEFITS PLAN. Any hospital and medical expense insurance policy or certificate; health, hospital, or medical service corporation contract or certificate; or health maintenance organization subscriber contract or certificate delivered or issued for delivery in New Jersey by any carrier to a Small Employer group pursuant to section 3 of P.L. 1992, c.162 (C. 17B:27A-19). Health Benefits Plan excludes the following plans, policies, or contracts: accident only, credit, disability, long term care, coverage for Medicare services pursuant to a contract with the United States government, Medicare supplement, dental only, or vision only, insurance issued as a supplement to liability insurance, coverage arising out of a workers' compensation or similar law, hospital confinement or other Supplemental Limited Benefit Insurance coverage, automobile medical payment insurance, or personal injury protection coverage issued pursuant to P.L. 1972, c.70 (C. 39:6A-1 et seq.).

[**HEALTH CARE CENTER OR HEALTH CENTER.** A place operated by or on behalf of an HMO where [Network] [Participating] Providers provide Covered Services and Supplies to Members.]

...

SUPPLEMENTAL LIMITED BENEFIT INSURANCE. Insurance that is provided in addition to a Health Benefits Plan on an indemnity non-expense incurred basis.

...

IV. ELIGIBILITY

...

DEPENDENT COVERAGE

...

Adopted Children and Step-Children

An Employee's "unmarried Dependent children" include the Employee's legally adopted children, his or her step-children **if they depend on the Employee for most of their support and maintenance** and children under a court appointed guardianship. [Carrier] will treat a child as legally adopted from the time the child is placed in the home for the purpose of adoption. [Carrier] will treat such a child this way whether or not a final adoption order is ever issued.

Eligible Dependents will not include any Dependent who is:

a. covered by this Contract as an Employee or
b. on active duty in the armed forces of any country.

...

VIII. COORDINATION OF BENEFITS AND SERVICES

...

DEFINITIONS

"Plan" means any of the following that provide health expense benefits or services:

a. group or blanket insurance plans;
b. group hospital or surgical plans, or other service or prepayment plans on a group basis;
c. union welfare plans, Employer plan, Employee benefits plans, trusteed labor and management plans, or other plans for members of a group;
d. programs or coverages required by law;
e. Medicare or other government programs which We are allowed to coordinate with by law.

"Plan" does not include:

a. Medicaid or any other government program or coverage which [Carrier] is not allowed to coordinate with by law;
b. school accident type coverages written on either a blanket, group, or franchise basis;
c. group or group-type hospital indemnity benefits;
d. Supplemental Limited Benefits Insurance coverages; nor
e. any plan We say We supplement.

...

IX. CONTRACT HOLDER GENERAL PROVISIONS

...

PREMIUM RATE CHANGES

The Premium rates in effect on the Effective Date are shown in the Premium Rates and Provisions section of the Contract. We have the right to change Premium rates as of any of these dates:

a. any Premium Due Date;
b. any date that an Employer becomes, or ceases to be, an Affiliated Company.
c. any date that the extent or nature of the risk under the Contract is changed:
   1. by amendment of the Contract; or
   2. by reason of any provision of law or any government program or regulation;
d. at the discovery of a clerical error or misstatement as described below.

We will give You 30 days written notice when a change in the Premium rates is made.

TERMINATION OF THE CONTRACT—RENEWAL PRIVILEGE

...

THE CONTRACT

...

EXHIBIT H
PART 1

RIDER FOR PRESCRIPTION DRUG INSURANCE **(CARD/MAIL)**

Policyholder:

Group Policy No:

Effective Date:

The **Prescription Drug** section of the **COVERED CHARGES** provision of the **HEALTH BENEFITS INSURANCE** section is replaced with the following:

[Carrier] covers drugs to treat an Illness or Injury which require a Practitioner's prescription which are obtained while confined as an Inpatient in a Facility. But [Carrier] only covers drugs which are:

a. approved for treatment of the Covered Person's Illness or Injury by the Food and Drug Administration;
b. approved by the Food and Drug Administration for the treatment of a particular diagnosis or condition other than the Covered Person's and recognized as appropriate medical treatment for the Covered Person's diagnosis or condition in one or more of the following established reference compendia:
   1. The American Medical Association Drug Evaluations;
   2. The American Hospital Formulary Service Drug Information;
   3. The United States Pharmacopeia Drug Information; or
c. recommended by a clinical study and recommended by a review article in a major peer-reviewed professional journal.

Coverage for the above drugs also includes medically necessary services associated with the administration of the drugs.

In no event will [Carrier] pay for:

a. drugs labeled: "Caution—Limited by Federal Law to Investigational Use"; or
b. any drug which the Food and Drug Administration has determined to be contraindicated for the specific treatment for which the drug has been prescribed.

And [Carrier] excludes drugs that can be bought without a prescription, even if a Practitioner orders them.

[Carrier] does cover drugs to treat Mental and Nervous Conditions and Substance Abuse under the Rider for Prescription Drug Insurance.

This Prescription Drug insurance will pay benefits for covered drugs, prescribed by a Practitioner. What [Carrier] pays and the terms of payment are explained below.

...

EXHIBIT H
PART 2

RIDER FOR PRESCRIPTION DRUG INSURANCE (CARD)

Policyholder:

Group Policy No:

Effective Date:

The **Prescription Drug** section of the **COVERED CHARGES** provision of the **HEALTH BENEFITS INSURANCE** section is replaced with the following:

[Carrier] covers drugs to treat an Illness or Injury which require a Practitioner's prescription which are obtained while confined as an Inpatient in a Facility. But [Carrier] only covers drugs which are:

a. approved for treatment of the Covered Person's Illness or Injury by the Food and Drug Administration;
b. approved by the Food and Drug Administration for the treatment of a particular diagnosis or condition other than the Covered Person's and recognized as appropriate medical treatment for the Covered Person's diagnosis or condition in one or more of the following established reference compendia:
   1. The American Medical Association Drug Evaluations;
   2. The American Hospital Formulary Service Drug Information;
   3. The United States Pharmacopeia Drug Information; or
c. recommended by a clinical study and recommended by a review article in a major peer-reviewed professional journal.

Coverage for the above drugs also includes medically necessary services associated with the administration of the drugs.

In no event will [Carrier] pay for:

a. drugs labeled: "Caution—Limited by Federal Law to Investigational Use"; or
b. any drug which the Food and Drug Administration has determined to be contraindicated for the specific treatment for which the drug has been prescribed.

And [Carrier] excludes drugs that can be bought without a prescription, even if a Practitioner orders them.

[Carrier] does cover drugs to treat Mental and Nervous Conditions and Substance Abuse under the Rider for Prescription Drug Insurance.

This Prescription Drug insurance will pay benefits for covered drugs, prescribed by a Practitioner. What [Carrier] pays and the terms of payment are explained below.

...

EXHIBIT H
PART 3

RIDER FOR PRESCRIPTION DRUG INSURANCE (MAIL)

Policyholder:

Group Policy No:

Effective Date:

The **Prescription Drug** section of the **COVERED CHARGES** provision of the **HEALTH BENEFITS INSURANCE** section is replaced with the following:

[Carrier] covers drugs to treat an Illness or Injury which require a Practitioner's prescription which are obtained while confined as an Inpatient in a Facility. But [Carrier] only covers drugs which are:

a. approved for treatment of the Covered Person's Illness or Injury by the Food and Drug Administration;
b. approved by the Food and Drug Administration for the treatment of a particular diagnosis or condition other than the Covered Person's and recognized as appropriate medical treatment for the Covered Person's diagnosis or condition in one or more of the following established reference compendia:
   1. The American Medical Association Drug Evaluations;
   2. The American Hospital Formulary Service Drug Information;
   3. The United States Pharmacopeia Drug Information; or
c. recommended by a clinical study and recommended by a review article in a major peer-reviewed professional journal.

Coverage for the above drugs also includes medically necessary services associated with the administration of the drugs.

In no event will [Carrier] pay for:

a. drugs labeled: "Caution—Limited by Federal Law to Investigational Use"; or
b. any drug which the Food and Drug Administration has determined to be contraindicated for the specific treatment for which the drug has been prescribed.

And [Carrier] excludes drugs that can be bought without a prescription, even if a Practitioner orders them.

[Carrier] does cover drugs to treat Mental and Nervous Conditions and Substance Abuse under the Rider for Prescription Drug Insurance.

This Prescription Drug insurance will pay benefits for covered drugs, prescribed by a Practitioner. What [Carrier] pays and the terms of payment are explained below.

...

EXHIBIT I

RIDER FOR MENTAL AND NERVOUS CONDITIONS AND SUBSTANCE ABUSE BENEFITS

Policyholder:

Group Policy No:

Effective Date:

The **Prescription Drug** section of the **COVERED CHARGES** provision of the **HEALTH BENEFITS INSURANCE** section is replaced with the following:

[Carrier] covers drugs to treat an Illness, Injury, or Mental and Nervous Conditions and Substance Abuse which require a Practitioner's prescription. But [Carrier] only covers drugs which are:

a. approved for treatment of the Covered Person's Illness, Injury or Mental and Nervous Conditions and Substance Abuse by the Food and Drug Administration;
b. approved by the Food and Drug Administration for the treatment of a particular diagnosis or condition other than the Covered Person's and recognized as appropriate medical treatment for the Covered Person's diagnosis or condition in one or more of the following established reference compendia:
   1. The American Medical Association Drug Evaluations;
   2. The American Hospital Formulary Service Drug Information;
   3. The United States Pharmacopeia Drug Information; or
c. recommended by a clinical study and recommended by a review article in a major peer-reviewed professional journal.

Coverage for the above drugs also includes medically necessary services associated with the administration of the drugs.

In no event will [Carrier] pay for:

a. drugs labeled: "Caution—Limited by Federal Law to Investigational Use"; or
b. any drug which the Food and Drug Administration has determined to be contraindicated for the specific treatment for which the drug has been prescribed.

And [Carrier] excludes drugs that can be bought without a prescription, even if a Practitioner orders them.

[Carrier] does cover drugs to treat Mental and Nervous Conditions and Substance Abuse as part of the Prescription Drugs Covered Charge. Drugs for such treatment are not covered under the Rider for Mental and Nervous Conditions and Substance Abuse Benefits.

The **Mental and Nervous Conditions and Substance Abuse** section of the **COVERED CHARGES WITH SPECIAL LIMITATIONS** provision of the **HEALTH BENEFITS INSURANCE** section of the Policy is replaced with the following:

The Co-Payment, Cash Deductible, Co-Insurance and Co-Insurance cap provisions of this Rider are independent of similar provisions of the **Health Benefits** section of the Policy. Charges incurred for the treatment of Mental and Nervous Conditions and Substance Abuse must be considered under the terms of this Rider and cannot be considered under the **Health Benefits** section of the Policy.

...

EXHIBIT J
PART 1

RIDER FOR PRESCRIPTION DRUG COVERAGE (CARD/MAIL)

Contract Holder:

Group Contract No.:

Effective Date:

The Prescription Drug section of the **Covered Services and Supplies** section of the HMO Contract is replaced with the following:

We cover drugs which require a Participating Provider's prescription which are obtained while confined as an Inpatient. But We only cover drugs which are:

a. approved for treatment of the Member's Illness or Injury or Mental or Nervous Condition by the Food and Drug Administration;
b. approved by the Food and Drug Administration for the treatment of a particular diagnosis or condition other than the Member's and recognized as appropriate medical treatment for the Member's diagnosis or condition in one or more of the following established reference compendia:
   1. The American Medical Association Drug Evaluations;
   2. The American Hospital Formulary Service Drug Information; or
   3. The United States Pharmacopeia Drug Information.
c. recommended by a clinical study and recommended by a review article in a major peer-reviewed professional journal.

In no event will We provide [or arrange] for

a. drugs labeled: "Caution—Limited by Federal Law to Investigational Use"; or
b. any drug which the Food and Drug Administration has determined to be contraindicated for the specific treatment for which the drug has been prescribed.

And We do not cover drugs that can be obtained without a prescription, even if a Participating Provider orders them.

. . .

EXHIBIT J
PART 2

RIDER FOR PRESCRIPTION DRUG COVERAGE (CARD)

Contract Holder:

Group Contract No.:

Effective Date:

The Prescription Drug section of the **Covered Services and Supplies** Section of the HMO Contract is replaced with the following:

We cover drugs which require a Participating Provider's prescription which are obtained while confined as an Inpatient. But We only cover drugs which are:

a. approved for treatment of the Member's Illness or Injury or Mental or Nervous Condition by the Food and Drug Administration;
b. approved by the Food and Drug Administration for the treatment of a particular diagnosis or condition other than the Member's and recognized as appropriate medical treatment for the Member's diagnosis or condition in one or more of the following established reference compendia:
   1. The American Medical Association Drug Evaluations;
   2. The American Hospital Formulary Service Drug Information; or
   3. The United States Pharmacopeia Drug Information.
c. recommended by a clinical study and recommended by a review article in a major peer-reviewed professional journal.

In no event will We provide [or arrange] for

a. drugs labeled: "Caution—limited by Federal Law to Investigational Use"; or
b. any drug which the Food and Drug Administration has determined to be contraindicated for the specific treatment for which the drug has been prescribed.

And We do not cover drugs that can be obtained without a prescription, even if a Participating Provider orders them.

. . .

EXHIBIT J
PART 3

RIDER FOR PRESCRIPTION DRUG COVERAGE (MAIL)

Contract Holder:

Group Contract No.:

Effective Date:

The Prescription Drug section of the **Covered Services and Supplies** Section of the HMO Contract is replaced with the following:

We cover drugs which require a Participating Provider's prescription which are obtained while confined as an Inpatient. But We only cover drugs which are:

a. approved for treatment of the Member's Illness or Injury or Mental or Nervous Condition by the Food and Drug Administration;
b. approved by the Food and Drug Administration for the treatment of a particular diagnosis or condition other than the Member's and recognized as appropriate medical treatment for the Member's diagnosis or condition in one or more of the following established reference compendia:
   1. The American Medical Association Drug Evaluations;
   2. The American Hospital Formulary Service Drug Information; or
   3. The United States Pharmacopeia Drug Information.
c. recommended by a clinical study and recommended by a review article in a major peer-reviewed professional journal.

In no event will We provide [or arrange] for

a. drugs labeled: "Caution—limited by Federal Law to Investigational Use"; or
b. any drug which the Food and Drug Administration has determined to be contraindicated for the specific treatment for which the drug has been prescribed.

And We do not cover drugs that can be obtained without a prescription, even if a Participating Provider orders them.

. . .

EXHIBIT V

[Carrier] PLAN A

SMALL GROUP HEALTH BENEFITS [CERTIFICATE]

. . .

SCHEDULE OF INSURANCE PLAN A

EMPLOYEE AND DEPENDENT HEALTH BENEFITS

. . .

SCHEDULE OF INSURANCE EXAMPLE: PLAN A PPO

EMPLOYEE AND DEPENDENT HEALTH BENEFITS

. . .

Co-Insurance

. . .

	If treatment, services or supplies are given by: a **Network Provider**	an **Out-Network Provider**
• for the following Covered Charges incurred while the Covered Person is an Inpatient in a Hospital:		
—Prescription Drugs	None	20%
—Blood Transfusions	None	20%
—Infusion Therapy	None	20%
—Chemotherapy	None	20%
—Radiation Therapy	None	20%
• for all other Covered Charges	70%	50%

The **Coinsured Charge Limit** means the amount of Covered Charges a Covered Person must incur **each calendar year** before no Co-Insurance is required.

Coinsured Charge Limit: $10,000

Daily Room and Board Limits

...

GENERAL PROVISIONS

...

MISSTATEMENTS

If the age of an Employee, or any other relevant facts, are found to have been misstated, and the premiums are thereby affected, an equitable adjustment of premiums will be made. If such misstatement involves whether or not the person's coverage would have been accepted by [Carrier], subject to the Policy's **Incontestability** section, the true facts will be used in determining whether coverage is in force under the terms of the Policy.

...

DEFINITIONS

...

Dependent means Your:

a. legal spouse;
b. unmarried Dependent child who is under age 19; and
c. unmarried Dependent child from age 19 until his or her 23rd birthday, who is enrolled as a full-time student at an accredited school. Full-time students status will be as defined by the accredited school.

A Dependent is not a person who is:

a. on active duty in any armed forces of any country; or
b. *[eligible]* ***insured*** for coverage under the Policy as an Employee.

Under certain circumstances, an incapacitated child is also a Dependent. See the **Dependent Coverage** section of this [certificate].

An Employee's "unmarried Dependent child" includes:

a. Your legally adopted children,
b. Your step-children if such step-children depend on You for most of their support and maintenance, and
c. children under a court appointed guardianship.

[Carrier] treats a child as legally adopted from the time the child is placed in the home for purposes of adoption. [Carrier] treats such a child this way whether or not a final adoption order is ever issued.

..

Employee means a Full-Time Employee (25 hours per week) of the Employer. Partners, Proprietors, and independent contractors will be treated like Employees, if they meet all of the Policy's conditions of eligibility. Employees who work on a temporary or substitute basis **or who are participating in an employee welfare arrangement established pursuant to a collective bargaining agreement** are not considered to be Employees for the purpose of the Policy. See also You, Your, Yours.

Employee's Eligibility Date means the later of:

a. the date of employment; or
b. the day after any applicable waiting period ends.

Employer means [ABC Company].

Experimental or Investigational means [Carrier] determines a service or supply is:

a. not of proven benefit for the particular diagnosis or treatment of a particular condition; or
b. not generally recognized by the medical community as effective or appropriate for the particular diagnosis or treatment of a particular condition; or
c. provided or performed in special settings for research purposes or under a controlled environment or clinical protocol.

Unless otherwise required by law with respect to drugs which have been prescribed for the treatment of a type of cancer for which the drug has not been approved by the United States Food and Drug Administration (FDA), [Carrier] will not cover any services or supplies, including treatment, procedures, drugs, biological products or medical devices or any hospitalizations in connection with Experimental or Investigational services or supplies.

[Carrier] will also not cover any technology or any hospitalization primarily to receive such technology if such technology is obsolete or ineffective and is not used generally by the medical community for the particular diagnosis or treatment of a particular condition.

Governmental approval of technology is not necessarily sufficient to render it of proven benefit or appropriate or effective for a particular diagnosis or treatment of a particular condition, as explained below.

[Carrier] will apply the following five criteria in determining whether services or supplies are Experimental or Investigational:

a. Any medical device, drug, or biological product must have received final approval to market by the FDA for the particular diagnosis or condition. Any other approval granted as an interim step in the FDA regulatory process, e.g., an Investigational Device Exemption or an Investigational New Drug Exemption, is not sufficient. Once FDA approval has been granted for a particular diagnosis or condition, use of the medical device, drug or biological product for another diagnosis or condition will require that one or more of the following established reference compendia:
   1. The American Medical Association Drug Evaluations;
   2. The American Hospital Formulary Service Drug Information; or
   3. The United States Pharmacopeia Drug Information

   recognize the usage as appropriate medical treatment. As an alternative to such recognition in one or more of the compendia, the usage of the drug will be recognized as appropriate if it is recommended by a clinical study and recommended by a review article in a major peer-reviewed professional journal. A medical device, drug, or biological product that meets the above tests will not be considered Experimental or Investigational.

In any event, any drug which the Food and Drug Administration has determined to be contraindicated for the specific treatment for which the drug has been prescribed will be considered Experimental or Investigational.

b. Conclusive evidence from the published peer-reviewed medical literature must exist that the technology has a definite positive effect on health outcomes; such evidence must include well-designed investigations that have been reproduced by non affiliated authoritative sources, with measurable results, backed up by the positive endorsements of national medical bodies or panels regarding scientific efficacy and rationale;
c. Demonstrated evidence as reflected in the published peer-reviewed medical literature must exist that over time the technology leads to improvement in health outcomes, i.e., the beneficial effects outweigh any harmful effects;
d. Proof as reflected in the published peer-reviewed medical literature must exist that the technology is at least as effective in improving health outcomes as established technology, or is usable in appropriate clinical contexts in which established technology is not employable; and
e. Proof as reflected in the published peer-reviewed medical literature must exist that improvements in health outcomes; as defined in item c. above, is possible in standard conditions of medical practice, outside clinical investigatory settings.

...

Health Benefits Plan means any hospital and medical expense insurance policy or certificate; health, hospital, or medical service corporation contract or certificate; or health maintenance organization subscriber contract or certificate delivered or issued for delivery in New Jersey by any carrier to a Small mployer group pursuant to section 3 of P.L. 1992, c.162 (C. 17B:27A-19). Health Benefits Plan excludes the following plans, policies, or contracts: accident only, credit, disability, long term care, coverage for Medicare services pursuant to a contract with the United States government, Medicare supplement, dental only, or vision only, insurance issued as a supplement to liability insurance, coverage arising out of a workers' compensation or similar law, hospital confinement or other Supplemental Limited Benefit Insurance coverage, automobile medical payment insurance, or personal injury protection coverage issued pursuant to P.L. 1972, c.70 (C. 39:6A-1 et seq.).

...

Preventive Care means charges for routine physical examinations, including related laboratory tests and x-rays, immunizations and vaccines, well baby care, pap smears, mammography and screening tests.

...

Supplemental Limited Benefit Insurance means insurance that is provided in addition to a Health Benefits Plan on an indemnity non-expense incurred basis.

...

DEPENDENT COVERAGE

Eligible Dependents for Dependent Health Benefits

Your eligible Dependents are Your:

a. legal spouse;
b. unmarried Dependent children who are under age 19; and
c. unmarried Dependent children, from age 19 until their 23rd birthday, who are enrolled as full-time students at accredited schools. Full-time students will be as defined by the accredited school.

A Dependent is not a person who is:

a. on active duty in any armed forces of any country; or
b. *{eligible}* ***insured*** for coverage under the Policy as an Employee.

Under certain circumstances, an incapacitated child is also a Dependent. See the **Incapacitated Children** section of this [certificate].

Your "unmarried Dependent child" includes:

a. Your legally adopted children,
b. Your step-children if such step-children depend on You for most of their support and maintenance, and
c. children under a court appointed guardianship.

[Carrier] treats a child as legally adopted from the time the child is placed in the home for purpose of adoption. [Carrier] treats such a child this way whether or not a final adoption order is ever issued.

...

HEALTH BENEFITS INSURANCE

This health benefits insurance will pay many of the medical expenses incurred by a Covered Person.

Note: [Carrier] payments will be reduced or eliminated if a Covered Person does not comply with the Utilization Review and Pre-Approval requirements contained in the Policy and in this [certificate].

BENEFIT PROVISION

...

[Coinsured Charge Limit

The coinsured charge limit is the amount of Covered Charges a Covered Person must incur each Calendar Year before no Co-Insurance is required.]

...

If This Plan Replaces Another Plan

The Employer who purchased the Policy may have purchased it to replace a plan the Employer had with some other insurer.

The Covered Person may have incurred charges for covered expenses under the Employer's old plan before it ended. If so, these charges will be used to meet the Policy's Cash Deductible if:

a. the charges were incurred during the Calendar Year in which the Policy starts;
b. the Policy would have paid benefits for the charges, if the Policy had been in effect;
c. the Covered Person was covered by the old plan when it ended and enrolled in the Policy on its Effective Date; and
d. the Policy starts right after the old plan ends.

The Covered Person may have satisfied part of the eligibility waiting period under the Employer's old plan before it ended. If so, the time satisfied will be used to satisfy the Policy's eligibility waiting period if:

a. the Employee was employed by the Employer on the date the Employer's old plan ended; and
b. the Policy starts right after the old plan ends.

...

COORDINATION OF BENEFITS

Purpose Of This Provision

A Covered Person may be covered for health expense benefits by more than one plan. For instance, he or she may be covered by the Policy as an Employee and by another plan as a Dependent of his or her spouse. If he or she is, the provision allows [Carrier] to coordinate what [Carrier] pays with what another plan pays. [Carrier] does this so the Covered Person does not collect more in benefits than he or she incurs in charges.

DEFINITIONS

"Plan" means any of the following that provide health expense benefits or services:

a. group or blanket insurance plans;
b. group hospital or surgical plans, or other service or prepayment plans on a group basis;
c. union welfare plans, Employer plan, Employee benefits plans, trusteed labor and management plans, or other plans for members of a group;
d. programs or coverages required by law;
e. Medicare or other government programs which [Carrier] is allowed to coordinate with by law.

"Plan" does not include:

a. Medicaid or any other government program or coverage which [Carrier] is not allowed to coordinate with by law;
b. school accident type coverages written on either a blanket, group, or franchise basis;
c. any group or group-type hospital indemnity benefits;
d. Supplemental Limited Benefits Insurance; nor
e. any plan [Carrier] says [Carrier] supplements, as named in the Schedule.

...

EXHIBIT W

[Carrier] **PLANS B, C, D, E**

SMALL GROUP HEALTH BENEFITS [CERTIFICATE]

...

SCHEDULE OF INSURANCE **EXAMPLE PPO (without Co-Payment)**

EMPLOYEE AND DEPENDENT HEALTH BENEFITS

...

Co-Insurance

Co-Insurance is the percentage of a Covered Charge that must be paid by a Covered Person. However, [Carrier] will waive the Co-Insurance requirement once the Coinsured Charge Limit has been reached. This Policy's Co-Insurance, as shown below, does not include penalties incurred under the Policy's Utilization Review provisions, or any other Non-Covered Charge.

The **Co-Insurance** for this Policy is as follows:

- if treatment, services or supplies are given by a Network Provider 20%
- if treatment, services or supplies are given by an Out-Network Provider 40%

The **Coinsured Charge Limit** means the amount of Covered Charges a Covered Person must incur **each Calendar Year** before no Co-Insurance is required, **except as stated below.**

Exception: Charges for Mental and Nervous Conditions and Substance Abuse treatment are not subject to or eligible for the **Coinsured Charge Limit.**

Coinsured Charge Limit: $10,000

SCHEDULE OF INSURANCE **EXAMPLE PPO (with Co-Payment)**

EMPLOYEE AND DEPENDENT HEALTH BENEFITS

...

Co-Insurance

Co-Insurance is the percentage of a Covered Charge that must be paid by a Covered Person. However, [Carrier] will waive the Co-Insurance requirement once the Coinsured Charge Limit has been reached.

This Policy's Co-Insurance, as shown below, does not include penalties incurred under the Policy's Utilization Review provisions, or any other Non-Covered Charge.

The **Co-Insurance** for the Policy is as follows:

- if treatment, services or supplies are given by a Network Provider — None
- if treatment, services or supplies are given by an Out-Network Provider — 30%

The **Coinsured Charge Limit** means the amount of Covered Charges a Covered Person must incur **each Calendar Year** before no Co-Insurance is required, **except as stated below.**

Exception: Charges for Mental and Nervous Conditions and Substance Abuse treatment are not subject to or eligible for the **Coinsured Charge Limit.**

Coinsured Charge Limit: $10,000

SCHEDULE OF INSURANCE EXAMPLE POS

EMPLOYEE AND DEPENDENT HEALTH BENEFITS

...

Co-Insurance

Co-Insurance is the percentage of a Covered Charge that must be paid by a Covered Person. However, [Carrier] will waive the Co-Insurance requirement once the Coinsured Charge Limit has been reached. This Policy's Co-Insurance, as shown below, does not include penalties incurred under the Policy's Utilization Review provisions, or any other Non-Covered Charge.

The **Co-Insurance** for the Policy is as follows:

- if treatment, services or supplies are given by the PCP — None, **except as stated below**
- if treatment, services or supplies are given or referred by a non-referred Provider — 20%, **except as stated below**

Exception: for Mental and Nervous and Substance Abuse charges

- if treatment, services or supplies are given or referred by the PCP — 5%
- if treatment, services or supplies are given by a non-referred Provider — 25%

The **Coinsured Charge Limit** means the amount of Covered Charges a Covered Person must incur **each Calendar Year** before no Co-Insurance is required, **except as stated below.**

Exception: Charges for Mental and Nervous Conditions and Substance Abuse treatment are not subject to or eligible for the **Coinsured Charge Limit.**

Coinsured Charge Limit: $10,000

[PLAN B]

Daily Room and Board Limits

...

- **During a Confinement In An Extended Care Center Or Rehabilitation Center**

[Carrier] will cover the lesser of:

a. the center's actual daily room and board charge; or
b. 50% of the covered daily room and board charge made by the Hospital during the Covered Person's preceding Hospital confinement, for semi-private accommodations.

Pre-Approval is required for charges incurred in connection with:

- Durable Medical Equipment
- Extended Care and Rehabilitation
- Home Health Care
- Hospice Care
- Infusion Therapy
- Prosthetic Devices
- **Autologous Bone Marrow Transplant and Associated High Dose Chemotherapy for treatment of breast cancer**

...

[PLANS C, D, E]

Daily Room and Board Limits

...

- **During a Confinement In An Extended Care Center Or Rehabilitation Center**

[Carrier] will cover the lesser of:

a. the center's actual daily room and board charge; or
b. 50% of the covered daily room and board charge made by the Hospital during the Covered Person's preceding Hospital confinement, for semi-private accommodations.

Pre-Approval is required for charges incurred in connection with:

- Durable Medical Equipment
- Extended Care and Rehabilitation
- Home Health Care
- Hospice Care
- Infusion Therapy
- Prosthetic Devices
- **Autologous Bone Marrow Transplant and Associated High Dose Chemotherapy for treatment of breast cancer**

...

GENERAL PROVISIONS

...

MISSTATEMENTS

If the age of an Employee, or any other relevant facts, are found to have been misstated, and the premiums are thereby affected, an equitable adjustment of premiums will be made. If such misstatement involves whether or not the person's coverage would have been accepted by [Carrier], subject to the Policy's **Incontestability** section, the true facts will be used in determining whether coverage is in force under the terms of the Policy.

...

DEFINITIONS

Dependent means Your:

a. legal spouse;
b. unmarried Dependent child who is under age 19; and
c. unmarried Dependent child from age 19 until his or her 23rd birthday, who is enrolled as a full-time student at an accredited school. Full-time students status will be as defined by the accredited school.

A Dependent is not a person who is:

a. on active duty in any armed forces of any country; or
b. *{eligible}* ***insured*** for coverage under the Policy as an Employee.

Under certain circumstances, an incapacitated child is also a Dependent. See the **Dependent Coverage** section of this [certificate].

An Employee's "unmarried Dependent child" includes:

a. Your legally adopted children,
b. Your step-children if such step children depend on You for most of their support and maintenance, and
c. children under a court appointed guardianship.

[Carrier] treats a child as legally adopted from the time the child is placed in the home for purposes of adoption. [Carrier] treats such a child this way whether or not a final adoption order is ever issued.

...

Employee means a Full-Time Employee (25 hours per week) of the Employer. Partners, Proprietors, and independent contractors will be treated like Employees, if they meet all of the Policy's conditions of eligibility. Employees who work on a temporary or substitute basis **or who are participating in an employee welfare arrangement established pursuant to a collective bargaining agreement** are not considered to be Employees for the purpose of the Policy. See also You, Your, Yours.

Employee's Eligibility Date means the later of:

a. the date of employment; or
b. the day after any applicable waiting period ends.

Employer means [ABC Company].

Experimental or Investigational means [Carrier] determines a service or supply is:

a. not of proven benefit for the particular diagnosis or treatment of a particular condition; or
b. not generally recognized by the medical community as effective or appropriate for the particular diagnosis or treatment of a particular condition; or

c. provided or performed in special settings for research purposes or under a controlled environment or clinical protocol.

Unless otherwise required by law with respect to drugs which have been prescribed for the treatment of a type of cancer for which the drug has not been approved by the United States Food and Drug Administration (FDA), [Carrier] will not cover any services or supplies, including treatment, procedures, drugs, biological products or medical devices or any hospitalizations in connection with Experimental or Investigational services or supplies.

[Carrier] will also not cover any technology or any hospitalization primarily to receive such technology if such technology is obsolete or ineffective and is not used generally by the medical community for the particular diagnosis or treatment of a particular condition.

Governmental approval of technology is not necessarily sufficient to render it of proven benefit or appropriate or effective for a particular diagnosis or treatment of a particular condition, as explained below.

[Carrier] will apply the following five criteria in determining whether services or supplies are Experimental or Investigational:

a. Any medical device, drug, or biological product must have received final approval to market by the FDA for the particular diagnosis or condition. Any other approval granted as an interim step in the FDA regulatory process, e.g., an Investigational Device Exemption or an Investigational New Drug Exemption, is not sufficient. Once FDA approval has been granted for a particular diagnosis or condition, use of the medical device, drug or biological product for another diagnosis or condition will require that one or more of the following established reference compendia:
   1. The American Medical Association Drug Evaluations;
   2. The American Hospital Formulary Service Drug Information; or
   3. The United States Pharmacopeia Drug Information

   recognize the usage as appropriate medical treatment. As an alternative to such recognition in one or more of the compendia, the usage of the drug will be recognized as appropriate if it is recommended by a clinical study and recommended by a review article in a major peer-reviewed professional journal. A medical device, drug, or biological product that meets the above tests will not be considered Experimental or Investigational.

In any event, any drug which the Food and Drug Administration has determined to be contraindicated for the specific treatment for which the drug has been prescribed will be considered Experimental or Investigational.

b. Conclusive evidence from the published peer-reviewed medical literature must exist that the technology has a definite positive effect on health outcomes; such evidence must include well-designed investigations that have been reproduced by non affiliated authoritative sources, with measurable results, backed up by the positive endorsements of national medical bodies or panels regarding scientific efficacy and rationale;

c. Demonstrated evidence as reflected in the published peer-reviewed medical literature must exist that over time the technology leads to improvement in health outcomes, i.e., the beneficial effects outweigh any harmful effects;

d. Proof as reflected in the published peer-reviewed medical literature must exist that the technology is at least as effective in improving health outcomes as established technology, or is usable in appropriate clinical contexts in which established technology is not employable; and

e. Proof as reflected in the published peer-reviewed medical literature must exist that improvements in health outcomes; as defined in item c. above, is possible in standard conditions of medical practice, outside clinical investigatory settings.

...

Health Benefits Plan means any hospital and medical expense insurance policy or certificate; health, hospital, or medical service corporation contract or certificate; or health maintenance organization subscriber contract or certificate delivered or issued for delivery in New Jersey by any carrier to a Small Employer group pursuant to section 3 of P.L. 1992, c.162 (C. 17B:27A-19). Health Benefits Plan excludes the following plans, policies, or contracts: accident only, credit, disability, long term care, coverage for Medicare services pursuant to a contract with the United States government, Medicare supplement, dental only, or vision only, insurance issued as a supplement to liability insurance, coverage arising out of a workers' compensation or similar law, hospital confinement or other Supplemental Limited Benefit Insurance coverage, automobile medical payment insurance, or personal injury protection coverage issued pursuant to P.L. 1972, c.70 (C. 39:6A-1 et seq.).

...

Preventive Care means charges for routine physical examinations, including related laboratory tests and x-rays, immunizations and vaccines, well baby care, pap smears, mammography and screening tests.

...

Supplemental Limited Benefit Insurance means insurance that is provided in addition to a Health Benefits Plan on an indemnity non-expense incurred basis.

...

DEPENDENT COVERAGE

Eligible Dependents for Dependent Health Benefits

Your eligible Dependents are Your:

a. legal spouse;
b. unmarried Dependent children who are under age 19; and
c. unmarried Dependent children, from age 19 until their 23rd birthday, who are enrolled as full-time students at accredited schools. Full-time students will be as defined by the accredited school.

A Dependent is not a person who is:

a. on active duty in any armed forces of any country; or
b. *{eligible}* ***insured*** for coverage under the Policy as an Employee.

Under certain circumstances, an incapacitated child is also a Dependent. See the **Incapacitated Children** section of this [certificate].

Your "unmarried Dependent child" includes:

a. Your legally adopted children,
b. Your stepchildren if such stepchildren depend on You for most of their support and maintenance, and
c. children under a court appointed guardianship.

[Carrier] treats a child as legally adopted from the time the child is placed in the home for purpose of adoption. [Carrier] treats such a child this way whether or not a final adoption order is ever issued.

...

HEALTH BENEFITS INSURANCE

This health benefits insurance will pay many of the medical expenses incurred by a Covered Person.

Note: [Carrier] payments will be reduced or eliminated if a Covered Person does not comply with the Utilization Review and Pre-Approval requirements contained in the Policy and in this [certificate].

BENEFIT PROVISION

...

[Coinsured Charge Limit

The Coinsured Charge Limit is the amount of Covered Charges a Covered Person must incur each Calendar Year before no Co-Insurance is required, **except as stated below.**

Exception: Charges for Mental and Nervous Conditions and Substance Abuse Treatment are not subject to or eligible for the **Coinsured Charge Limit.**]

...

If This Plan Replaces Another Plan

The Employer who purchased this Policy may have purchased it to replace a plan the Employer had with some other insurer.

The Covered Person may have incurred charges for covered expenses under the Employer's old plan before it ended. If so, these charges will be used to meet the Policy's Cash Deductible if:

a. the charges were incurred during the Calendar Year in which the Policy starts;
b. the Policy would have paid benefits for the charges, if the Policy had been in effect;
c. the Covered Person was covered by the old plan when it ended and enrolled in the Policy on its Effective Date; and
d. the Policy starts right after the old plan ends.

The Covered Person may have satisfied part of the eligibility waiting period under the Employer's old plan before it ended. If so, the time satisfied will be used to satisfy this Policy's eligibility waiting period if:

a. the Employee was employed by the Employer on the date the Employer's old plan ended; and
b. this Policy starts right after the old plan ends.

...

COVERED CHARGES

...

Prescription Drugs

[Carrier] covers drugs to treat an Illness or Injury which require a Practitioner's prescription. But [Carrier] only covers drugs which are:

a. approved for treatment of the Covered Person's Illness or Injury by the Food and Drug Administration;
b. approved by the Food and Drug Administration for the treatment of a particular diagnosis or condition other than the Covered Person's and recognized as appropriate medical treatment for the Covered Person's diagnosis or condition in one or more of the following established reference compendia:
   1. The American Medical Association Drug Evaluations;
   2. The American Hospital Formulary Service Drug Information;
   3. The United States Pharmacopeia Drug Information; or
c. recommended by a clinical study and recommended by a review article in a major peer-reviewed professional journal.

Coverage for the above drugs also includes medically necessary services associated with the administration of the drugs.

In no event will [Carrier] pay for:

a. drugs labeled: "Caution—Limited by Federal Law to Investigational Use"; or
b. any drug which the Food and Drug Administration has determined to be contraindicated for the specific treatment for which the drug has been prescribed.

And [Carrier] excludes drugs that can be bought without a prescription, even if a Practitioner orders them.

[Carrier] does not cover drugs to treat Mental and Nervous Conditions and Substance Abuse as part of the Prescription Drugs Covered Charge. Drugs for such treatment are subject to the Mental and Nervous Conditions and Substance Abuse section of the Policy.

...

COORDINATION OF BENEFITS

Purpose Of This Provision

A Covered Person may be covered for health benefits by more than one plan. For instance, he or she may be covered by the Policy as an Employee and by another plan as a Dependent of his or her spouse. If he or she is, the provision allows [Carrier] to coordinate what [Carrier] pays with what another plan pays. [Carrier] does this so the Covered Person does not collect more in benefits than he or she incurs in charges.

DEFINITIONS

"Plan" means any of the following that provide health expense benefits or services:

a. group or blanket insurance plans;
b. group hospital or surgical plans, or other service or prepayment plans on a group basis;
c. union welfare plans, Employer plan, Employee benefits plans, trusteed labor and management plans, or other plans for members of a group;
d. programs or coverages required by law; or
e. Medicare or other government programs which [Carrier] is allowed to coordinate with by law.

"Plan" does not include:

a. Medicaid or any other government program or coverage which [Carrier] is not allowed to coordinate with by law;
b. school accident type coverages written on either a blanket, group, or franchise basis;
c. any group or group-type hospital indemnity benefits;
d. Supplemental Limited Benefits Insurance; nor
e. any plan [Carrier] says [Carrier] supplements, as named in the Schedule.

...

EXHIBIT Y

[Carrier] **HMO PLAN**

SMALL GROUP HEALTH MAINTENANCE ORGANIZATION EVIDENCE OF COVERAGE

...

II. DEFINITIONS

...

EMPLOYEE. A Full-Time Employee (25 hours per week) of the Employer. **Employees who work on a temporary or substitute basis or who are participating in an employee welfare arrangement established pursuant to a collective bargaining agreement are not considered to be Employees for the purpose of this Group Health Care Plan.** Partners, Proprietors, and independent contractors will be treated like Employees, if they meet all of the Group Health Care Plan's conditions of eligibility.

EMPLOYEE ELIGIBILITY DATE.

a. the date of employment; or
b. the day after any applicable waiting period ends.

EMPLOYER. [ABC Company].

EXPERIMENTAL or INVESTIGATIONAL.

Services or supplies which We Determine are:

a. not of proven benefit for the particular diagnosis or treatment of a Member's particular condition; or
b. not generally recognized by the medical community as effective or appropriate for the particular diagnosis or treatment of a Member's particular condition; or
c. provided or performed in special settings for research purposes or under a controlled environment or clinical protocol.

Unless otherwise required by law with respect to drugs which have been prescribed for the treatment of a type of cancer for which the drug has not been approved by the United States Food and Drug Administration (FDA), We will not cover any services or supplies, including treatment, procedures, drugs, biological products or medical devices or any hospitalizations in connection with Experimental or Investigational services or supplies.

We will also not cover any technology or any hospitalization in connection with such technology if such technology is obsolete or ineffective and is not used generally by the medical community for the particular diagnosis or treatment of a Member's particular condition.

Governmental approval of a technology is not necessarily sufficient to render it of proven benefit or appropriate or effective for a particular diagnosis or treatment of a Member's particular condition, as explained below.

We will apply the following five criteria in Determining whether services or supplies are Experimental or Investigational:

1. any medical device, drug, or biological product must have received final approval to market by the United States Food and Drug Administration (FDA) for the particular diagnosis or condition. Any other approval granted as an interim step in the FDA regulatory process, e.g., an Investigational Device Exemption or an Investigational New Drug Exemption, is not sufficient. Once FDA approval has been granted for a particular diagnosis or condition, use of the medical device, drug or biological product for another diagnosis or condition will require that one or more of the following established reference compendia:
   I. The American Medical Association Drug Evaluations;
   II. The American Hospital Formulary Service Drug Information; or
   III. The United States Pharmacopeia Drug Information.

   recognize the usage as appropriate medical treatment. As an alternative to such recognition in one or more of the compendia, the usage of the drug will be recognized as appropriate if it is recommended by a clinical study and recommended by a review article in a major peer-reviewed professional journal. A medical device, drug, or biological product that meets the above tests will not be considered Experimental or Investigational.

In any event, any drug which the Food and Drug Administration has determined to be contraindicated for the specific treatment for which the drug has been prescribed will be considered Experimental or Investigational.

2. conclusive evidence from the published peer-reviewed medical literature must exist that the technology has a definite positive

effect on health outcomes; such evidence must include well-designed investigations that have been reproduced by non-affiliated authoritative sources, with measurable results, backed up by the positive endorsements of national medical bodies or panels regarding scientific efficacy and rationale;
3. demonstrated evidence as reflected in the published peer-reviewed medical literature must exist that over time the technology leads to improvement in health outcomes, i.e., the beneficial effects outweigh any harmful effects;
4. proof as reflected in the published peer-reviewed medical literature must exist that the technology is at least as effective in improving health outcomes as established technology, or is usable in appropriate clinical contexts in which established technology is not employable; and
5. proof as reflected in the published peer-reviewed medical literature must exist that improvements in health outcomes, as defined in paragraph 3, is possible in standard conditions of medical practice, outside clinical investigatory settings.

FULL-TIME. A normal work week of 25 or more hours. Work must be at the Employer's regular place of business or at another place to which an Employee must travel to perform his or her regular duties for his or her full and normal work hours.

HEALTH BENEFITS PLAN. Any hospital and medical expense insurance policy or certificate; health, hospital, or medical service corporation contract or certificate; or health maintenance organization subscriber contract or certificate delivered or issued for delivery in New Jersey by any carrier to a Small Employer group pursuant to section 3 of P.L. 1992, c.162 (C. 17B:27A-19). Health Benefits Plan excludes the following plans, policies, or contracts: accident only, credit, disability, long term care, coverage for Medicare services pursuant to a contract with the United States government, Medicare supplement, dental only, or vision only, insurance issued as a supplement to liability insurance, coverage arising out of a workers' compensation or similar law, hospital confinement or other Supplemental Limited Benefit Insurance coverage, automobile medical payment insurance, or personal injury protection coverage issued pursuant to P.L. 1972, c.70 (C. 39:6A-1 et seq.).

...

SUPPLEMENTAL LIMITED BENEFIT INSURANCE. Insurance that is provided in addition to a Health Benefits Plan on an indemnity non-expense incurred basis.

...

III. ELIGIBILITY

...

DEPENDENT COVERAGE

...

Adopted Children and Step-Children

Your "unmarried Dependent children" include Your legally adopted children, Your step-children **if they depend on You for most of their support and maintenance** and children under a court appointed guardianship. [Carrier] will treat a child as legally adopted from the time the child is placed in the home for the purpose of adoption. [Carrier] will treat such a child this way whether or not a final adoption order is ever issued.

Eligible Dependents will not include any Dependent who is:
a. covered by the Group Health Care Plan as an Employee or
b. on active duty in the armed forces of any country.

...

VII. COORDINATION OF BENEFITS AND SERVICES

...

DEFINITIONS

"Plan" means any of the following that provide health expense benefits or services:
a. group or blanket insurance plans;
b. group hospital or surgical plans, or other service or prepayment plans on a group basis;
c. union welfare plans, Employer plan, Employee benefits plans, trusteed labor and management plans, or other plans for members of a group;
d. programs or coverages required by law;
e. Medicare or other government programs which We are allowed to coordinate with by law.

"Plan" does not include:
a. Medicaid or any other government program or coverage which [Carrier] is not allowed to coordinate with by law;
b. school accident type coverages written on either a blanket, group, or franchise basis;
c. group or group-type hospital indemnity benefits;
d. Supplemental Limited Benefits Insurance coverages; nor
e. any plan We say We supplement.

...

EXHIBIT Z
PART 1

RIDER FOR PRESCRIPTION DRUG INSURANCE (CARD/MAIL)

[Policyholder:

Group Policy No:

Effective Date:]

The **Prescription Drug** section of the **COVERED CHARGES** provision of the **HEALTH BENEFITS INSURANCE** section is replaced with the following:

[Carrier] covers drugs to treat an Illness or Injury which require a Practitioner's prescription which are obtained while confined as an Inpatient in a Facility. But [Carrier] only covers drugs which are:
a. approved for treatment of the Covered Person's Illness or Injury by the Food and Drug Administration;
b. approved by the Food and Drug Administration for the treatment of a particular diagnosis or condition other than the Covered Person's and recognized as appropriate medical treatment for the Covered Person's diagnosis or condition in one or more of the following established reference compendia:
   1. The American Medical Association Drug Evaluations;
   2. The American Hospital Formulary Service Drug Information;
   3. The United States Pharmacopeia Drug Information; or
c. recommended by a clinical study and recommended by a review article in a major peer-reviewed professional journal.

Coverage for the above drugs also includes medically necessary services associated with the administration of the drugs.

In no event will [Carrier] pay for:
a. drugs labeled: "Caution—Limited by Federal Law to Investigational Use"; or
b. any drug which the Food and Drug Administration has determined to be contraindicated for the specific treatment for which the drug has been prescribed.

And [Carrier] excludes drugs that can be bought without a prescription, even if a Practitioner orders them.

[Carrier] does cover drugs to treat Mental and Nervous Conditions and Substance Abuse under the Rider for Prescription Drug Insurance.

This Prescription Drug insurance will pay benefits for covered drugs, prescribed by a Practitioner. What [Carrier] pays and the terms of payment are explained below.

...

EXHIBIT Z
PART 2

RIDER FOR PRESCRIPTION DRUG INSURANCE (CARD)

[Policyholder:

Group Policy No:

Effective Date:]

The **Prescription Drug** section of the **COVERED CHARGES** provision of the **HEALTH BENEFITS INSURANCE** section is replaced with the following:

[Carrier] covers drugs to treat an Illness or Injury which require a Practitioner's prescription which are obtained while confined as an Inpatient in a Facility. But [Carrier] only covers drugs which are:

a. approved for treatment of the Covered Person's Illness or Injury by the Food and Drug Administration;
b. approved by the Food and Drug Administration for the treatment of a particular diagnosis or condition other than the Covered Person's and recognized as appropriate medical treatment for the Covered Person's diagnosis or condition in one or more of the following established reference compendia:
   1. The American Medical Association Drug Evaluations;
   2. The American Hospital Formulary Service Drug Information;
   3. The United States Pharmacopeia Drug Information; or
c. recommended by a clinical study and recommended by a review article in a major peer-reviewed professional journal.

Coverage for the above drugs also includes medically necessary services associated with the administration of the drugs.

In no event will [Carrier] pay for:

a. drugs labeled: "Caution—Limited by Federal Law to Investigational Use"; or
b. any drug which the Food and Drug Administration has determined to be contraindicated for the specific treatment for which the drug has been prescribed.

And [Carrier] excludes drugs that can be bought without a prescription, even if a Practitioner orders them.

[Carrier] does cover drugs to treat Mental and Nervous Conditions and Substance Abuse under the Rider for Prescription Drug Insurance.

This Prescription Drug insurance will pay benefits for covered drugs, prescribed by a Practitioner. What [Carrier] pays and the terms of payment are explained below.

. . .

EXHIBIT Z
PART 3

RIDER FOR PRESCRIPTION DRUG INSURANCE (MAIL)

[Policyholder:

Group Policy No:

Effective Date:]

The **Prescription Drug** section of the **COVERED CHARGES** provision of the **HEALTH BENEFITS INSURANCE** section is replaced with the following:

[Carrier] covers drugs to treat an Illness or Injury which require a Practitioner's prescription which are obtained while confined as an Inpatient in a Facility. But [Carrier] only covers drugs which are:

a. approved for treatment of the Covered Person's Illness or Injury by the Food and Drug Administration;
b. approved by the Food and Drug Administration for the treatment of a particular diagnosis or condition other than the Covered Person's and recognized as appropriate medical treatment for the Covered Person's diagnosis or condition in one or more of the following established reference compendia:
   1. The American Medical Association Drug Evaluations;
   2. The American Hospital Formulary Service Drug Information;
   3. The United States Pharmacopeia Drug Information; or
c. recommended by a clinical study and recommended by a review article in a major peer-reviewed professional journal.

Coverage for the above drugs also includes medically necessary services associated with the administration of the drugs.

In no event will [Carrier] pay for:

a. drugs labeled: "Caution—Limited by Federal Law to Investigational Use"; or
b. any drug which the Food and Drug Administration has determined to be contraindicated for the specific treatment for which the drug has been prescribed.

And [Carrier] excludes drugs that can be bought without a prescription, even if a Practitioner orders them.

[Carrier] does cover drugs to treat Mental and Nervous Conditions and Substance Abuse under the Rider for Prescription Drug Insurance.

This Prescription Drug insurance will pay benefits for covered drugs, prescribed by a Practitioner. What [Carrier] pays and the terms of payment are explained below.

. . .

EXHIBIT Z
PART 4

RIDER FOR MENTAL AND NERVOUS CONDITIONS AND SUBSTANCE ABUSE BENEFITS

[Policyholder:

Group Policy No:

Effective Date:]

The **Prescription Drug** section of the **COVERED CHARGES** provision of the **HEALTH BENEFITS INSURANCE** section is replaced with the following:

[Carrier] covers drugs to treat an Illness, Injury, or Mental and Nervous Conditions and Substance Abuse which require a Practitioner's prescription. But [Carrier] only covers drugs which are:

a. approved for treatment of the Covered Person's Illness, Injury or Mental and Nervous Conditions and Substance Abuse by the Food and Drug Administration;
b. approved by the Food and Drug Administration for the treatment of a particular diagnosis or condition other than the Covered Person's and recognized as appropriate medical treatment for the Covered Person's diagnosis or condition in one or more of the following established reference compendia:
   1. The American Medical Association Drug Evaluations;
   2. The American Hospital Formulary Service Drug Information;
   3. The United States Pharmacopeia Drug Information; or
c. recommended by a clinical study and recommended by a review article in a major peer-reviewed professional journal.

Coverage for the above drugs also includes medically necessary services associated with the administration of the drugs.

In no event will [Carrier] pay for:

a. drugs labeled: "Caution—Limited by Federal Law to Investigational Use"; or
b. any drug which the Food and Drug Administration has determined to be contraindicated for the specific treatment for which the drug has been prescribed.

And [Carrier] excludes drugs that can be bought without a prescription, even if a Practitioner orders them.

[Carrier] does cover drugs to treat Mental and Nervous Conditions and Substance Abuse as part of the Prescription Drugs Covered Charge. Drugs for such treatment are not covered under the Rider for Mental and Nervous Conditions and Substance Abuse Benefits.

The **Mental and Nervous Conditions and Substance Abuse** section of the **COVERED CHARGES WITH SPECIAL LIMITATIONS** provision of the **HEALTH BENEFITS INSURANCE** section of the Policy is replaced with the following:

The Co-Payment, Cash Deductible, Co-Insurance and Co-Insurance cap provisions of this Rider are independent of similar provisions of the **Health Benefits** section of the Policy. Charges incurred for the treatment of Mental and Nervous Conditions and Substance Abuse must be considered under the terms of this Rider and cannot be considered under the **Health Benefits** section of the Policy.

. . .

EXHIBIT AA
PART 1

EVIDENCE OF COVERAGE RIDER FOR PRESCRIPTION DRUG COVERAGE (CARD/MAIL)

Contract Holder:

Group Contract No:

Effective Date:

The **Prescription Drug** section of the **COVERED SERVICES AND SUPPLIES** Section of the HMO **EVIDENCE OF COVERAGE** is replaced with the following:

We cover drugs which require a Participating Provider's prescription which are obtained while confined as an Inpatient. But We only cover drugs which are:

a. approved for treatment of the Member's Illness or Injury or Mental or Nervous Condition by the Food and Drug Administration;
b. approved by the Food and Drug Administration for the treatment of a particular diagnosis or condition other than the Member's and recognized as appropriate medical treatment for the Member's diagnosis or condition in one or more of the following established reference compendia:
   1. The American Medical Association Drug Evaluations;
   2. The American Hospital Formulary Service Drug Information; or
   3. The United States Pharmacopeia Drug Information.
c. recommended by a clinical study and recommended by a review article in a major peer-reviewed professional journal.

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EXHIBIT AA
PART 2

EVIDENCE OF COVERAGE RIDER FOR PRESCRIPTION DRUG COVERAGE **(CARD)**

Contract Holder:

Group Contract No:

Effective Date:

The **Prescription Drug** section of the **COVERED SERVICES AND SUPPLIES** Section of the HMO **EVIDENCE OF COVERAGE** is replaced with the following:

We cover drugs which require a Participating Provider's prescription which are obtained while confined as an Inpatient. But We only cover drugs which are:

a. approved for treatment of the Member's Illness or Injury **or Mental or Nervous Condition** by the Food and Drug Administration;
b. approved by the Food and Drug Administration for the treatment of a particular diagnosis or condition other than the Member's and recognized as appropriate medical treatment for the Member's diagnosis or condition in one or more of the following established reference compendia:
   1. The American Medical Association Drug Evaluations;
   2. The American Hospital Formulary Service Drug Information; or
   3. The United States Pharmacopeia Drug Information.
c. recommended by a clinical study and recommended by a review article in a major peer-reviewed professional journal.

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EXHIBIT AA
PART 3

EVIDENCE OF COVERAGE RIDER FOR PRESCRIPTION DRUG COVERAGE **(MAIL)**

Contract Holder:

Group Contract No:

Effective Date:

The **Prescription Drug** section of the **COVERED SERVICES AND SUPPLIES** Section of the HMO **EVIDENCE OF COVERAGE** is replaced with the following:

We cover drugs which require a Participating Provider's prescription which are obtained while confined as an Inpatient. But We only cover drugs which are:

a. approved for treatment of the Member's Illness or Injury or Mental or Nervous Condition by the Food and Drug Administration;
b. approved by the Food and Drug Administration for the treatment of a particular diagnosis or condition other than the Member's and recognized as appropriate medical treatment for the Member's diagnosis or condition in one or more of the following established reference compendia:
   1. The American Medical Association Drug Evaluations;
   2. The American Hospital Formulary Service Drug Information; or
   3. The United States Pharmacopeia Drug Information.
c. recommended by a clinical study and recommended by a review article in a major peer-reviewed professional journal.

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LAW AND PUBLIC SAFETY

(a)

DIVISION OF CONSUMER AFFAIRS
BOARD OF MEDICAL EXAMINERS

Notice of Withdrawal of Stay of Operative Date
Hair Replacement Techniques
N.J.A.C. 13:35-6.21

Take notice that on February 23, 1994, the Board of Medical Examiners voted to stay the operative date of N.J.A.C. 13:35-6.21 until April 13, 1994 (see 26 N.J.R. 1354(a)). The Board also voted to permit CSP Medical Group, Inc., Stan Smith, M.D. and International Cosmetic Laboratories (ICL) 30 days to present written comments, exhibits and statements. The Board denied a request for a full evidentiary hearing at that time and requested the parties to identify specific issues that would require a public hearing.

Take further notice that on April 13, 1994 the Board considered comments received from Stan Smith, M.D. and CSP Medical Group and voted to continue the stay and to refer the matter to an Ad Hoc Committee to more fully consider the submissions and the contemplated regulation and to report back to the Board. The Board also voted to deny a request for a public hearing at that time and advised that it would reconsider the request for a public hearing upon its review of the report of the Committee.

Summary of Comments Received from Stan Smith, M.D. and CSP Medical Group

The commenters' submissions included plaintiff's brief in opposition to the adoption of N.J.A.C. 13:35-6.21; supporting affidavit of Stan Smith, M.D.; statements of Michael A.M. Rea, M.D., Robert Berger, M.D., and Robert Koepke; 118 patient certifications; and 256 patient surveys.

(1) Plaintiff's Brief—The brief submitted by Dr. Smith argues that (a) the material in the possession of the Board in promulgating this regulation consisted of one report by a Dr. Pierce and 28 letters, none of which were in the form of an affidavit or certification; (b) a substantial number of the letters appear to have been written at the prompting or direction of an attorney who has a financial interest in banning the procedure because he is pursuing claims for damages on behalf of persons who have had the procedure; (c) the overwhelming majority of the letters were prepared after the Board promulgated the regulation and therefore could not have been relied upon by the Board in the initial drafting of the regulation; and (d) the Board has made no record or received any medical evidence concerning the effect or safety of the procedure, nor is there a record of any serious medical complication.

(2) Affidavit of Stan Smith, M.D.—In his affidavit, Dr. Smith describes the cosmetic suturing procedure in detail and states that it is a relatively simple procedure involving minor surgery. He contends that the rate of infection or rejection is minimal and that patients are advised of risks prior to the procedure and are adequately instructed in follow-up care. He states that the procedure is easily reversible and that if any undue swelling or infection should occur, he immediately sees or refers the patient for appropriate medical care. Listing patents that exist on similar procedures, Dr. Smith argued that a ban would infringe upon his constitutional rights as well as upon the rights of individuals who may have or have had the procedure performed. Dr. Smith states that the regulation would effectively mandate abandonment of persons who have had the procedure performed; he estimates that he has personally performed 7,000 of the total 14,000 to 15,000 procedures that have been performed throughout the world. Listing a number of other hair replacement procedures involving invasive or surgical methods, Dr. Smith argues that it is his firm belief that the Cosmetic Suture Procedure, with the risk benefit ratio involved, is the most beneficial to the patient and carries the least amount of risk.

(3) Statement of Michael A.M. Rea, M.D.—Dr. Rea states that he performed the procedure once and observed Dr. Smith performing the procedure on three or four occasions. He stated that to his knowledge no serious infections are associated with the procedure when performed on a compliant patient. It is Dr. Rea's opinion that compared to other hair replacement procedures this procedure offers a much less invasive, less onerous and more successful method of hair replacement.

(4) Statement of Robert Berger, M.D.—Dr. Berger, a dermatologist practicing in New York City, stated that he has experience with hundreds of patients during the past 24 years in which he performed the medical aspect of the procedure for a number of hair weaving firms in the greater New York area. He stated he continues to see patients for occasional repair of sutures, some of whom have enjoyed the suture-weave process for more than 15 years. Dr. Berger stated that in his experience pain during the procedure is limited and that he has never seen a serious complication from this relatively minor surgical technique.

(5) Statement of Robert Koepke—The commenter stated that he practiced anesthesia for 25 years until his retirement in 1991. In the 1970's he underwent two "punch grafting" sessions with a cosmetic surgeon, both of which took between two and three hours to perform and caused concomitant pain. In 1993, he underwent the cosmetic suture procedure in order to cover the punch grafts. He stated the procedure took approximately 10 minutes and was accomplished with minimal discomfort and that he would not hesitate to recommend ICL to anyone.

Summary of Ad Hoc Committee Report

The Committee considered all of the above submissions as well as reports of hair replacement experts and other material available to the Board. The Committee also determined that additional expert opinions should be sought. Those additional opinions were obtained and considered in the Committee's deliberations in this matter. The Committee Report is set forth in its entirety below.

The Committee FOUND that the affidavit and physician statements submitted by Dr. Smith were overborne not only by the Board's own expertise regarding the procedure's violation of basic surgical principles, but by the overwhelmingly negative response of numerous experts in the field contacted by the Medical Board staff. The Committee also FOUND that the patient surveys submitted by Dr. Smith were an unscientific and insignificant sampling of Dr. Smith's claim of many thousands of patients.

Based upon these findings, the Committee CONCLUDED that the current stay of operative date should be withdrawn. The Committee Report clarified the follow-up maintenance of patients who desire to continue utilizing presently implanted sutures is not prohibited by the rule.

Take further notice that on July 8, 1994, the Board received the Ad Hoc Committee Report on Suture Process and notified counsel for CSP Medical Group, Stan Smith, M.D. and ICL that the Board would consider the report at its July 13, 1994 meeting. Copies of the report and attachments were also forwarded to counsel.

By letters dated July 11, 1994 and July 12, 1994, counsel for Dr. Smith submitted objections to the Board's consideration of the Committee report on short notice and requested that the matter be adjourned. Oral objections to consideration of the matter on short notice were also received from counsel for ICL.

Take further notice that on July 13, 1994, the Board considered the adjournment application including oral comments by John Morelli, Esq., and voted to deny the application based on its conclusion that it had adequately complied with requirements of law regarding notice, including the Administrative Procedure Act, N.J.S.A. 52:14B-4 and the Open Public Meetings Act, N.J.S.A. 10:4-8 and specifically N.J.S.A. 10:4-18.

Take further notice that on July 13, 1994, the Board also considered and adopted the report of the Ad Hoc Committee. For the reasons set forth therein, the Board voted to withdraw the stay of operative date effective upon publication in the New Jersey Register of a notice withdrawing the stay. The Board also agreed it would receive any additional submissions from Stan Smith, M.D., CSP Medical Group or any other individual up until the date of publication. The request for a public hearing was denied.

Take further notice that on August 5, 1994, Dr. Smith submitted additional information to the Board. In light of the receipt of this additional information, the Board, at its August 10, 1994 meeting, determined that it would review and consider all submissions on this matter as a whole at the next Board meeting on September 7, 1994.

Take further notice that on September 7, 1994, the Board considered Dr. Smith's additional submission and noted that its conclusions were not altered by any of the items submitted, including Dr. Smith's unsupported claim of a low failure rate for the cosmetic suture procedure and the incorrect assertion that only adverse opinions were sought regarding the procedure. The Board noted further that it had read all of the information, comments and submissions related to this matter and that an ad hoc committee of the Board had been formed to review Dr. Smith's initial comments and had submitted a lengthy report on the suture process. Based upon consideration of all of the above, the Board voted to withdraw the stay of the operative date effective October 3, 1994.

AD HOC COMMITTEE REPORT ON SUTURE PROCESS
July 8, 1994

Members: Bennett C. Rothenberg, M.D., Board Member, certified plastic surgeon
Harvey L. Roter, D.P.M., Board Member
Dong Cha, M.D., Committee Member and Consultant, certified plastic surgeon

Staff: William I. Weiss, M.D., Medical Director of the Board
Sandra Y. Dick, D.A.G., Counsel to the Committee

I. Review of proposed rule

On December 6, 1993, the Board proposed a rule for the conduct of physicians participating in hair transplantation techniques. The Board has been alerted by the Division of Consumer Affairs to large numbers of consumer complaints regarding hair replacement techniques. The complaints involved a technique called the implanted Prolene Loop procedure or dermal retention technique being utilized by physicians within New Jersey. The technique involves suturing of a hairpiece to the scalp with Prolene stitches, permanently leaving the sutures in the scalp and exposed through the skin to air. The Board was aware of reports of complications arising from the procedure which could be far ranging and even life threatening because of the ever present risk of infection associated with septicemia due to the suture being permanently implanted yet exposed to air.

The Board considered many things, including but not limited to, reports of complaints regarding complications and the opinions of two certified dermatologists (Drs. Pierce and Lepaw, whose comments are discussed below), the opinion of former Board member and dermatologist Sharon Berkowitz, M.D., pictorial representations of the complications of the procedure and utilized its own expertise and understanding of basic surgical, biological and immunological principles. The Board concluded that the procedure involved an unacceptably high risk that the use of even very inert material such as Prolene as a permanent suture through the skin, exposed to skin bacteria and air, can lead to inflammation, infection and scarring, such that the procedure should be prohibited.

Thus the rule proposal in addition to setting forth appropriate standards of practice involving hair replacement techniques (such as informed consent, provision of 24 hour medical coverage, and recordkeeping) banned the utilization of the implanted Prolene Loop procedure for hair replacement in New Jersey.

Although the Board voted to adopt the rule at its 1/12/94 meeting, an emergent application was filed by CSP Medical Group and Stan Smith, M.D., (a physician utilizing the Prolene Loop procedure in New Jersey) arguing that they had not been given appropriate notice of the rule proposal and thus had not been able to submit comments and arguing among other things that the regulation was arbitrary and capricious. The Board President on 2/22/94 and the full Board on 2/23/94 granted a stay of the effectiveness of the regulation and permitted CSP Medical Group, Inc., Stan Smith, M.D. and International Cosmetic Laboratories (ICL) thirty days to present written comments, exhibits and statements.

Those comments were received and considered at the Board's meeting of April 13, 1994. At that time, the Board voted to continue the stay and the President appointed an Ad Hoc Committee (consisting of Drs. Cha, Rothenberg and Roter assisted by Medical Director Weiss and D.A.G. Dick) to more fully consider the submissions and the contemplated regulation and to report back to the Board.

II. Review of comments submitted by Stan Smith, M.D., CSP Medical Group

The submissions of Stan Smith, M.D. have been previously circulated and otherwise made available to the Board in toto, and will be available to the Board again with this report. They include the following:

1. Affidavit of Stan P. Smith, M.D., dated March 25, 1994
2. Statement of Robert Marinaro dated March 1, 1994

3. Report of Michael M. Rea, M.D. dated March 20, 1994
4. Report of Robert A. Berger, M.D. dated March 21, 1994
5. Report of Dr. Robert W. Koepke dated March 9, 1994
6. Brief in Opposition to the Adoption of N.J.A.C. 13:35-6.21
7. Certifications of 118 patients who have had the cosmetic suture procedure performed (all certifications are form letters)
8. 256 Patient Surveys conducted immediately following the procedure (all surveys are forms)

The brief submitted by Dr. Smith argues (among other things) that he did not receive proper notice of the rule proposal; that the rule will only affect him since he claims to be the only practitioner in New Jersey performing the procedure; that the procedure has been reviewed previously without adverse findings; and that the Board only relied on one expert (Dr. Pierce) with unknown credentials, at the time of the rule proposal.

The Committee reviewed all of the materials. We note that the effectiveness of the regulation was stayed in order to enable Dr. Smith, CSP Medical Group and ICL (International Cosmetic Laboratories) an opportunity to comment and submit any material they wished regarding the rule. The Committee notes that the rule is directed not at Dr. Smith, but at the procedure involved, and that it is aware of several other physicians who have engaged in the performance of this procedure in the past. Furthermore, prior reviews by the Board of Dr. Smith did not involve a searching inquiry about this particular hair transplantation techniques, but rather focused on particular consumer complaints. One inquiry regarding Dr. Smith resulted in an admonishment of him not to permit cosmetology assistants to perform work in the medical area, and to properly dispense and record all medications dispensed to his patients. The Committee also notes that Dr. Smith has included in his materials this admonishment letter, a subpoena and Demand for Statement Under Oath regarding an ongoing investigation of him. These materials would ordinarily be confidential, however, Dr. Smith has included them with his submissions.

As to Dr. Smith's claim that the Board only relied on a statement of one expert in promulgating the rule, in fact the Board was aware of innumerable consumer complaints regarding the procedure, had access to several opinions of experts (some discussed below), was aware of required malpractice reporting regarding the procedure and relied on its own expertise regarding sound surgical and medical procedures.

As to the statements of physicians submitted by Dr. Smith, the Committee notes that one of the physicians, Joseph Buono, M.D., who it is claimed trained Dr. Smith in the procedure, was previously ordered to cease and desist permitting unlicensed individuals to perform surgical procedures in hair transplant operations and to cease and desist certain implanting techniques directly into the scalp. Additionally, although it is claimed Dr. Buono was trained in the technique by a respected New York surgeon, Dr. Orentreich, the Committee has contacted Dr. Orentreich who denies ever performing or teaching the procedure.

The other statements of physicians submitted by Dr. Smith are overborne not only by the Board's own expertise regarding the procedure's violation of basic surgical principles, but by the overwhelming negative response of numerous experts in the field contacted by the Medical Board staff. Also submitted by them were several photographs of disfiguring scarring, represented to be the result of the procedure.

As to the patient "surveys", they are an unscientific and insignificant sampling of Dr. Smith's claim of many thousands of patients. Most surveys were done either right after the procedure, or within a short time frame when the infection, scarring and other problems noted by the Committee may not yet have occurred. Additionally, the surveys are insignificant when considered against the numerous consumer complaints known to the Board. For example, among the many comments received after the publication of the rule proposal in support of the prohibition on the procedure, the Director of the Office of Consumer Affairs of Burlington County reported that she had provided previously 72 consumer complaints to the State regarding the implanted Prolene Loop procedure, and responded to 582 inquiries providing information from January 1992 to the present. She also reports that since 1984, she has yet to hear from any satisfied consumer. The numerous comments to the rule proposal also included individual consumers who suffered from repetitive infections, bleeding, constant unrelenting pain, swelling, insomnia, what was described as "bursting blood sacs", disfiguring scarring and psychological pain and reported their difficulty receiving proper follow-up. None reported contact with Dr. Smith after experiencing problems, most reported dealing with ICL, a business on the same premises, (and elsewhere), also associated with CSP Medical Group for repair of problems and removal of the sutures. This may account in part for Dr. Smith's claimed lack of knowledge regarding significant problems.

In summary, the Committee has reviewed Dr. Smith's claim that the procedure is "safe and effective", and finds that representation to be belied by the overwhelming negative information about it that has been presented.

III. Review of hair replacement specialty expert reports and other material available to the Board.

A. Material presented to Board prior to proposal of regulation

1. Comments of Harold E. Pierce, M.D., Assistant Professor in Dermatology (surgery), Howard University College of Medicine

   Dr. Pierce describes his experience in performing the implanted Prolene Loop Procedure and in treating complications. He examined a number of cases suffering from pain, purulent exudate, infection and fever requiring immediate debridement of the scalp with removal of the hair piece and the implant attachment. The patients were placed on topical and systemic antibiotics and many were left with significant permanent scarring. Dr. Pierce opines that because of the significant side effects and the risk of infection associated with septicemia, the procedure should be discontinued as a serious violation of the standards of medical care.

2. Marvin I. Lepaw, M.D., Assistant Professor of Clinical Medicine, Department of Dermatology, State University of New York, Stony Brook

   In a medical article written in Cutis, a New York medical journal, volume 2 no. 1 January 1973 discussing hair implant complications, Dr. Lepaw states, "It would seem unlikely that a suture left in the skin would be interpreted by the leukocytes and connective tissue cells as anything other than a foreign body. Bunius, in his treatise on wound healing impairment, demonstrated that tissue reactions occur from onwards of four days. Bacteria entering these perforations through the skin's integrity as well as inflammatory reactions caused by suture material cannot be avoided". In another article published in the Journal of Dermatologic Surgery and Oncology 9:6 June 1983 page 460, Dr. Lepaw states that "even Prolene sutures used today are inappropriate for covering a bald or balding scalp. There is a 50% to 70% risk of infection and rejection; there may be accidental laceration by any of the 6 to 8 interrupted sutures. Free access to the scalp to allow proper cleaning and prevent seborrheic dermatitis is also a problem."

3. Sharon F. Berkowitz, M.D., Board Certified dermatology consultant to the State Board of Medical Examiners

   Dr. Berkowitz responded to the Board after reviewing the material on the procedure. She stated that, although she does not personally do hair replacement, "it is inevitable that the placement of a permanent Prolene suture must sooner or later lead to problems. The problems would consist primarily of foreign body reaction and or infection accompanied by subsequent scarring."

4. Carl H. Manstein, M.D., Associate Professor of Plastic Surgery, Temple University School of Medicine (materials received both prior to and after rule proposal)

   Dr. Manstein states that he had the unfortunate situation to examine and evaluate at least four gentlemen who had this procedure. All of these men had abscesses, significant scarring and required removal of the hair piece as a result of complications from these sutures.

   It was his opinion that the cosmetic suture retention technique is biologically flawed from the outset. Specifically, the use of any type of suture as a method to secure a hair piece is fraught with danger because once this suture is placed through the skin and scalp, normal biological and physiological parameters including acute mild inflammatory response will result. Such a response must produce scarring and in addition, there is a high probability that such a retention suture will extrude because of a foreign body reaction.

B. Additional expert reports received following grant of stay and in consideration of the materials submitted by Stan Smith, M.D. (full comments and curricula vitae attached)

1. Walter T. Unger, M.D., Associate Professor
Department of Medicine (dermatology), University of Toronto
66 Avenue Road
Toronto, Ontario M5R 3N8

Dr. Unger mentions three specific cases he has seen in which the dermal suture technique was associated with infections around the sutures. The suture material acts as a foreign body and nidus for infection. Dr. Unger points out the connection between the vasculature of the scalp and the meninges overlying the brain. Scalp infections, therefore, always carry with them the potential risk of spreading to the brain covering and hence the brain itself. He further points out that with chronic, even mild, infection, scarring is inevitable around the sites of the suture. He finds it unbelievable that Dr. Smith would state that scarring around the suture sites would be less than scarring seen in other surgical techniques. Scarring secondary to dermal suturing techniques will always occur according to Dr. Unger. He states that the dermal suture technique in which a suture is left in place in the scalp for an indeterminate period of time is medically inadvisable and possibly dangerous.

2. Emanuel Marritt, M.D., Associate Professor, Hair Transplant Department, University of Colorado, Health Services Center, School of Medicine
5445 DTC Parkway
Englewood, CO 80111

Dr. Marritt's comments on the retained Prolene scalp sutures, state that it is basic knowledge of medical students that the body's first line of defense against infection is the intact skin. By forcing a foreign body to keep a wound open indefinitely and intentionally preventing the skin from becoming intact, (such as with the suture retention procedure) the continued presence of the suture not only prevents natural wound closure, but acts as a wick, a ladder, down which surface bacteria can freely and continually migrate into the lower dermis and areolar tissue of the scalp. Compounding this problem is the presence of a hair prosthesis over the sutures providing the ideal growing conditions for bacteria; darkness, moisture and warmth. Dr. Marritt finds it incredulous that it is even necessary to write a letter about a procedure which so blatantly violates fundamental principles of ethical and logical medical practice.

Over the course of 20 years, Dr. Marritt has seen at least five patients with active bacterial infections requiring immediate suture removal and the use of systemic and topical antibiotics. In addition, he has seen at least 20 patients with multiple scars left in their heads from the movement of multiple sutures around the scalp. He has included photographs. He explains that in the course of a normal day, constant tension, tugging, irritation and wound opening occur, creating new foci of infection and inflammation, requiring removal of sutures and relocation to a new site. The final outcome is a head laced with permanent scars, both on the bald scalp and in the fringe hair itself. These scars are often hypopigmented, retracted and obvious, visible in the front of the scalp when the hair addition is removed. The clients then are forced to wear a hair addition constantly in order to hide the scars. He states that the process fails to adhere to logical, ethical and sound physiologic medical principles and although the vast majority of inflammation, abscesses and cellulitic infections remain localized and heal quickly with removal of the suture, responding well to antibiotics, they can cause more serious systemic complications. He describes the risk of serious complications, the ever increasing number of scalp scars, the possibility of suture avulsion and the deliberate installment of a permanent ideal system for bacterial growth and infection as "perfectly absurd". Dr. Marritt states that the first principle of all medical practice, "above all else, first do no harm" warrants the banning of an invasive, illogical and disfiguring procedure employed solely for cosmetic purposes.

3. Sheldon S. Kabaker, M.D., F.A.C.S., Associate Clinical Professor, Department of Otolaryngology, University of California Medical Center, San Francisco
3324 Webster St.
Oakland, CA 94609

Dr. Kabaker tells of his experience with hair pieces that have been affixed to the scalp by suture. He states that almost every hair transplant surgeon he has spoken with has had negative experiences and has had to remove a number of these devices. In his own personal experience he has removed 8 or 9 of these over the past 15 years, each patient complaining of pain, purulent discharge and in some cases, hair loss. After removal, the local condition of the scalp improved dramatically, although a number of cases had permanent hair loss in the residual scars. He states that overseas colleagues have mentioned better success with the process, but it requires frequent maintenance by the surgeon in follow-up. The course of events that most surgeons have seen in the U.S. follow basic surgical principles of wound contamination. A suture going through the skin left in place for a long time will elicit an inflammatory response.

4. Jeffrey Weidig, M.D., Board Certified Nephrologist, practicing hair transplantation for 21 years
6243 Executive Blvd.
Rockville, MD 20852

Dr. Weidig states that he has observed no less than 40 to 45 patients who have had hair pieces sutured to the scalp. These patients arrived at his office generally in great pain and often with complaints of spontaneous bleeding or infection. The patients universally exhibited the following characteristics: chronic infection in the scalp, foreign body reaction to the sutures, evidence of inflammation and swelling around the suture sites and a malodorous build-up of the epidermis with caking of the epidermis, sebaceous material, pus and sometimes dried soap under the toupee. Rapid healing occurred following scrubbing the area, removing the sutures and treatment with a broad spectrum antibiotic for two weeks. Some described symptoms of chronic fatigue, listlessness and weakness which improved after the infections cleared. All of the patients to one degree or another were left with residual scarring over the scalp and sometimes the forehead. Dr. Weidig notes that when foreign material is embedded from the inside of the skin to the outside, universally there is infection. This applies to suturing of toupees to the scalp and is compounded by the fact that the scalp cannot be adequately cleaned. Dr. Weidig states that it is clear from the medical literature and his own experience that the suturing of a toupee to the scalp is not medically or surgically sound, is unsafe and should be discontinued.

5. Jane Ann Arcey, President, J.A. Alternatives, non-medical hair replacement specialist
12 Route 17 North
Paramus, NJ 07652

Ms. Arcey is a hair replacement specialist operating a non-surgical hair replacement company. She states that many suture-wearing clients, both those with new sutures and those who have worn sutures for many years, have come to her to seek help. She describes common side effects of the suture process that she has seen, including permanent scarring, infections accompanied by bloody blisters and pain, insomnia because of pain, bleeding and oozing of the suture area. She refers these clients to physicians who remove the sutures and follow-up with appropriate medical care. These clients seek not only a solution to their hair loss, but also a means of covering up the unsightly dog-eared permanent scars which often impair the quality of her work because of misplaced sutures protruding into the forehead. This replacement forces her to design a less than natural looking hair replacement that will cover the scars.

Ms. Arcey states that she has seen approximately 300 clients who initially opted for the suture method of hair replacement. Ms. Arcey has enclosed photographs of severe scalp scarring in one such patient.

6. William R. Rassman, M.D., Board Certified surgeon engaged in hair replacement since 1989

Dr. Rassman states he has treated many patients "victimized" by the procedure. He further states that placing synthetic material through the skin for long term application universally causes infection, often indolent with extensive fasciitis. Removal and antibiotic therapy can cure the infection, but the scalp never fully recovers. Reduced compliance and permanent scarring of the scalp above and below skin level is evident for years.

C. Additional material reviewed by the Committee

1. Norman Orentreich, M.D.

In the submissions of Stan Smith, M.D., a statement is made that Dr. Smith received training in the cosmetic suture process from Joseph Buono, D.O. who, according to Dr. Smith was trained by Dr. Orentreich. Dr. Orentreich has submitted a letter dated April 6, 1994 stating that the cosmetic suturing procedure utilizing Prolene sutures has never been performed, taught or otherwise endorsed by him in his dermatologic practice.

2. Articles

In a brochure by International Cosmetic Laboratories, the CSP procedure is described and references are given to the JAMA volume 179 pages 780-782 and the British Journal of Surgery volume 52 No. 5 as supporting utilization of the procedures. Reprints of these articles were obtained. The first entitled "Polypropylene Monofilament" by Usher, Allen, et al, read before the 21st Annual Meeting of the AMA, Prolene is discussed as a suture for closing contaminated wounds. It describes Prolene as a relatively inert material and specifically states on page 138 "polypropylene monofilament appears to fill the need for a non-absorbable suture that can be used as a buried suture in contaminated wounds".

The second article referred to in the ICL literature regarding the CSP procedure is entitled "The Influence of Suture Materials and Methods on the Healing of Abdominal Wounds" by Herbert Haxton published in the British Journal of Surgery 1965 volume 52 No. 5 May pages 372-375. On page 374, the author states "the principle of using strong non-absorbable sutures of non-irritant material to support the wound until it is healed and then removing the sutures so that no chronic sinuses will form seems correct". Ten years ago, the author worked out a method whereby such a material can be inserted as a continuous suture buried except at the two ends and removed easily when wound healing is sufficiently advanced." Both articles refer to the Prolene suture as being suitable for buried sutures or sutures to be removed after wound healing. Nowhere is the application of the Prolene suture recommended for permanent implantation exposed to the exterior as in the cosmetic suture process described.

IV. Conference Calls

The Committee met via two conference calls and discussed the matter after reviewing the background material, expert reports received to date, the video tapes, briefs and the materials submitted by counsel for Stan Smith, M.D. Dr. Cha stated that the procedure was brief and simple to perform, but questioned it's success on a long term basis. He described Prolene as a relatively inert substance, but as utilized in the cosmetic suture process, infection would be virtually inevitable since the sutures are designed to be buried whereas in this process, they are left extruded through the skin exposed to the elements. The presence of the overlying hair piece virtually prevents adequate shampooing through the hair to clean the sutures properly, which is required to prevent infection. Under the circumstances, infection is inevitable. Furthermore, trauma from manipulation, combing or pulling the hair can frequently cause irritation, bleeding or total extrusion of the sutures. Removal of the sutures would then be necessary with permanent scarring remaining. While other methods of hair replacement can be permanent, the cosmetic suture process is not permanent. It frequently requires removal and replacement of sutures which only compound the problems. It was pointed out that the procedure is against surgical principles defined by Halstead. Adequate follow-up evaluations have never been done to our knowledge. A recent questionnaire instituted by Stan Smith, M.D. is very inadequate, as it is only a form questionnaire to a limited group, not acceptable as a scientific study.

After the time of the conference calls, additional expert reports and comments were received which have been included with this report.

V. Committee Review

After thorough discussion, the Committee enumerated the following points:

A. The cosmetic suture procedure is absolutely in violation of basic surgical principles by leaving a foreign body (suture) channeled into the skin and exposed to elements of moisture, heat, bacterial contamination, poor ventilation and repeated trauma with inadequate access to shampooing and cleansing.

B. Normally, surgical sutures should be removed within a 7 to 10 day period following a surgical procedure. The cosmetic suture technique flies in the face of this basic requirement. Infection is virtually guaranteed if left in place for a long enough period of time and must be fought off for life.

C. The risk of infection would be greatly enhanced in individuals whose immunity is impaired for various reasons. These could include diabetics, patients receiving chemotherapy or steroids and others. These conditions could develop at any time in recipients of the cosmetic suture process, greatly increasing the risk of serious infection.

D. Although the scalp with its rich blood supply tends to minimize the almost inevitable chronic infections resulting from the cosmetic suture technique, the scar tissue which eventually develops as the infected sutures are replaced will no longer have the rich blood supply of a healthy scalp which can result in further hair loss and increased infection.

E. Eventually, as a result of constant irritation, and/or infection, many if not most sutures will be rejected or will require removal and possible reinsertion elsewhere with a repeat cycle of problems.

F. The performance of the procedure in New Jersey as known to us, by the CSP Medical Group, appears to constitute itinerant surgery. Meticulous regular repeated follow-up is absolutely necessary to control infection, yet patients are solicited from all over the world and once the surgeon performs the procedure, it appears patients leave the area despite the potential for acute and chronic local infection and disfiguring scarring. The documented reports of experts from coast to coast verify complications experienced by persons undergoing the procedure. While this is not a scientific study, it does verify that the problems causing concern to the Committee do exist.

G. The claims of success with the procedure are not confirmed by any reliable statistics or studies.

VI. Conclusions of the Committee

The cosmetic suture technique violates basic principles of surgery and the basic tenet of medicine to do no harm. The procedure puts all patients at risk, some greater than others. The risks will continue and will increase indefinitely as long as the sutures remain in the scalp. In view of the purely cosmetic purpose served by the procedure which is in violation of basic surgical principles, the procedure is unacceptable.

A. The procedure should be banned in New Jersey by withdrawing the current stay effective on the date responses to due comments by Stan Smith, M.D. and CSP Medical Group are published.

B. Follow-up maintenance of patients who have already undergone the technique should the patient desire to continue utilizing the presently implanted sutures be limited to:

1. Treatment of infection if feasible
2. Follow-up cleaning, tightening or other maintenance measures
3. Under no circumstances should new sutures be added
4. Removal of sutures as necessary. Nothing in the rule should preclude or prevent follow-up for maintenance and infection control so long as existing sutures are not replaced and no new sutures shall be implanted.

TREASURY-TAXATION

(a)

DIVISION OF TAXATION

Organization of the Division of Taxation

Adopted New Rules: N.J.A.C. 18:1

Proposed: July 5, 1994 at 26 N.J.R. 2752(a).

Adopted: September 6, 1994 by Richard D. Gardiner, Acting Director, Division of Taxation.

Filed: September 8, 1994 as R.1994 d.503, **without change.**

Authority: N.J.S.A. 54:50-1.

Effective Date: October 3, 1994.

Expiration Date: October 3, 1999.

Summary of Public Comments and Agency Responses:

No comments received. Pursuant to Executive Order No. 66(1978), N.J.A.C. 18:1 expired on July 21, 1994. In accordance with N.J.A.C. 1:30-4.4(f), the expired rules, with amendments, are adopted herein as new rules.

Full text of the rules proposed for readoption adopted herein as new rules can be found in the New Jersey Administrative Code at N.J.A.C. 18:1.

Full text of the adopted amendments follows:

18:1-1.1 Organization of the Division of Taxation

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

(c) The following functional subunits exist under the Director and are headed by Assistant Directors:

1. Audit;
2. Processing/Administration Activity;
3. Compliance;
4. Property Administration; and
5. Planning and Policy.

(d) Beneath the level of Assistant Director, subunits as required are headed by Superintendents and Branch Chiefs.

(e) (No change in text.)

18:1-1.2 Public information and submissions or requests

(a) The public may obtain general information regarding their rights and responsibilities under the tax laws of the State of New Jersey by writing to the New Jersey Division of Taxation Taxpayer Services Branch, Office of Communications, CN 281, Trenton, NJ 08646-0281. The public may obtain specific information regarding their rights or responsibilities under one or more State tax laws by writing to the New Jersey Division of Taxation, Tax Services Branch, 50 Barrack Street, CN 269, Trenton, NJ 08646-0269.

(b) The Division will provide an explanation of the audit and collection processes and of the taxpayer's rights pursuant to P.L. 1992, c.175 before or at interviews with taxpayers relating to the determination or collection of tax. For this purpose, a taxpayer may request or receive Publication TBR-P from the Division.

(c) To request New Jersey tax forms or publications, a taxpayer may call the Tax Hotline at 609-588-2200 or 800-323-4400 (touch-tone only), or write New Jersey Division of Taxation, Forms Distribution Section, 50 Barrack Street, CN 269, Trenton, NJ 08646-0269.

18:1-1.3 Background investigations

(a) The Division of Taxation may conduct background inquiries on applicants for Division positions to ensure that only qualified individuals of good character are appointed and that information contained on Taxation employment applications is accurate and complete. The inquiry will be conducted and the acquired information will be kept confidential in accordance with the Civil Service Act (N.J.S.A. 11A:1-1 et seq.) and any other applicable laws, and may include the following:

1.-7. (No change.)

18:1-1.4 Exemption opinions

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

(e) Requests for exemption opinions should be submitted to the Tax Services Branch, Division of Taxation, 50 Barrack Street, CN 269, Trenton, NJ 08646-0269.

18:1-1.8 Conference and Appeals Branch

(a) A Conference and Appeals Branch within the Division of Taxation exists in accordance with N.J.S.A. 54:49-18 to conduct administrative hearings and reviews of findings or assessments of the Director, except administrative hearings and reviews of findings of transfer inheritance and estate taxes which are conducted by the Transfer Inheritance Tax Branch. See N.J.S.A. 18:26-12.5-12.10. A protest, and a request for hearing, if any, by a taxpayer to the Conference and Appeals Branch must be made within the time mandated by the appropriate taxing statute, if any. Unless the appropriate taxing statute provides for a different period within which a protest must be filed, a protest, and a request for hearing, if any, must be made pursuant to N.J.S.A. 54:49-18 within 90 days of the giving of the notice or the action of the Director sought to be reviewed. In the case of a petition for a redetermination under the Gross Income Tax Act, the taxpayer may file a petition within 90 days after the mailing of the notice (or 150 days if the notice is addressed to a person outside of the United States) pursuant to N.J.S.A. 54A:9-9(b). The administrative hearing or protest review results in a Final Determination which confirms, modifies or vacates the finding or assessment under review. The Final Determination is then subject to judicial review in the New Jersey Tax Court within 90 days of the date of issuance pursuant to N.J.S.A. 54:51A-14 and 54A:9-10. The 90 day period for appeals to the Tax Court cannot be relaxed.

(b) Upon the timely filing of a protest and a request for hearing pursuant to (a) above, the hearing process shall be commenced with the submission of a written protest statement as defined by this rule and a request for a hearing, if a hearing is desired. A written protest shall be signed by the taxpayer, by the taxpayer's duly authorized officer or duly authorized representative, under oath, and shall contain the following documents, information and payments:

1.-6. (No change.)

7. The specific facts supporting each ground asserted, and a summary of evidence or documentation to be presented in support of taxpayer's position. (If this requirement cannot be met within the 90 day period, the Division will, upon written request, extend the time for complying with this submission for an additional 90 days.); and

8. (No change.)

(c) A submission which, in particular, does not set forth the information in (b)5, (b)6 and (b)7 above will not be considered a valid protest and will not result in a hearing or review. If a taxpayer does not submit a payment under (b)8 above, a hearing will nevertheless be held. The Division may, however, in accordance with applicable law, proceed to collect outstanding amounts which are due.

(d) Hearings are scheduled whenever possible by telephone on a mutually acceptable date for both the taxpayer representative and the conferee, who represents the Division. Cancellations are discouraged except in cases that make attendance unavoidable. In the event that a cancellation must be granted, the hearing will be rescheduled on the Conference and Appeals Branch's soonest available date. A Final Determination based on facts documented in the file may be issued if the taxpayer fails to appear at a scheduled conference.

(e) Transfer inheritance tax hearings are held pursuant to N.J.A.C. 18:26-12.5 to 12.10 and may be scheduled by contacting the Transfer Inheritance Tax Branch, 50 Barrack Street, Trenton, NJ 08646. Railroad tax hearings are held pursuant to N.J.A.C. 18:23-11.2 and 11.3 and may be scheduled by contacting Property Administration, 50 Barrack Street, Trenton, NJ 08646.

(f) Protests, petitions for redetermination, and requests for administrative hearings should be submitted to the Conference and Appeals Branch, Division of Taxation, 50 Barrack Street, CN 269, Trenton, NJ 08646-0269.

OTHER AGENCIES

(a)

CASINO CONTROL COMMISSION

Accounting and Internal Controls
Gaming Equipment
Slot Tokens
Prize Tokens
Slot Machine Hoppers

Adopted New Rules: N.J.A.C. 19:46-1.34 through 1.36
Adopted Amendments: N.J.A.C. 19:40-1.2; 19:45-1.1, 1.9, 1.9B, 1.14, 1.15, 1.24, 1.24B, 1.25A, 1.34, 1.35, 1.36, 1.36A, 1.37, 1.38, 1.39, 1.40, 1.40A, 1.40C, 1.41, 1.41A, 1.43, 1.44, 1.46, 1.46A and 1.46B; 19:46-1.5, 1.6, 1.20, 1.26 and 1.33; 19:51-1.1 and 1.2; and 19:54-1.6

Proposed: July 18, 1994 at 26 N.J.R. 2872(a) and 3253(a).
Adopted: September 8, 1994 by the Casino Control Commission, James R. Hurley, Acting Chairman.
Filed: September 12, 1994 as R.1994 d.504, **with substantive and technical changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 5:12-63c, 69, 70i, 99 and 100.

Effective Date: October 3, 1994.
Expiration Dates: August 15, 1999, N.J.A.C. 19:40; August 15, 1997, N.J.A.C. 19:45; April 15, 1998, N.J.A.C. 19:46; August 15, 1996, N.J.A.C. 19:51; December 15, 1994, N.J.A.C. 19:54.

Agency Note: Subsequent to the publication of this reproposal, the Commission approved the adoption of two other separate proposals regarding complimentary cash gifts in the September 19, 1994, New Jersey Register at 26 N.J.R. 3891(c) and 3894(a). This adoption, on prize tokens, has three sections, N.J.A.C. 19:45-1.1, 1.9B and 1.24, in common with the complimentary cash gifts adoption, and another section, N.J.A.C. 19:45-1.36, in common with the embedded bill changer adoption. Each of those sections herein reflect the intervening amendments from the other two proposals, which became effective while the prize token reproposal was pending and consequently were not included in that reproposal at the time of its publication.

Summary of Agency-Initiated Changes:

The term "complimentary cash gift" in the definition of "patron cash deposit" N.J.A.C. 19:45-1.1 will be made plural upon adoption in order for that term to be parallel with the other terms contained in the definition. Similar changes will also be made to N.J.A.C. 19:45-1.24, which contains the procedures on the acceptance, accounting for and redemption of patron cash deposits.

N.J.A.C. 19:45-1.36(j), as it exists prior to this adoption, contains cross-references to subsections (h) and (i). Further, throughout N.J.A.C. 19:45-1.36(k), as it exists prior to this adoption, are cross-references to paragraphs within that subsection. However, upon adoption of the prize token reproposal, subsections (g) through (k) will be recodified as subsections (f) through (j), respectively. Consequently, the correct cross-references will now be added as reflected in the adoption.

Similar cross-reference corrections are being made upon adoption to the following sections:

1. N.J.A.C. 19:45-1.41A, which will now refer to N.J.A.C. 19:45-1.36(j) rather than (k); and,
2. N.J.A.C. 19:46-1.5(a), which will now refer to subsection (e) rather than (f).

A correction to an internal cite at N.J.A.C. 19:45-1.44(a) which will now refer to N.J.A.C. 19:45-1.42(o) rather than N.J.A.C. 19:45-1.42(d) is the result of recodifications in N.J.A.C. 19:45-1.42 which took place in former rulemakings (see 23 N.J.R. 3243(a), 24 N.J.R. 858(c), 25 N.J.R. 4873(a) and 26 N.J.R. 1110(b)) but were not picked up at the time.

Typographical errors in N.J.A.C. 19:45-1.37 and 19:46-1.26(c)5 are also being corrected on adoption.

The Commission routinely approves slot tokens that have a statement advising patrons that the token will only be accepted by the casino licensee that issued the slot token. In the past, the Commission has permitted that statement to appear on only one face of the slot token. As proposed, N.J.A.C. 19:46-1.33(b)3 would require that statement to appear on each face of a slot token.

It was never the Commission's intention, however, to require casino licensees to incur the unnecessary expense of destroying all those slot tokens which it had previously approved with the statement on only one face, and then replacing them with tokens bearing the statement on each face. The statement on a single side has always been adequate notice to patrons of the acceptability of slot tokens only at the casino where issued, particularly given that the statement on the token merely supplements the general notice to the same effect that is required to be prominently posted pursuant to N.J.A.C. 19:46-1.5(k) (recodified in the reproposal as N.J.A.C. 19:46-1.35(f)). Thus, the Commission, without the need for further public notice or comment, is deleting the word "each" from N.J.A.C. 19:46-1.33(b)3 and replacing it at adoption with the phrase, "at least one."

Summary of Public Comments and Agency Responses:

Comments on the reproposal were received from the Division of Gaming Enforcement (Division), Harrah's Casino Hotel (Harrah's) and Global Gaming Distributors, Inc. (Global).

COMMENT: Harrah's commented that it fully supports the reproposal and recommends its adoption.

RESPONSE: Accepted.

COMMENT: The Division and Global each commented on N.J.A.C. 19:46-1.33(e), which, as reproposed, requires each prize token to have a metal content that is different from the metal content of any slot token that is approved for use. Each commenter recommends that the Commission, rather than impose a rigid metal content requirement, should simply ensure that prize tokens are not used in slot machines that accept a higher denomination slot token, which the commenters believe could be accomplished by the Commission requiring such prize tokens and slot tokens to be different from each other in terms of metal content, diameter or thickness, or by any other means approved by the Commission.

RESPONSE: The primary purpose in requiring prize tokens to have physical characteristics that are different from those of slot tokens is to implement the requirement that prize tokens not be capable of activating slot machine play. It is reasonable to expect that a typical slot patron will not attempt to use a higher denomination prize token in a lower denomination slot machine because the cash value of such a prize token will be in excess of the machine's denomination, which would mean that the patron would lose money by engaging in such a transaction. Thus, the risk to the integrity of gaming operations has always been that a lower denomination prize token will be used to activate play at a higher denomination slot machine.

The Commission, as one means of ensuring that large denomination slot machines do not accept prize tokens of lesser denomination, has already recognized the importance of requiring a prize token to have a diameter that is different from the diameter of a slot token of higher denomination. See N.J.A.C. 19:46-1.33(d)1i, as reproposed. The reproposal also requires casino licensees to count, at face value, any prize tokens that are found in slot drop buckets, slot drop boxes or slot machine hoppers, so that the State is assured of receiving the appropriate amount of gross revenue tax.

As the commenters point out, the reproposal already recognizes that the risk to be minimized is the use of a prize token in a higher denomination slot machine. Based on the foregoing, it appears that the Commission's original intent, although expressed in the reproposal, is not as clear as it could be, at least insofar as the reproposal suggests that there are limitations on the Commission's authority to use differences in diameter, metal content or thickness, either singly or in combination, to prevent prize tokens from being used to activate play in slot machines that are capable of accepting slot tokens of higher denomination than the prize token.

Thus, the Commission, without the need for further public notice or comment, is amending N.J.A.C. 19:46-1.33 upon adoption to incorporate the comments of the Division and Global. Although the adoption will thereby more clearly express the Commission's original intent to provide flexibility in the design specifications of prize tokens, the use of such tokens to activate slot machine play will nonetheless continue to be prohibited. N.J.A.C. 19:46-1.34(c).

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

19:40-1.2 Definitions

(a) (No change.)

(b) The following words and terms, when used in these rules, shall have the following meanings, unless the context clearly indicates otherwise:

...

"All-purpose slot machine hopper" or "all-purpose hopper" is defined in N.J.A.C. 19:45-1.36.

...

"Bill changer" means any mechanical, electrical, or other device, contrivance or machine designed to interface mechanically, electrically or electronically with a slot machine for the purpose of dispensing from an all-purpose hopper an amount of coins or slot tokens that is equal to the amount of currency or the denomination of a coupon inserted into the bill changer.

...

"Casino check" means a check which is drawn by a casino licensee upon the licensee's account at any New Jersey banking institution and made payable to a person in redemption of the licensee's gaming chips, pursuant to N.J.S.A. 5:12-100(k), in return, either in whole or in part, of a person's deposit on account with the casino licensee pursuant to N.J.S.A. 5:12-101(b), or for winnings from slot machine or simulcast wagering payoffs, and which is identifiable in a manner approved by the Commission as a check issued for one of these purposes. At a minimum, such identification method shall include an endorsement or imprinting on the check which indicates that the check is issued in redemption of gaming chips, in return of funds on account with the casino licensee or for winnings from slot machine or simulcast wagering payoffs.

...

"Change machine" means any mechanical, electrical, or other device which operates independently of a slot machine which, upon insertion of currency therein, shall dispense an equivalent amount of loose or rolled coin or slot tokens.

"Changeperson" means a person employed in the operation of a casino to possess an imprest inventory of coin, currency and slot tokens received pursuant to N.J.A.C. 19:45-1.35(d) and used for the even exchange with slot machine patrons of coupons, coin, currency, gaming chips, slot tokens and prize tokens.

"Coin acceptor" means the slot and accompanying device, approved by the Commission, that is the part of a slot machine into which a patron, in the normal course of operating the machine, inserts a coin or slot token for the purpose of activating play and which is designed to identify those coins or slot tokens so inserted that are appropriate for use in that machine and to reject all slugs, prize tokens and other non-conforming objects so inserted.

...

"Hopper" is defined in N.J.A.C. 19:45-1.36.

...

"Machine denomination equivalent" is defined in N.J.A.C. 19:45-1.37.

...

"Payout-only jackpot meter" and "payout-only win meter" are defined in N.J.A.C. 19:45-1.37.

"Payout-only slot machine hopper" or "payout-only hopper" is defined in N.J.A.C. 19:45-1.36.

...

"Prize token" is defined in N.J.A.C. 19:46-1.33.

...

"Slot token" is defined in N.J.A.C. 19:46-1.33.

"Slug" means any object, other than coin appropriately used to activate play, that is found in a slot machine hopper, slot drop bucket or slot drop box and that is not approved pursuant to N.J.A.C. 19:46-1.33.

...

19:45-1.1 Definitions

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

...

"Patron cash deposit" means an amount of cash, cash equivalents, complimentary cash gift**s***, slot tokens, prize tokens, gaming chips or plaques deposited with a casino licensee by a patron for his or her subsequent use pursuant to N.J.A.C. 19:45-1.24.

...

19:45-1.9 Complimentary services or items

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

(i) Prize tokens shall not be offered or provided as a complimentary service or item.

19:45-1.9B Procedures for complimentary cash and noncash gifts

(a) No casino licensee shall offer or provide, either directly or indirectly, any complimentary cash or noncash gift to any person or his or her guests except in accordance with the provisions of N.J.S.A. 5:12-102m and this section. For the purposes of this section, "complimentary cash or noncash gift" does not refer to any complimentary service or item which is provided pursuant to N.J.S.A. 5:12-102m (1) through (3), N.J.A.C. 19:45-1.9(f), 19:45-1.9(h) or 19:45-1.46. Complimentary cash gifts shall include, without limitation:

1.-2. (No change.)

3. Slot tokens issued to any person; provided, however, that prize tokens shall not be offered or provided as a complimentary service or item;

4.-5. (No change.)

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

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

19:45-1.14 Cashiers' cage; satellite cages; master coin bank; coin vaults

(a) (No change.)

(b) Each establishment shall have within the cage or in such other area as approved by the Commission a physical structure known as a master coin bank to house master coin bank cashiers. The master coin bank shall be designed and constructed to provide maximum security for the materials housed therein and the activities performed therein and serve as the central location in the casino for the following:

1. The custody of currency, coin, prize tokens, slot tokens, forms, documents and records normally generated or utilized by master coin bank cashiers, slot cashiers, changepersons, and slot attendants;

2. The exchange of currency, coin, coupons, prize tokens and slot tokens for supporting documentation;

3. The responsibility for the overall reconciliation of all documentation generated by master coin bank cashiers, slot cashiers, changepersons, and slot attendants;

4.-5. (No change.)

(c) The cage shall be designed and constructed to provide maximum security for the materials housed therein and the activities performed therein; such design and construction shall be, at a minimum, as effective as the following:

1. Fully enclosed except for openings through which materials such as gaming chips and plaques, slot tokens and prize tokens, patron checks, cash, records, and documents can be passed to service the public, gaming tables, and slot booths;

2.-4. (No change.)

(d) (No change.)

(e) Each establishment may have separate areas for the storage of coin, prize tokens and slot tokens ("coin vaults") in locations outside the cage or master coin bank, as approved by the Commission.

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

19:45-1.15 Accounting controls for the cashiers' cage, satellite cages, master coin bank, and coin vaults

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

(c) The cashiers' cage and any satellite cage shall be physically segregated by personnel and function as follows:

1. General cashiers shall operate with individual imprest inventories of cash and, at the discretion of the casino licensee, slot tokens, and such cashiers' functions shall include, but are not limited to, the following:

i. (No change.)
ii. Receive gaming chips, slot tokens and prize tokens from patrons in exchange for cash;
iii. Receive cash, traveler's checks and other cash equivalents from patrons in exchange for currency, slot tokens or coin;
iv. (No change.)
v. Receive cash, cash equivalents, slot tokens, prize tokens and gaming chips from patrons in exchange for Customer Deposit Forms;
vi. (No change.)
vii. Receive Customer Deposit Forms from patrons in exchange for cash or slot tokens;
viii. Receive coupons from patrons in exchange for currency, slot tokens or coin, in conformity with N.J.A.C. 19:45-1.46(j).
ix.-x. (No change.)
xi. Receive from check, chip bank, master coin bank and reserve cash cashiers documentation with signatures thereon, required to be prepared for the effective segregation of functions in the cashiers' cage;
xii. (No change.)
xiii. Exchange Slot Counter Checks in accordance with N.J.A.C. 19:45-1.25A;
xiv. Prepare Jackpot Payout Slips in accordance with N.J.A.C. 19:45-1.40; and
xv. Receive slot tokens from, and transmit slot tokens and prize tokens to, the master coin bank in exchanges supported by proper documentation.
2. Check cashiers shall not have access to cash, gaming chips and plaques and such cashiers' functions shall include, but are not limited to, the following:
i.-vii. (No change.)
3. Chip bank cashiers shall not have access to currency or cash equivalents, but shall operate with a limited inventory of $0.50 and $0.25 cent coins which may only be used to facilitate odds payoffs or vigorish bets. Such cashiers' functions shall include, but are not limited to, the following:
i.-v. (No change.)
4. Reserve cash ("main bank") cashiers' functions shall include, but are not limited to, the following:
i. Receive cash, cash equivalents, issuance copies of Slot Counter Checks, original copies of Jackpot Payout Slips, personal checks received for non-gaming purposes, slot tokens, prize tokens, gaming chips and plaques from general cashiers in exchange for cash;
ii.-x. (No change.)
5. Master coin bank cashiers' functions shall include, but are not limited to, the following:
i. Receive currency, coin, slot tokens, prize tokens, gaming chips, and coupons from slot cashiers in exchange for proper documentation;
ii. (No change.)
iii. Provide slot cashiers with currency, coin, prize tokens and slot tokens in exchange for proper documentation;
iv.-v. (No change.)
vi. Prepare the daily bank deposit of excess cash;
vii. Prepare Jackpot Payout Slips in accordance with N.J.A.C. 19:45-1.40; and
viii. Receive slot tokens and prize tokens from, and transmit slot tokens to, general cashiers in exchanges supported by proper documentation.
(d)-(e) (No change.)
(f) Coin vaults authorized pursuant to N.J.A.C. 19:45-1.14(e) shall be under the control of the casino accounting department. The storage of coin, prize tokens or slot tokens in, or the removal of coin, prize tokens or slot tokens from, any coin vaults shall be properly documented, and the amount of coin, prize tokens and slot tokens in each coin vault shall be reconciled at the end of each gaming day.

19:45-1.24 Procedure for acceptance, accounting for and redemption of patron cash deposits

(a) Whenever a patron requests a casino licensee to hold his or her cash, cash equivalents, complimentary cash gift**s***, slot tokens, prize tokens, gaming chips or plaques for subsequent use, *[or she]* the patron shall deliver the cash, cash equivalents, complimentary cash gift**s***, slot tokens, prize tokens, gaming chips or plaques to a general cashier who, after converting any of those non-cash items into cash, shall deposit the cash for credit to the patron cash deposit account established for that patron pursuant to this section.
(b)-(g) (No change.)
(h) On the original and duplicate of the Customer Deposit Form, or in stored data, the general cashier shall record, at a minimum, the following information.
1.-4. (No change.)
5. Nature of the amount received (cash, cash equivalents, ***complimentary cash gifts,*** chips, plaques, slot tokens, prize tokens or wire transfer).
(i)-(q) (No change.)

19:45-1.24B Procedure for sending funds by wire transfer

(a) Whenever a patron requests a casino licensee to send funds by wire transfer to a financial institution on behalf of the patron, the patron shall present to the general cashier the cash, cash equivalents, casino check, chips, plaques, slot tokens or prize tokens representing the amount sought to be transferred, or, in the case of a cash deposit, request that the unused balance of the cash deposit be transferred. In the case of a cash deposit, the procedures set forth in N.J.A.C. 19:45-1.24 for redemption of a cash deposit shall be observed.
(b) The general cashier shall obtain from the reserve cash cashier a Wire Transfer Request Form, a four-part serially prenumbered form, and shall record thereon, at a minimum, the information required by (b)1 through (b)7 below:
1.-3. (No change.)
4. The source of funds to be transferred (cash, cash equivalent, casino check, chips, plaques, slot tokens, prize tokens or cash deposit);
5.-8. (No change.)
(c)-(g) (No change.)

19:45-1.25A Procedure for exchange of slot counter checks by slot patrons

(a) A casino licensee may offer credit to slot patrons pursuant to N.J.A.C. 19:45-1.27. Slot Counter Checks may be prepared by slot cashiers at slot booths and coin redemption locations and by general cashiers at the cashiers' cage in exchange for which patrons may receive any combination of coin, currency or slot tokens. For casino licensees which issue credit to slot players, the following procedures and requirements over Slot Counter Checks shall be observed:
1.-3. (No change.)
(b) For each Slot Counter Check exchanged, in accordance with (a) above, the general cashier or slot cashier shall:
1.-5. (No change.)
6. Receive the signed original and all duplicate copies of the Slot Counter Check directly from the patron. The general cashier or slot cashier shall, if verification occurs in accordance with (b)1i above, compare the patron's signature on the signed Slot Counter Check to the form referenced in (b)1 above and sign the form referenced in (b)1 above if the signatures appear to agree. In no instance shall currency, coin or slot tokens be given to the patron prior to the receipt of the signed copy of the Slot Counter Check by the general cashier or slot cashier. Distribution of the Slot Counter Check copies shall be as follows:
i. The issuance copy of the Slot Counter Check, which shall serve as documentation of the exchange of currency, coin or slot tokens for the Slot Counter Check and shall be maintained by the general cashier or slot cashier in his or her imprest fund immediately after the issuance of currency, coin or slot tokens to the patron.
ii.-iii. (No change.)
(c) Nothing in this section shall preclude a casino licensee from issuing a Slot Counter Check to a patron directly at a slot machine, provided the casino licensee follows the procedures and requirements established below:
1.-3. (No change.)

4. The accounting department representative, with no incompatible functions, shall verify the currency, coin and/or slot tokens against the amount recorded on the Slot Counter Check and the Request. If in agreement, the accounting department representative shall sign the original and duplicate copy of the Request and return the duplicate copy of the Request to the general cashier or slot cashier.

5. (No change.)

6. Once the currency, coin and/or slot tokens has been verified in accordance with (c)4 above, the funds shall be secured in a sealed envelope or container along with the original and all copies of the Slot Counter Check and the original Request for transportation to the patron by the accounting department representative in the presence of the slot supervisor referenced in (c)1 above.

7.-10. (No change.)

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

19:45-1.34 Slot booths

(a) Each establishment may have on or immediately adjacent to the gaming floor one or more physical structures, each to be known as a slot booth, to house one or more slot cashiers and to serve as the central location in the casino or, when there are multiple slot booths, in that portion of the casino, for the following:

1. (No change.)

2. The exchange by patrons of coin for currency or slot tokens;

3. The exchange by patrons of currency for coin or slot tokens;

4. The exchange by patrons of gaming chips, prize tokens or slot tokens for currency, slot tokens or coin;

5. The exchange by patrons of coupons for currency, coin or slot tokens in conformity with N.J.A.C. 19:45-1.46(j);

6. The exchange by patrons of signed Slot Counter Checks for currency, coin or slot tokens, or any combination thereof, in conformity with N.J.A.C. 19:45-1.25A;

Recodify 8.-11. as 7.-10. (No change in text.)

11. The exchange with the master coin bank of any coin, currency, slot tokens, prize tokens, chips, plaques, issuance copies of Slot Counter Checks and documentation and the related preparation of a Slot Booth Exchange Slip, which shall be a two-part, serially prenumbered form signed by the master coin bank cashier, slot cashier, and the security department member responsible for transporting the funds. Except for the exchanging of coin, currency, prize tokens and slot tokens with changepersons, the slot booth shall not be allowed to obtain coin, currency, prize tokens or slot tokens, from other than patrons, through exchange or otherwise, from any source other than the master coin bank or a coin vault approved pursuant to N.J.A.C. 19:45-1.14(e). An exchange with the master coin bank or coin vault must be accompanied by a Slot Booth Exchange Slip or by a Fill Slip authorizing the distribution of coins, prize tokens or slot tokens to the slot booth. An exchange with a changeperson must be documented in accordance with procedures approved by the Commission.

(b) (No change.)

19:45-1.35 Accounting controls for slot booths and change machines

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

(d) The slot booth inventory may be used to supply changepersons with an imprest inventory of coin, currency and slot tokens, provided that such inventory shall only be used to accept any combination of currency, coin, gaming chips, slot tokens, prize tokens or coupons presented by a patron in exchange for an equivalent amount of any combination of currency, coin or slot tokens. The slot booth inventory may also be used to provide a changeperson with coin, currency and slot tokens in exchange for an equal amount of any combination of coin, currency, coupons, prize tokens or gaming chips. The exchange of coupons shall be in accordance with N.J.A.C. 19:45-1.46(j). If a changeperson's inventory is obtained from a location other than a slot booth, the location and the procedures for the issuance and maintenance of the inventory shall be approved by the Commission.

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

19:45-1.36 Slot machines and bill changers; coin and slot token containers; slot cash storage boxes; entry authorization logs

(a) Each slot machine located in a casino shall have the following coin, prize token or slot token containers:

1. At least one but no more than two containers, each to be known as a payout reserve container ("hopper"), in which coins, prize tokens or slot tokens are retained by the slot machine to automatically pay jackpots or to dispense change as directed by a bill changer connected to the slot machine; provided, however, that:

i. Coins or slot tokens shall be retained in a separate hopper, known as an "all-purpose hopper," that is designed to accept coin or slot tokens of the same denomination, and only such coin or slot tokens, upon insertion thereof into the slot machine's coin acceptor, and that is capable of paying out or dispensing only coin or slot tokens of the same denomination as jackpots or as change; provided, however, that any coins or slot tokens that are accepted by the coin acceptor and that exceed the capacity of the hooper shall be diverted to the slot drop bucket, and if applicable, the slot drop box;

ii. Prize tokens shall be retained only in a separate hopper, known as a "payout-only hopper," that is capable of retaining and making jackpot payouts only of prize tokens of the same denomination, and that is incapable of making change or of accepting any coin or slot token upon insertion thereof into the slot machine's coin acceptor, which shall divert coins or slot tokens that it has accepted to the slot drop bucket or any applicable slot drop box.

iii. No slot machine shall have more than one all-purpose hopper unless each hopper accepts the same denomination of coin or slot token;

iv. Notwithstanding (a)1ii above, coins or slot tokens of the same denomination that are placed in a payout-only hopper exclusively through hopper fills may be retained in that hopper to make payouts to winnings patrons, subject to the Division's inspection and the Commission's approval of the machine as part of the review of that machine and of the internal controls therefor;

v. Unless both hoppers on slot machines with multiple hoppers either each contain the same denomination of coin, slot tokens or prize tokens, or are connected to win meters that satisfy the requirements of N.J.A.C. 19:45-1.37(b)4i and 19:46-1.26(c)5i or 19:45-1.37(b)4ii and 19:46-1.26(c)5ii, each automatic pay jackpot of coins, slot tokens or prize tokens that is made from a multiple hopper slot machine on a round of play shall be paid out only on the round of play when the winning combination is hit and only from one, but not both, of the machine's hoppers for any winning combination that is hit on that round, and no casino licensee shall offer or provide a jackpot at such slot machine that will be paid out from both hoppers for any winning combination that is hit on the same round; and

vi. Prize tokens shall not be placed in or retained by a payout-only hopper that retains coins or slot tokens pursuant to (a)1iv above;

2.-3. (No change.)

(b) (No change.)

(c) A slot drop box shall have:

1. A slotted opening through which coins and slot tokens can be deposited;

2.-3. (No change.)

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

(i) Any key removed from a department's secure area pursuant to (b), (c), (d), ***(g) or*** (h) *[and (i)]* above, shall be returned no later than the end of the shift of the department member to whom the key was issued, and the department shall establish a sign-out and sign-in procedure approved by the Commission for all such keys removed.

(j) Unless a computer which automatically records the information specified in *[(k)1,]* ***(j)1,*** 2, and 3 below is connected to the slot machines in the casino, the following entry authorization logs shall be maintained by the casino licensee:

1. (No change.)

2. Whenever it is required that a progressive controller not housed within the cabinet of a slot machine be opened, the information specified in *[(k)1]* ***(j)1*** above shall be recorded on a form to

be entitled "Progressive Entry Authorization Log." The Progressive Entry Authorization Log shall be maintained in the progressive unit and shall have recorded thereon a sequential number and serial number of the progressive controller.

3. With the exception of the transportation of slot cash storage boxes, pursuant to N.J.A.C. 19:45-1.17(a), whenever it is required that a bill changer, other than a separate slot cash storage box compartment, be opened, certain information shall be recorded on a form to be entitled "Bill Changer Log." The information shall include, at a minimum, the date, time, purpose of opening the bill changer, and the signature of the authorized employee opening the bill changer. The Bill Changer Log shall be maintained in the bill changer and shall have recorded thereon a sequential number and the serial number or asset number of the bill changer. If the bill changer is contained completely within the cabinet of a slot machine and there is no separate access to the bill changer unit, the information may be recorded on the Machine Entry Authorization Log required by *[(k)1]* **(j)1*** above, provided that any information that concerns the opening of the bill changer may be distinguished from any other information that concerns the opening of the slot machine or any other device connected thereto.

19:45-1.36A Slot machines; hopper storage areas

(a) A hopper storage area may be used in connection with the operation of the slot machine, for the purpose of temporarily storing coins, prize tokens or slot tokens that are to be deposited only into the slot machine's hopper that corresponds with the coin or type of token stored in the hopper storage area.

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

19:45-1.37 Slot machines and bill changers; identifications; signs, meters

(a) Unless otherwise authorized by the Commission, each slot machine in a casino shall have the following identifying features:

1.-3. (No change.)

4. A display on the front of the slot machine that provides fair notice of the following:

i. The rules of play, character combinations which will award payouts and the related payouts;

ii. If the slot machine offers a payout of merchandise or some other thing of value, a clear description of the merchandise or thing of value including its cash equivalent value (unless the payout is an annuity jackpot), the dates the merchandise or thing of value will be offered if the casino licensee establishes a time limit for offering the merchandise or thing of value as provided in N.J.A.C. 19:45-1.40A, and the availability or unavailability to the patron of the optional cash equivalent value authorized by N.J.A.C. 19:45-1.40A(m). The display need only contain the name or a brief description of the merchandise or thing of value offered, provided that a sign containing all of the information specified in (a)4ii above shall be displayed in a location near the slot machine as approved by the Commission;

iii. If the slot machine offers a progressive jackpot, the dates the progressive jackpot will be offered and the payout limit, if the casino licensee establishes a time limit or payout limit as provided in N.J.A.C. 19:45-1.39. If no time limit or payout limit is established, the display shall state that the casino licensee reserves the right to change or discontinue the progressive slot machine upon 30 days notice. The display need not contain this information provided that a sign which does contain this information shall be displayed in a location near the slot machine as approved by the Commission;

iv. If the slot machine is equipped with a payout-only hopper, a statement either that:

(1) Any prize tokens that are paid out as a jackpot from that hopper cannot be used to activate play at any slot machine; or

(2) Any coins or slot tokens that are paid out from that hopper cannot be used to activate play at that slot machine; and

v. If the slot machine is equipped with multiple hoppers and has the win meter permitted by (b)4ii below and N.J.A.C. 19:46-1.26(c)5, a statement, approved by the Commission in consultation with the Division, that reasonably explains to patrons the information disclosed by the win meter.

5.-7. (No change.)

(b) Unless otherwise authorized by the Commission, each slot machine in a casino shall be equipped with the following:

1. (No change.)

2. A mechanical, electrical or electronic device, to be known as a "drop meter," that continuously and automatically counts the number of coins or slot tokens that are dropped into the machine's slot drop bucket or slot drop box;*[;]*

3. For each hopper in a slot machine, a separate mechanical, electrical or electronic device, to be known as a "jackpot meter," that continuously and automatically counts, for that hopper only, the number of coins, prize tokens or slot tokens that are automatically paid by the machine from the corresponding hopper and that displays the aggregate number so counted; provided, however, that:

i. In lieu of the jackpot meter for a payout-only hopper displaying the aggregate number of coins, slot tokens or prize tokens paid out from that hopper, each casino licensee that uses a slot machine which is capable of converting the number of coins, slot tokens or prize tokens paid out from a payout-only hopper into the equivalent number of coins or slot tokens that match the denomination of the coin or slot token which that slot machine is designed to accept in order to activate play (the "machine denomination equivalent"), may, in accordance with internal controls approved by the Commission, set the jackpot meter connected to each payout-only hopper in that slot machine to continuously and automatically count and display the aggregate number of coins, slot tokens or prize tokens paid out from that hopper by its machine denomination equivalent (for example, the jackpot meter on a 25¢ slot machine may display the payout of one $3.00 prize token as the payout of "12" quarters); and

ii. Each slot machine with multiple hoppers may have a single jackpot meter to count and display the aggregate number of coins, slot tokens or prize tokens paid out from that machine's hoppers provided that:

(1) Each hopper is connected to that meter;

(2) The jackpot meter counts and displays, in accordance with (b)3i above, the aggregate number of coins, slot tokens or prize tokens paid out from a payout-only hopper by its machine denomination equivalent; and

(3) Each payout-only hopper has a separate jackpot meter, to be known as a "payout-only jackpot meter," that counts and displays the aggregate number of coins, slot tokens or prize tokens actually paid out from that hopper only; ***and***

4. A mechanical, electrical or electronic device, to be known as a "win meter," visible from the front of the machine, that, upon a player hitting a winning combination, advises the player of the number of coins, prize tokens or slot tokens for that round that have been paid to the player by the machine from the corresponding hopper; provided, however, that multiple win meters, as provided in (b)4i or ii below after approval of the casino licensee's internal controls therefor, shall be used on each multiple hopper slot machine whenever one or more winning combinations that are hit on the same round of play at that machine entitle the winning player to automatically receive coins, slot tokens or prize tokens from both hoppers and each hopper contains a different denomination of coins, slot tokens or prize tokens, as follows:

i. A separate win meter for each hopper that, for the round in which a winning combination is hit, advises the winning player of the actual number of coins, slot tokens or prize tokens won from that hopper only; or

ii. A win meter to which each hopper is connected that advises the winning player of the aggregate number of coins, slot tokens or prize tokens won that round from both hoppers after first converting the aggregate number of any coins, slot tokens or prize tokens won on that round from a payout-only hopper into its machine denomination equivalent, and a separate win meter, to be known as a "payout-only win meter," connected to each payout-only hopper that advises the player of the number of coins, slot tokens or prize

tokens actually won on that round from the corresponding hopper only (for example, a win meter on a multiple hopper 25¢ slot machine may, pursuant to this paragraph, record the payout, on the same round of play, of one $3.00 prize token and two quarters as the payout of "14" quarters, provided there is a separate payout-only win meter advising the player that one prize token was paid out).

(c) Unless otherwise authorized by the Commission each slot machine which does not totally and automatically pay the full amount of a jackpot to a patron shall be equipped with a mechanical, electrical or electronic device to be known as a "manual jackpot meter" that continuously and automatically records a pulse(s) for a predetermined number of coins or slot tokens that are to be paid manually.

(d) (No change.)

(e) Unless otherwise authorized by the Commission, each slot machine that has an attached bill changer shall also be equipped with mechanical, electrical or electronic devices as follows:

1. A "change meter," that continuously and automatically counts the number of coins or slot tokens that are vended from the slot machine's all-purpose hopper to make change, whether for currency or coupons;

2.-3. (No change.)

(f) All meters described in this section and in N.J.A.C. 19:46-1.26 shall be placed in a position so that the numbers thereon can be read and recorded without opening the slot machine.

(g) Each casino licensee shall set each of its slot machines to pay out, at a minimum, 83 percent of the amount of coins, currency or slot tokens that are placed by patrons into that slot machine and shall maintain a record of each slot machine setting and theoretical payout percentage. No payout of any merchandise or thing of value or payment of cash in lieu of any merchandise or thing of value pursuant to N.J.A.C. 19:45-1.40A shall be included in determining whether a slot machine meets the 83 percent minimum payout requirement.

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

19:45-1.38 Slot machines and bill changers; location; movements

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

(d) Prior to removing a slot machine from the gaming floor:

1. The machine's slot drop bucket or slot drop box shall be removed and transported to the count room;

2. All meters shall be read and recorded in conformity with the procedures set forth in N.J.A.C. 19:45-1.42; and

3. Any coins or slot tokens in any of the slot machine's hoppers or in the corresponding hopper storage area shall be removed, transported, and counted with the slot drop bucket or slot drop box; provided, however, that a slot machine may be removed from the casino with coins or slot tokens contained therein so long as:

i. Removal of the coins or the slot tokens, or any combination thereof, is precluded by mechanical or electrical difficulty;

ii. The casino licensee records in a slot machine movement log whether coins or slot tokens remain in the slot machine that is removed from the casino, and also records in that log the nature of the mechanical or electrical difficulty, the date and time that the coins or slot tokens are removed from the slot machine and transported to the count room, the date and time that the slot machine is removed from the casino, and the date and time that the slot machine is opened; and

iii. The removal and transportation to the count room of the coins or slot tokens is completed immediately after the slot machine is opened; and

4. Any prize tokens in a payout-only hopper or in a corresponding hopper storage area shall be removed, transported and counted in accordance with procedures and internal controls submitted to and approved by the Commission pursuant to N.J.A.C. 19:45-1.3.

(e) (No change.)

19:45-1.39 Progressive slot machines

(a)-(k) (No change.)

(l) Except as otherwise authorized by this section, a progressive slot machine removed from the gaming floor shall be returned to or replaced on the gaming floor within five gaming days. The amount on the progressive meter(s) on the returned or replacement machine shall not be less than the amount on the progressive meter(s) at the time of removal. If the machine is not returned or replaced, then the progressive meter(s) amount at the time of removal shall, within five days of the slot machine's removal, be added to a slot machine approved by the Commission which machine offers the same or a greater probability of winning the progressive jackpot, and accepts a denomination of coin or slot token not greater than the denomination accepted by the slot machine which was removed. Any time limit for the offering of a progressive jackpot shall be extended by the number of days during which the progressive jackpot was not offered as the result of any action taken by a casino licensee pursuant to this subsection.

(m) Progressive slot machines may have payout-only hoppers from which prize tokens may be paid as jackpots; provided, however, that prize tokens shall not be available as a payout on a winning progressive jackpot combination.

19:45-1.40 Jackpot payouts of cash or slot tokens that are not paid directly from the slot machine

(a)-(o) (No change.)

(p) No casino licensee shall offer a jackpot of prize tokens unless that jackpot is totally and automatically paid directly from the slot machine.

19:45-1.40A Jackpot payouts of merchandise or other things of value

(a)-(l) (No change.)

(m) Except when the payout is an annuity jackpot, the casino licensee may permit a winning patron to request and receive the exact cash equivalent value of the merchandise or thing of value as determined in (b)1-4 above in lieu of the merchandise or thing of value. However, any cash so provided shall not be included in determining gross revenue or in determining the minimum 83 percent payout of any slot machine as required by N.J.A.C. 19:45-1.37(g). If a licensee chooses to offer a patron this option, the licensee shall advise the patron in advance of actual play pursuant to N.J.A.C. 19:45-1.37(a)4 and 19:46-1.26(a)5.

(n)-(p) (No change.)

(q) Except as otherwise authorized by this section, a slot machine which offers merchandise or some other thing of value as a payout which is removed from the gaming floor shall be returned to or replaced on the gaming floor within five days. If the machine is not returned or replaced, the merchandise or thing of value shall, within five days of the slot machine's removal, be offered as a payout on a slot machine approved by the Commission which offers the same or a greater probability of winning the merchandise or thing of value, and accepts a denomination of coin or slot token not greater than the denomination accepted by the slot machine which was removed. Any time limit for offering a jackpot of merchandise or other thing of value shall be extended by the number of days during which the merchandise or thing of value was not offered as the result of any action taken by a casino licensee pursuant to this subsection.

19:45-1.40C Multi-casino slot system jackpot payouts of cash

(a) Any slot machine jackpot payout of cash or slot tokens which will be included in the calculation of gross revenue by two or more casino licensees as part of a multi-casino progressive slot system shall be subject, except as otherwise provided in this section, to any procedural or documentation requirement established in N.J.A.C. 19:45-1.40. All forms utilized in the preparation or payment of a multi-casino progressive slot system jackpot shall be clearly identified as forms used for such purpose.

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

(d) If a multi-casino slot machine system will not permit slot department personnel employed by the casino licensee where the jackpot is won to determine from the slot machine or the progressive display the actual amount of the jackpot payout of cash or slot tokens won by the patron, the following additional requirements shall apply:

1. The slot cashier who is responsible for preparing the Multi-Casino Payout shall request the slot system operator to provide

documentation of the actual amount of the jackpot payout of cash or slot tokens won by the patron;

2.-3. (No change.)

(e) Prize tokens shall not be available as a Multi-Casino Payout.

19:45-1.41 Procedure for filling payout reserve containers of slot machines and hopper storage areas

(a) Each hopper of a slot machine may be filled by requesting coin, slot tokens or prize tokens, which are compatible with the hopper to be filled, on a Hopper Fill Slip, or by utilizing coin, slot tokens or prize tokens that are compatible with the hopper to be filled and that are stored in its corresponding hopper storage area pursuant to N.J.A.C. 19:45-1.36A.

(b) The filling of a hopper or a hopper storage area by means of a Hopper Fill Slip shall be accomplished as follows:

1. Whenever a slot supervisor, attendant or mechanic requests coins, slot tokens or prize tokens to fill a hopper or a hopper storage area of a slot machine, he or she shall obtain a properly completed and signed Hopper Fill Slip ("Hopper Fills") from a slot cashier.

2. Hopper Fills shall be serially prenumbered forms, each series of Hopper Fills shall be used in sequential order, and the series numbers of all Hopper Fills received by a casino licensee shall be accounted for by employees independent of the cashiers' cage and the slot department. All original and duplicate void Hopper Fills shall be marked "VOID" and shall require the signature of a slot cashier. Notwithstanding the above, a serially prenumbered combined Jackpot Payout/Hopper Fill form may be utilized in conjunction with N.J.A.C. 19:45-1.40(b), as approved by the Commission, provided that the combined form shall be used in a manner which otherwise complies with the procedures and requirements established by this section.

3. For establishments in which Hopper Fills are manually prepared, the following procedures and requirements shall be observed:

i. (No change.)

ii. Access to the triplicates shall be maintained and controlled at all times by employees responsible for controlling and accounting for the unused supply of Hopper Fills, placing Hopper Fills in the dispensers, and removing from the dispensers the triplicates remaining therein.

4. (No change.)

5. On originals, duplicates and triplicates or in stored data, the Hopper Fill shall include, at a minimum, the following information:

i. The asset number of the slot machine to which the coins, slot tokens or prize tokens are to be distributed;

ii. The date and shift during which the coins, slot tokens or prize token are distributed;

iii. The denomination of the coin, slot tokens or prize tokens that are to be distributed;

iv. The amount of coins, slot tokens or prize tokens that are to be distributed;

v. The location from which the coins, slot tokens or prize tokens are distributed;

vi. (No change.)

vii. The signature or identification code of the person requesting coins, slot tokens or prize tokens to fill the hopper (on the original and the duplicate only); and

viii. Whether the coins, slot tokens or prize tokens are to be placed in the slot machine's all-purpose hopper or payout-only hopper, or in its corresponding hopper storage area.

6. (No change.)

7. All coins, slot tokens and prize tokens distributed from a slot booth to a slot machine or its corresponding hopper storage area shall, during their transportation directly to the machine and until their deposit into the appropriate hopper, remain in pre-wrapped secured bags; provided, however, that:

i. A casino security department member shall transport the pre-wrapped secured bags containing loose coin, slot tokens or prize tokens directly to the slot machine or its corresponding hopper storage area, accompanied by the duplicate Hopper Fill for signature;

ii. The secured bags in which prize tokens are transported shall have sufficient identifying features, approved by the Commission, to distinguish those bags and their contents from the secured bags in which coins or slot tokens are transported; and

iii. The casino security department member shall observe the deposit of the coins, slot tokens or prize tokens in the appropriate slot machine hopper or the slot machine's corresponding hopper storage area, and the closing and locking of the slot machine or its corresponding hopper storage area by the slot mechanic or slot attendant before obtaining the signature of the slot mechanic or attendant on the duplicate copy of the Hopper Fill.

8. A slot mechanic who participates in filling a slot machine hopper shall inspect the slot machine and determine if the empty hopper resulted from a machine malfunction. A slot attendant participating in a hopper fill shall review the Machine Entry Authorization Log and alert a slot mechanic to inspect the slot machine if the entries in the log indicate a consistent malfunction problem.

9. Signatures attesting to the accuracy of the information contained on the Hopper Fill shall be, at a minimum, of the following personnel at the following times:

i. The original:

(1) The slot cashier—upon preparation; and

(2) The security department member transporting the coins, slot tokens or prize tokens to the slot machine—upon receipt from the cashier of the coins, slot tokens or prize tokens to be transported; and

ii. The duplicate:

(1) The slot cashier—upon preparation;

(2) The security department member transporting the coins, slot tokens or prize tokens to the slot machine—upon receipt from the cashier of coins, slot tokens or prize tokens to be transported; and

(3) The slot mechanic or attendant—after depositing the coins, slot tokens or prize tokens in the appropriate hopper of the slot machine and closing and locking the slot machine.

10. Upon meeting the signature requirements as described in (b)9 above, the security department member shall maintain and control the duplicate and the slot cashier shall maintain and control the original of the Hopper Fill Slip.

11. At the end of each gaming day, at a minimum, the original and duplicate Hopper Fill Slip shall be forwarded as follows:

i. The original Hopper Fill Slip shall be forwarded to the cashiers' cage by the slot cashier for exchange for coin, currency or credit, after which the original shall be forwarded to the accounting department, which, as reasonably practicable after receipt, shall confirm that the information on the original Hopper Fill agrees with the information on the triplicate or in stored data.

ii. The duplicate Hopper Fill Slip shall be forwarded directly to the accounting department, which, as reasonably practicable after receipt, shall record the information from the Hopper Fill Slip on the Slot Win Sheet, and shall confirm that the information recorded on the Hopper Fill Slip agrees with the meter readings recorded on the Slot Meter Sheet and with the information on the triplicates or in stored data.

(c) Each slot machine hopper may be filled from its corresponding hopper storage area as follows:

1. Whenever a slot machine's hopper requires coin, slot tokens or prize tokens, a slot attendant or mechanic, after confirming that the hopper storage area contains the necessary coin, slot tokens or prize tokens to replenish the hopper to be filled, may, in the presence of a member of the security department, transfer the necessary coin, slot tokens or prize tokens from that slot machine's hopper storage area directly to the appropriate hopper of the corresponding slot machine. The security department member shall observe the deposit of the coins, slot tokens or prize tokens in the appropriate 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. After transferring the coins, slot tokens or prize tokens to the slot machine's appropriate hopper, the slot attendant or mechanic

shall make the entries required on the slot machine's log, which, at a minimum, shall include the following:

i. The date and time of the transfer;

ii. The type of hopper in the slot machine to which the coins, slot tokens or prize tokens were transferred;

iii. The amount of coins, slot tokens or prize tokens that were placed in that hopper; and

iv. The name and license number of the slot attendant or slot mechanic who made the transfer.

(d) (No change.)

(e) Each casino licensee shall submit and have approved internal controls for detecting and removing prize tokens from the all-purpose hoppers of its slot machines. Each casino licensee so removing a prize token shall count it, for purposes of calculating its gross revenue pursuant to N.J.S.A. 5:12-24, as cash received from gaming operations for the face amount of the prize token.

19:45-1.41A Procedures governing the removal of coin, slot tokens and slugs from a slot machine hopper

(a) (No change.)

(b) If a slot machine malfunctions during a payout and the slot machine cannot be repaired in a timely manner, coin and slot tokens may be removed from a slot machine's hopper in order to complete the slot machine paid jackpot. The coin or slot tokens shall be removed from the slot machine hopper by a slot attendant, slot mechanic or supervisor thereof for slot machines which accept coin or slot tokens in denominations less than $25.00, or a slot department supervisor for slot machines which accept slot tokens in denominations of $25.00 or more. The removal of the coin or slot tokens shall be documented on the Machine Entry Authorization Log pursuant to N.J.A.C. 19:45-1.36*[(k)]**(j)*. Nothing herein shall preclude a casino licensee from preparing a Jackpot Payout Slip for the amount of coin or slot token owed the patron provided that the payout is completed in accordance with N.J.A.C. 19:45-1.40 and a notation is made on the Jackpot Payout Slip indicating the reason for the slip.

(c) If coin or slot tokens are inserted by a patron and are neither registered nor returned to the patron by the slot machine, a member of the slot department in accordance with (b) above, may remove the coin or slot tokens from the slot machine hopper and return them to the patron. The removal of the coin or slot tokens shall be documented on the Machine Entry Authorization Log pursuant to N.J.A.C. 19:45-1.36*[(k)]**(j)*. Under no circumstances shall a casino licensee remove more coin or slot tokens than the maximum number of coin or slot tokens which can be wagered on one handle pull of the slot machine.

(d) Whenever slugs are found in a slot machine's hopper the following procedures and requirements shall be followed:

1. A slot attendant, slot mechanic or supervisor thereof shall, for slot machine denominations less than $25.00, or a slot department supervisor for slot machine denominations of $25.00 or more, immediately remove the slugs from the slot machine hopper and place the slugs into an envelope or container. The individual who found the slugs shall record the asset number and denomination of the slot machine, the quantity of slugs found, the date the slugs were found, and his or her signature on the Machine Entry Authorization Log pursuant to N.J.A.C. 19:45-1.36*[(k)]**(j)*. The envelope or container may be maintained inside the slot machine until the number of slugs in the envelope or container is nine. When the number of slugs in the envelope or container reaches nine or at such other times as may be necessary, the slot attendant, slot mechanic or slot supervisor shall complete a three-part Slug Report which contains, at a minimum, the following:

i.-vi. (No change.)

2. (No change.)

3. If more than nine slugs are found at any one time in a slot machine's hopper, the slot department member shall place the slugs into the envelope or container and immediately complete the Slug Report required by (d)1 above. The slugs shall be immediately transported in accordance with (d)2 above. The slot department member shall inspect the slot machine and coin mechanism to determine if there is a malfunction. The results of this inspection shall be documented on the Machine Entry Authorization Log pursuant to N.J.A.C. 19:45-1.36*[(k)]**(j)*.

4. (No change.)

19:45-1.43 Slot count; procedure for counting and recording contents of slot drop buckets and slot drop boxes

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

(i) Procedures and requirements for conducting the hard count shall be as follows:

1. (No change.)

2. All slot tokens in denominations of $25.00 or more shall be counted or weighed at the beginning of the hard count, in the presence of the Commission inspector. The casino licensee may count or weigh other denominations of coins or slot tokens at the same time, provided that the high denomination slot token count proceeds to completion without interruption, except as otherwise provided herein. The Commission inspector shall, independently of the casino licensee, record on a countdown sheet the total amount of each slot token in a denomination of $25.00 or more which is counted or weighed. The inspector shall compare the totals on his or her countdown sheet with the amounts of those slot tokens recorded by the hard count team on the Slot Win Sheet, and verify that the amounts are in agreement and are correct, and if not, shall either satisfactorily account for any discrepancies, if possible, or document the incident and promptly report it to the Division. At the conclusion of the hard count, the inspector shall recompare the totals on the countdown sheet with the final totals determined by the casino licensee.

3.-4. (No change.)

5. The contents of each slot drop bucket or slot drop box shall be emptied separately into either a machine that automatically counts the coins or slot tokens or a scale that automatically weighs the coins or slot tokens; provided, however, that any prize tokens shall be manually counted and separately recorded on the Slot Win Sheet.

6. (No change.)

7. As the contents of each slot drop bucket or slot drop box are counted by the counting machine or weighed by the scale, one member of the count team shall record the following information on the Slot Win Sheet or a supporting document:

i. The asset number of the slot machine to which the slot drop bucket or slot drop box contents corresponds, if not preprinted thereon;

ii. The number of coins or slot tokens, or the weight of the coins or slot tokens contained in the slot drop bucket or slot drop box; provided, however, that if the value of the coins or slot tokens is not converted into dollars and cents until after the counting process is completed, the conversion shall be calculated and the dollar value of the drop shall be entered by denomination on the Slot Win Sheet; and

iii. The number and dollar value of each denomination of prize token issued by any casino licensee, and the total dollar value of all prize tokens issued by any casino licensee.

8.-13. (No change.)

14. Each prize token issued by any casino licensee that is removed from a slot drop bucket or a slot drop box and counted pursuant to this section shall be counted, for purposes of calculating gross revenue pursuant to N.J.S.A. 5:12-24, as cash received by the casino licensee from gaming operations for the face amount of the prize token, and, notwithstanding the prohibition on prize tokens activating slot machine play, no adjustment to the amount recorded on the Slot Win Sheet in accordance with (i)7iii above shall be allowed.

(j) Procedures and requirements at the conclusion of the hard count shall be as follows:

1.-3. (No change.)

4. The prize tokens, wrapped coin and slot tokens removed from the slot drop buckets and slot drop boxes shall be recounted in the count room by a cage cashier or master coin bank cashier, in the presence of a count team member and the Commission inspector, prior to the cashier having access to the information recorded on the Slot Win Sheet.

5. The inspector shall then compare the amounts of the slot tokens and prize tokens listed on his or her countdown sheet with the amounts of each of those tokens shown on the Slot Win Sheet, and verify that the amounts are in agreement and are correct, and if not, either satisfactorily account for any discrepancies, if possible, or document the incident and promptly report it to the Division.

6. The cage cashier or master coin bank cashier shall then attest by signature on the Slot Win Sheet to the accuracy of the amount of coin, prize tokens and slot tokens received from the slot machines. The inspector shall then sign the Slot Win Sheet evidencing the inspector's presence and the fact that the inspector, the cashier and count team have agreed on the total amount of coin, prize tokens and slot tokens counted. The coin, prize tokens and slot tokens thereafter shall remain in the custody of cage cashiers or master coin bank cashiers.

7. A casino security department employee, in the presence of the Commission inspector, shall:

i. (No change.)

ii. Conduct a thorough inspection of the entire count room and all equipment located therein, for unsecured coins, prize tokens and slot tokens.

8. (No change.)

9. The preparation of the Slot Win Sheet shall be completed by accounting department employees who shall:

i. Compare for agreement, for each slot machine, the number of coins or slot tokens counted and recorded by the count team to the drop meter reading recorded on the Slot Meter Sheet; provided, however, that the accounting department, in making the comparison, shall account for any prize tokens that were counted pursuant to this section after being improperly accepted by the coin acceptor and diverted to the slot drop bucket or slot drop box;

ii.-vi. (No change.)

10. (No change.)

19:45-1.44 Computer recordation and monitoring of slot machines

(a) In lieu of the requirements of N.J.A.C. 19:45-1.37(b) and (c), and N.J.A.C. 19:45-1.42*[(d)]**(o)*, a casino licensee may have a computer connected to slot machines in the casino to record and monitor the activities of such machines.

(b) The computer permitted by (a) above shall be designed and operated to automatically perform the functions relating to slot machine meters in the casino as follows:

1. (No change.)

2. Record the number and total value of coins or slot tokens deposited in the slot drop bucket or slot drop box of the slot machine;

3. Record the number and total value of coins, prize tokens or slot tokens automatically paid by the slot machine as the result of a jackpot;

Recodify 5. as 4. (No change in text.)

5. Record the number and total value of coins or slot tokens vended from the slot machine all-purpose hopper to make change;

Recodify 7.-9. as 6.-8. (No change in text.)

(c) (No change.)

19:45-1.46 Procedure for control of coupon redemption and other complimentary distribution programs

(a)-(o) (No change.)

(p) Prize tokens shall not be distributed as complimentary services or items pursuant to this section.

19:45-1.46A Procedures and requirements for the use of an automated coupon redemption machine

(a)-(p) (No change.)

(q) Prize tokens shall not be dispensed from automated coupon redemption machines.

19:45-1.46B Procedures and requirements for a bill changer which can accept coupons

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

(d) Unless the slot machine to which the bill changer is attached contains the coupon meters identified in N.J.A.C. 19:45-1.37(e)3 and 19:46-1.26(d), a bill changer which can accept coupons shall be equipped with mechanical, electrical or electronic devices as follows:

1.-2. (No change.)

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

19:46-1.5 Nature and exchange of gaming chips, plaques and match play coupons

(a) All wagering on authorized games, other than slot machines, in a casino or casino simulcasting facility shall be conducted with gaming chips or plaques; provided however, that match play coupons shall be permitted for use in wagering at authorized games in accordance with N.J.A.C. 19:45-1.18 and 19:45-1.46. Gaming chips previously issued by a casino licensee which are not in active use by that casino licensee shall not be used for wagering at authorized table games or casino simulcasting, and shall not be accepted nor exchanged for any purpose at a gaming table or a casino simulcast counter. Such chips shall only be redeemed at the cashiers' cage pursuant to *[(f)]**(e)* below.

(b) Gaming chips or plaques shall be issued to a person only at the request of such person and shall not be given as change in any other but a gaming transaction. Gaming chips and plaques shall only be issued to casino patrons at the gaming tables and shall only be redeemed at the cashiers' cage; provided, however, that gaming chips may be exchanged by a patron at the slot booths or with changepersons for currency, coin or slot tokens to play the slot machines, and may be used for simulcast wagering.

(c) Except as provided in (h) below and as otherwise may be specifically approved by the Commission, each casino licensee shall redeem its gaming chips and plaques only from its patrons and shall not knowingly redeem its gaming chips and plaques from any non-patron source.

(d) Each gaming chip and plaque is solely evidence of a debt that the issuing casino licensee owes to the person legally in possession of the gaming chip or plaque, and shall remain the property of the issuing casino licensee, which shall have the right at any time to demand that the person in possession of the gaming chip or plaque surrender the item upon the casino licensee exercising its right of redemption in accordance with (f) below.

(e) Each casino licensee shall redeem promptly its own genuine gaming chips and plaques, except when the gaming chips or plaques were obtained or being used unlawfully. A casino licensee shall redeem its gaming chips or plaques by exchanging them for an equivalent amount of cash or, upon request by a patron who surrenders gaming chips or plaques in any amount over $25.00, for a casino check of that casino licensee in the amount of the chips or plaques surrendered and dated the day of such redemption.

(f) Each casino licensee shall have the right to demand the redemption of its gaming chips or plaques from any person in possession of them and such person shall redeem said chips or plaques upon presentation by the casino licensee of cash in an equivalent amount.

(g) Each casino licensee shall accept, exchange, use or redeem only gaming chips or plaques that it has issued and shall not knowingly accept, exchange, use or redeem gaming chips or plaques, or objects purporting to be gaming chips or plaques, that have been issued by any other person, except that a casino licensee may redeem from its patrons gaming chips or plaques issued by another legally operated casino licensee upon the representation of a patron that such chips or plaques had been purchased or received as payment in a gaming transaction from an employee of such licensee working on the premises.

(h) Each casino licensee shall redeem promptly its own genuine gaming chips and plaques presented to it by any other legally operated casino licensee upon the representation that such chips and plaques were received or accepted unknowingly, inadvertently or in error or were redeemed from patrons. Each casino licensee shall submit to the Commission for approval a system for the exchange, with other legally operated casino licensees, of gaming chips and plaques:

1. That are in its possession and that have been issued by any other legally operated casino licensee; and

2. That it has issued and that are presented to it for redemption by any other legally operated casino licensee.

Recodify (j) as (i) (No change in text.)

19:46-1.6 Receipt of gaming chips or plaques from manufacturer or distributor; inventory, security, storage and destruction of chips and plaques

(a) When gaming chips or plaques are received from the manufacturer or distributor thereof, they shall be opened and checked by at least three people, one of whom shall be from the accounting or auditing department of the casino licensee. Any deviation between the invoice accompanying the chips and plaques and the actual chips or plaques received or any defects found in such chips or plaques shall be reported promptly to the Commission and Division.

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

19:46-1.20 Approval of gaming and simulcast wagering equipment; retention by Commission or Division; evidence of tampering

(a) Each casino licensee shall submit to the Commission, for its review, inspection and approval after consultation with the Division, each piece of gaming and simulcast wagering equipment, and any other related device, prior to its use, whether initially or following any modification thereto or replacement or movement thereof, in a casino, casino simulcasting facility or hub facility. Each such item, including, without limitation, gaming tables, layouts, roulette wheels, pokette wheels, roulette balls, drop boxes, big sic wheels, sic bo shakers, sic bo electrical devices, pai gow shakers, chip holders, racks and containers, scales, count room equipment and counting devices, trolleys, slip dispensers, dealing shoes, dice, cards, pai gow tiles, locking devices, card reader devices, slot tokens, prize tokens, data processing equipment, slot machines and slot bases (see N.J.A.C. 19:41-9.6(b) and N.J.A.C. 19:46-1.28), pari-mutuel machines, self-service pari-mutuel machines, credit voucher machines and totalisators, shall be subject to review, inspection and approval for, at a minimum, quality, design, integrity, fairness, honesty and suitability.

(b) (No change.)

(c) Any evidence that gaming equipment or other devices used in a casino, casino simulcasting facility or hub facility including, without limitation, gaming tables, layouts, roulette wheels, pokette wheels, roulette balls, drop boxes, big six wheels, sic bo shakers, sic bo electrical devices, pai gow shakers, gaming chips, plaques, chip holders, racks and containers, scales, counting devices, trolleys, slip dispensers, dealing shoes, locking devices, card reader devices, data processing equipment, slot tokens, prize tokens, slot machines, pari-mutuel machines, self-service pari-mutuel machines, credit voucher machines and totalisators have been tampered with or altered in any way which would affect the integrity, fairness, honesty or suitabiity of the gaming equipment or other device for use in a casino, casino simulcasting facility or hub facility shall be immediately reported to an agent of the Commission and the Division. A member of the casino licensee's casino security department shall be required to insure that the gaming equipment or other device and any evidence required to be reported pursuant to this subsection is maintained in a secure manner until the arrival of an agent of the Division. Rules concerning evidence of tampering with dice, cards and pai gow tiles may be found at N.J.A.C. 19:46-1.16, 19:46-1.18 and 19:46-1.19B, respectively.

(d) (No change.)

19:46-1.26 Slot machines and bill changers; identification; signs; meters; other devices

(a) (No change.)

(b) Unless otherwise authorized by the Commission, each bill changer shall have the following identifying features:

1.-2. (No change.)

3. A display on the front of the bill changer that clearly indicates the amount of coins or slot tokens dispensed by the slot machine all-purpose hopper after currency or a coupon has been inserted and accepted; and

4. (No change.)

(c) Unless otherwise authorized by the Commission, each slot machine in a casino shall be equipped with the following:

1. (No change.)

2. A mechanical, electrical or electronic device, to be known as a "drop-meter," that continuously and automatically counts the number of coins or slot tokens that are dropped into the machine's slot drop bucket or slot drop box;

3. For each hopper in a slot machine, a separate mechanical, electrical or electronic device, to be known as a "jackpot meter," that continuously and automatically counts, for that hopper only, the number of coins, prize tokens or slot tokens that are automatically paid by the machine from the corresponding hopper and that displays the aggregate number so counted; provided, however, that:

i. In lieu of the jackpot meter for a payout-only hopper displaying the number of coins, slot tokens or prize tokens paid out from that hopper, each casino licensee that uses a slot machine which is capable of converting the number of coins, slot tokens or prize tokens paid out from a payout-only hopper into its machine denomination equivalent, may, in accordance with its internal controls approved by the Commission, set the jackpot meter connected to each payout-only hopper in that slot machine to continuously and automatically count and display the aggregate number of coins, slot tokens or prize tokens paid out from that hopper by its machine denomination equivalent (for example, the jackpot meter on a 25¢ slot machine may record the payout of one $3.00 prize token as the payout of "12" quarters); and

ii. Each slot machine with multiple hoppers may have a single jackpot meter to count and display the aggregate number of coins, slot tokens or prize tokens paid out from that machine's hoppers provided that:

(1) Each hopper is connected to that meter;

(2) The jackpot meter counts and displays, in accordance with (c)3i above, the aggregate number of coins, slot tokens or prize tokens paid out from a payout-only hopper by its machine denomination equivalent; and

(3) Each payout-only hopper has a separate payout-only jackpot meter;

4. A mechanical, electrical or electronic device, to be known as a "manual jackpot meter," that continuously and automatically records the number of coins or slot tokens to be paid manually;

5. A mechanical, electrical or electronic device, to be known as a "win meter," visible from the front of the machine, that, upon a player hitting a winning combination, advises the player of the number of coins, prize tokens or slot tokens for that round that have been paid to the player by the machine from the corresponding hopper; provided, however, that multiple win meters, as provided in (c)5i or ii below after approval of the casino licensee's internal controls *[therefore]* ***therefor***, shall be used on each multiple hopper slot machine whenever one or more winning combinations that are hit on the same round of play at the machine entitle the winning player to automatically receive coins, slot tokens or prize tokens from both hoppers and each hopper contains a different denomination of coins, slot tokens or prize tokens, as follows:

i. A separate win meter for each hopper that, for the round in which a winning combination is hit, advises the winning player of the actual number of coins, slot tokens or prize tokens won from that hopper only; or

ii. A win meter to which each hopper is connected that advises the winning player of the aggregate number of coins, slot tokens or prize tokens won on that round from both hoppers after first converting the aggregate number of any coins, slot tokens or prize tokens won on that round from a payout-only hopper into its machine denomination equivalent, and a separate payout-only win meter connected to each payout-only hopper (for example, a win meter on a 25¢ slot machine may, pursuant to this paragraph, record the payout, on the same round of play, of one $3.00 prize token and two quarters as the payout of "14" quarters, provided there is a separate payout-only win meter advising the patron that one prize token was paid out); and

6. (No change.)

(d) Unless otherwise authorized by the Commission, each slot machine that has an attached bill changer shall also be equipped with the mechanical, electrical or electronic devices that are required by N.J.A.C. 19:45-1.37(e).

Recodify (i) as (e) (No change in text.)

19:46-1.33 *[Inssuance]* ***Issuance*** and use of slot tokens for gaming and simulcast wagering; prize tokens; slot token and prize token specifications

(a) Each casino licensee may, with Commission approval, issue the following types of metal disks having two faces and an edge:

1. A "slot token" that is:

i. Designed for gaming use in the hoppers of the casino licensee's slot machines and in simulcast wagering within the casino licensee's casino simulcasting facility;

ii. Capable, upon insertion into the coin acceptor of a designated slot machine operated by the casino licensee that issued the slot token, of activating the play of that slot machine;

iii. Issuable, in an exchange with a patron upon request, only from a slot booth, the cashiers' cage, a change machine or bill changer, or by a changeperson; provided, however, that each casino licensee may issue slot tokens as complimentary services or items in accordance with a distribution program authorized pursuant to N.J.A.C. 19:45-1.46;

iv. Exchangeable, by a patron at the casino where the slot token was issued, in the manner provided by N.J.A.C. 19:45-1.34 and 19:45-1.35; and

v. Redeemable, by the issuing casino licensee promptly upon request of the patron surrendering one or more slot tokens, only at a coin redemption booth, a slot booth or the cashiers' cage for an equivalent amount of cash or for a casino check of that casino licensee in the amount of the slot tokens surrendered and dated the day of the redemption; and

2. A "prize token" that is:

i. Designed to be awarded and issued only as a payout from a payout-only hopper of a designated slot machine that is operated by the casino licensee using the token;

ii. Incapable of activating slot machine play ***at any slot machine which is capable of accepting coin or slot tokens of a denomination that is greater than the denomination of the prize token***;

iii. Unavailable for use in simulcast wagering;

iv. Redeemable, by the issuing casino licensee promptly upon request of the patron surrendering one or more prize tokens, only at a coin redemption booth, a slot booth or the cashiers' cage for an equivalent amount of cash or for a casino check of that casino licensee in the amount of the prize tokens surrendered and dated the day of the redemption;

v. Exchangeable, by a patron at the casino where the prize token was issued, in the manner provided by N.J.A.C. 19:45-1.34 and 19:45-1.35;

vi. Unavailable as a manually paid jackpot;

vii. Unavailable as a payout on a winning progressive jackpot combination;

viii. Unavailable as a multi-casino jackpot; and

ix. Unavailable as a complimentary service or item.

(b) Each slot token and each prize token shall be designed so that it:

1.-2. (No change.)

3. Contains on *[each]* ***at least one*** face, in the case of a slot token only, a statement, approved by the Commission as to form and content, that notifies a patron that the slot token will be accepted to activate play only in slot machines operated by the casino licensee that issued it;

4.-11. (No change.)

12. Contains on each face, in the case of a prize token only, a statement, approved by the Commission as to form and content, that notifies a patron that the prize token does not activate play.

Recodify (b) as (c) (No change in text.)

*[(d) For each denomination of prize token for which there is an identical denomination of approved slot token, the diameter of each of those prize tokens shall equal the diameter of the approved slot token of like denomination. For every other denomination of prize token, each prize token of the same denomination shall have a diameter that:

1. Is either:

i. Equal to the diameter of any approved slot token with a face value that is less than the face value of the prize token; or

ii. Different from the diameter:

(1) Of any slot token approved for use by any casino licensee; and

(2) Authorized for each denomination of slot token as enumerated in (c) above; and

2. Is exclusively used for each prize token of that denomination once the diameter is initially determined pursuant to (d)1 above.]*

*[(e)]**(d)* Each prize token ***with a face value that is less than the denomination of any slot token that is approved for use by any casino licnesee*** shall *[have a]* ***be designed, through differences between it and such slot token in their*** metal content***, diameter, thickness or by any other means approved by the Commission, to prevent its use for activating play at any slot machine*** that is *[different from the metal content of any]* ***capable of accepting any*** slot token *[approved for use by any casino licensee]* ***of greater denomination than the prize token***.

*[(f)]**(e)* Each casino licensee, in accordance with its internal controls approved by the Commission, may encase its prize tokens in clear plastic provided that:

1. The plastic does not hamper the payout of prize tokens from a payout-only hopper;

2. A patron with reasonable ease can remove the prize token from the plastic; and

3. The casino licensee:

i. Redeems each prize token under the same terms and conditions whether or not the prize token, when presented for redemption, is encased in plastic as originally issued by the casino licensee; and

ii. Reasonably notifies its patrons that prize tokens that are encased in plastic when originally issued to the patron may be redeemed without removing the plastic.

*[(g)]**(f)* No slot token or prize token shall be issued by a casino licensee or utilized in a casino or casino simulcasting facility unless and until:

1. The design specifications of the proposed slot token or prize token are, prior to the manufacture of the slot token or prize token, submitted to and approved by the Commission, which submission shall include a detailed schematic depicting the actual size of the token's diameter and thickness and, as appropriate, location of the following:

i. Each face;

ii. The edge; and

iii. Any words, logos, designs, graphics or security measures contained on the slot token or prize token; and

2. A sample slot token or prize token, manufactured in accordance with its approved design specifications, is submitted to and approved by the Commission.

*[(h)]**(g)* No casino licensee shall issue, use or allow a patron to use in its casino or casino simulcasting facility any slot token or prize token that it knows, or reasonably should know, is materially different from the sample of that slot token or prize token approved by the Commission.

19:46-1.34 Wagering at slot machines; use of slot tokens and prize tokens

(a) All wagering at slot machines in a casino shall be conducted with coins or slot tokens; provided, however, that currency may be accepted through bill changers.

(b) Slot tokens may be used to make simulcast wagers.

(c) Prize tokens shall not be used for simulcast wagering or to activate play at slot machines.

19:46-1.35 Redemption of slot tokens and prize tokens from non-patrons; duty of patrons to surrender slot tokens and prize tokens upon demand

(a) Except as provided in (e) below and as may be specifically approved by the Commission, each casino licensee shall redeem its slot tokens and prize tokens only from its patrons and shall not knowingly redeem its slot tokens and prize tokens from any non-patron source.

(b) Each slot token and prize token is solely evidence of a debt that the issuing casino licensee owes to the person legally in possession of the slot token or prize token, and shall remain the property of the issuing casino licensee, which shall have the right

at any time to demand that the person in possession of the slot token or prize token surrender the item upon the casino licensee exercising its right of redemption in accordance with (c) below.

(c) Each casino licensee, upon demand, shall have the right to redeem its slot tokens and prize tokens from any person in possession of them, who shall surrender the slot tokens and prize tokens upon the casino licensee presenting the person with an equivalent amount of cash.

(d) Each casino licensee shall accept, exchange, use or redeem only slot tokens or prize tokens that it has issued and shall not knowingly accept, exchange, use or redeem slot tokens or prize tokens, or objects purporting to be slot tokens or prize tokens, that have been issued by any other person, except that each casino licensee may redeem from its patrons slot tokens or prize tokens issued by any other legally operated casino licensee upon a patron's representation that he or she received such tokens from the payout chutes of slot machines on the casino licensee's premises, or that the patron purchased or received such tokens as payment in a gaming transaction from an employee of the casino licensee during the normal course of the employee's duties on the premises while at work.

(e) Each casino licensee shall redeem promptly its own genuine slot tokens and prize tokens presented to it by any other legally operated casino licensee upon the representation that such slot tokens and prize tokens were received or accepted unknowingly, inadvertently or in error, were unavoidably received in slot machines through patron play, or mistakenly were redeemed from patrons. Each casino licensee shall submit to the Commission for approval a system for the exchange, with other legally operated casino licensees, of slot tokens and prize tokens:

1. That are in its possession and that have been issued by any other legally operated casino licensee; and

2. That it has issued and that are presented to it for redemption by any other legally operated casino licensee.

(f) Each casino licensee shall cause to be posted and remain posted in a prominent place on all slot booths and coin redemption booths a sign that reads as follows:

"It is a violation of Federal law to use tokens issued by this casino outside these premises or to use tokens issued by another casino here."

19:46-1.36 Slot tokens and prize tokens; receipt, inventory, security, storage and destruction

(a) Each casino licensee shall inspect all slot tokens or prize tokens, or any combination thereof, upon receipt from the manufacturer or distributor to ensure, at a minimum, that:

1. The quantity and denomination of slot tokens or prize tokens that are actually received from the manufacturer or distributor agrees with the amount of such tokens listed on the shipping documents; and

2. There are no physical defects in the slot tokens or prize tokens that were so received.

(b) The inspection required by (a) above shall be conducted by at least three people (the "inspection team"). Each inspection team shall consist of at least one representative from the following categories:

1. The accounting or auditing department of the casino licensee;

2. The casino security department of the casino licensee; and

3. With prior Commission approval, a casino employee from any of the casino licensee's other departments.

(c) Each casino licensee shall report to the Commission and the Division promptly after an inspection required by (a) above discloses any discrepancy in the shipment including, but not limited to, the following:

1. The shipment contains defective slot tokens or prize tokens; or

2. The quantity and denomination of the slot tokens or prize tokens actually received does not agree with the amount listed on the shippping documents.

(d) Each casino licensee shall submit to the Commission for approval procedures to record and process the receipt, inventory, storage and destruction of slot tokens and prize tokens.

19:51-1.1 Definitions

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

"Gaming equipment" means any mechanical, electrical or electronic contrivance or machine used in connection with gaming or any game and includes, without limitation, roulette wheels, roulette tables, big six wheels, craps tables, tables for card games, layouts, slot machines, slot tokens, prize tokens, cards, dice, chips, plaques, match play coupons, card dealing shoes, drop boxes, and other devices, machines, equipment, items or articles determined by the Commission to be so utilized in gaming as to require licensing of the manufacturers, distributors or servicers, or as to require Commission approval in order to contribute to the integrity of the gaming industry or to facilitate the operation of the Commission or the Division.

...

19:51-1.2 Gaming-related casino service industry

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

(c) Enterprises required to be licensed in accordance with subsections 92a and b of the Act and (a) above shall include, without limitation, the following:

1. Manufacturers, suppliers, distributors, servicers and repairers of roulette wheels, roulette balls, big six wheels, gaming tables, slot machines, cards, dice, gaming chips, gaming plaques, slot tokens, prize tokens, dealing shoes, drop boxes, computerized gaming monitoring systems, totalisators, pari-mutuel machines, self-service pari-mutuel machines and credit voucher machines;

2.-3. (No change.)

19:54-1.6 Computation of tax

(a) The gross revenue tax shall be eight percent of gross revenue. The gross revenue for the tax year, or portion thereof, shall be the amount obtained from the following calculation:

1. The total of all sums for the tax year, or portion thereof, that are actually received by a casino operator from its gaming operations, which sums include, but are not limited to, cash, slot tokens, prize tokens counted at face value pursuant to N.J.A.C. 19:45-1.41 and 19:45-1.43, checks received by a casino operator pursuant to N.J.S.A. 5:12-101 whether collected or not, and coupons counted pursuant to N.J.A.C. 19:45-1.33 regardless of validity, less only the total of all sums paid out as winnings to patrons;

2. Minus only the lesser of the following:

i. (No change.)

ii. The amount shown in the casino department account entitled "Provision for Uncollectible Patron Checks," which account shall be maintained in accordance with generally accepted accounting principles as part of the uniform chart of accounts required for casino departments pursuant to N.J.S.A. 5:12-70m and N.J.A.C. 19:45-1.2(b).

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

(d) Each casino operator shall treat each check which it receives in that year but which is invalid and unenforceable pursuant to N.J.S.A. 5:12-101f as cash received from gaming operations, and no deduction for the amount thereof shall be allowed in computing gross revenue.

(a)

CASINO CONTROL COMMISSION

Persons Doing Business with Casino Licensees Application for Initial Casino Service Industry License and License Renewal

Adopted New Rules: N.J.A.C. 19:51-1.3A and 1.3B

Proposed: July 18, 1994 at 26 N.J.R. 2886(a).

Adopted: September 8, 1994 by the Casino Control Commission, James R. Hurley, Acting Chairman.

Filed: September 12, 1994 as R.1994 d.505, **without change**.

Authority: N.J.S.A. 5:12-63c, 69a, 70a, and 92.

Effective Date: October 3, 1994.
Expiration Date: August 15, 1996.

Summary of Public Comments and Agency Responses:

Comments were received from the Division of Gaming Enforcement (Division).

COMMENT: The Division indicated that it supports the adoption of the proposed regulations.

RESPONSE: Accepted.

Full text of the adoption follows:

19:51-1.3A Application for initial casino service industry license

(a) An application for an initial casino service industry license pursuant to N.J.S.A. 5:12-92a and b shall consist of the fee specified in N.J.A.C. 19:41-9.8 and a completed original and one copy of the following:

1. A Business Entity Disclosure (BED) form for the applicant as follows:

i. For a corporation, a BED-Corporate as set forth in N.J.A.C. 19:41-5.6; or

ii. For a partnership or sole proprietor, a BED-Partnership as set forth in N.J.A.C. 19:41-5.6A;

2. The appropriate BED form in (a)1i or ii above for each holding company of the applicant;

3. A complete application in accordance with N.J.A.C. 19:41-7.1A, including a Personal History Disclosure Form—1A (PHD-1A) as set forth in N.J.A.C. 19:41-5.2, for each person required to be qualified pursuant to N.J.S.A. 5:12-92a and b and N.J.A.C. 19:51-1.14(a)1; and

4. Both of the following in a format prescribed by the Commission:

i. A notarized acknowledgment of the equal employment and business opportunity obligations imposed by N.J.A.C. 19:53-3 which shall be signed and dated by the president, chief executive officer, partner or sole proprietor, as applicable; and

ii. A statistical report of the composition of the applicant's work force.

(b) An application for an initial casino service industry license pursuant to N.J.S.A. 5:12-92c shall consist of the fee specified in N.J.A.C. 19:41-9.9 and a completed original and one copy of the following:

1. A Business Entity Disclosure Form-3 (BED-3) as set forth in N.J.A.C. 19:41-5.7 for the applicant;

2. A BED-Holding Company (BED-HC) as set forth in N.J.A.C. 19:41-5.8 for each holding company of the applicant;

3. A completed application in accordance with N.J.A.C. 19:41-7.1A, including a Qualifier Disclosure Form (QDF) as set forth in N.J.A.C. 19:41-5.9, for each person required to be qualified pursuant to N.J.S.A. 5:12-92c and N.J.A.C. 19:51-1.14(a)2;

4. If the applicant is required pursuant to N.J.A.C. 19:51-1.2A(f) to obtain a license prior to conducting business with a casino licensee or applicant, two copies of the following documents:

i. The applicant's Federal tax returns and related documents for the three years and State tax returns and related documents for the one year preceding application; and

ii. The Federal tax returns and related documents for the one year preceding application for each person required to be qualified pursuant to N.J.A.C. 19:51-1.14(a)2;

5. Both of the following in a format prescribed by the Commission:

i. A notarized acknowledgment of the equal employment and business opportunity obligations imposed by N.J.S.A. 5:12-134 and 135 and N.J.A.C. 19:53 which shall be signed and dated by the president, chief executive officer, partner or sole proprietor, as applicable; and

ii. A statistical report of the composition of the applicant's work force.

19:51-1.3B Application for renewal of casino service industry license

(a) An application for renewal of a casino service industry license pursuant to N.J.S.A. 5:12-92a and b shall consist of the fee specified in N.J.A.C. 19:41-9.8 and an original and one copy of the following:

1. A Business Entity Disclosure (BED) form for the applicant as follows:

i. For a corporation, a BED-Corporate as set forth in N.J.A.C. 19:41-5.6 except that documents in N.J.A.C. 19:41-5.6(a)28i, ii, iv, viii and ix, (a)29 and (a)31 which were included in a prior application may be incorporated by reference if there is no change in the information contained therein; and

ii. For a partnership or sole proprietor, a BED-Partnership as set forth in N.J.A.C. 19:41-5.6A except that documents in N.J.A.C. 19:41-5.6A(a)23 through 25 which were included in a prior application may be incorporated by reference if there is no change in the information contained therein;

2. The appropriate form in (a)1i or ii above for each holding company of the applicant;

3. A completed application, including a Personal History Disclosure Form-1A (PHD-1A) as set forth in N.J.A.C. 19:41-5.2, for each person required to be qualified pursuant to N.J.S.A. 5:12-92a and b and N.J.A.C. 19:51-1.14(a)1 who has not previously been found qualified;

4. An Employee License Renewal Application, as set forth in N.J.A.C. 19:41-14.3(b), for each person required to be qualified pursuant to N.J.S.A. 5:12-92a and b and N.J.A.C. 19:51-14(a)1 who has previously been found qualified;

5. Both of the following, in a format prescribed by the Commission:

i. A notarized affidavit of compliance with the equal employment and business opportunity requirements of N.J.S.A. 5:12-134 and 135 and N.J.A.C. 19:53 which shall be signed and dated by the president, chief executive officer, partner or sole proprietor of the applicant, as applicable; and

ii. A statistical report of the composition of the applicant's work force;

(b) An application for renewal of a casino service industry license pursuant to N.J.S.A. 5:12-92c shall consist of the fee specified in N.J.A.C. 19:41-9.9 and an original and one copy of following:

1. A BED-3 as set forth in N.J.A.C. 19:41-5.7(a) for the applicant except that documents in N.J.A.C. 19:41-5.7(a)5 which were included in a prior application may be incorporated by reference if there is no change in the information contained therein;

2. A BED-Holding Company (BED-HC) as set forth in N.J.A.C. 19:41-5.8 for each holding company of the applicant except that documents in N.J.A.C. 19:41-5.8(a)5 which were included in a prior application may be incorporated by reference if there is no change in the information contained therein;

3. A completed application, including a Qualifier Disclosure Form (QDF) as set forth in N.J.A.C. 19:41-5.9, for each person required to be qualified pursuant to N.J.S.A. 5:12-92c and N.J.A.C. 19:51-1.14(a)2 who has not previously been found qualified;

4. A Qualifier Renewal Form (QRF) as set forth in N.J.A.C. 19:41-5.10 for each person required to be qualified pursuant to N.J.S.A. 5:12-92c and N.J.A.C. 19:51-1.14(a)2 who has previously been found qualified;

5. Both of the following, in a format prescribed by the Commission:

i. A notarized affidavit of compliance with the equal employment and business opportunity requirements of N.J.S.A. 5:12-134 and 135 and N.J.A.C. 19:53 which shall be signed and dated by the president, chief executive officer, partner or sole proprietor of the applicant, as applicable; and

ii. A statistical report of the composition of the applicant's work force.

PUBLIC NOTICES

ENVIRONMENTAL PROTECTION

(a)

ENVIRONMENTAL REGULATION

Notice of Adoption of 1994 New Jersey Pollutant Discharge Elimination System (NJPDES) Statewide Stormwater Permitting Program Annual Fee Report and Fee Schedule

Take notice that the Department of Environmental Protection (Department) has adopted the fiscal year 1994 Annual Fee Report and Fee Schedule for the NJPDES Stormwater Permitting Program administered by the Department's Bureau of Stormwater Permitting. In accordance with N.J.A.C. 7:14A-1.8, this adoption marked the completion of the fiscal year 1994 budgeting process for the NJPDES Stormwater Permitting Program.

The Department held a public hearing on June 21, 1994 at the Department's Public Hearing Room, in Trenton, New Jersey. Four persons attended the public hearing. No oral testimony or written comments were presented at the public hearing. One person, the Honorable Dean A. Gallo, Congressman, 11th District, submitted written comments during the public comment period.

Barry Chalofsky, Manager of the Department's Bureau of Stormwater Permitting, served as hearing officer at the June 21, 1994 public hearing on the 1994 Annual Fee Report and Fee Schedule for the NJPDES Stormwater Permitting Program. After reviewing the public comments regarding that Annual Fee Report, Mr. Chalofsky recommended that the Department adopt the 1994 Annual Fee Report and Fee Schedule as proposed.

Summary of Public Comments and Agency Response:

COMMENT: A constituent of mine believes that the $500.00 in fees he pays each year are exorbitant and are directly related to Department budget needs. Governor Whitman's administration has continually pledged to make the Department more efficient and citizen-friendly. However, my constituent feels that the previous administration's policies have not been abandoned. (The Honorable Dean A. Gallo, Congressman, 11th District)

RESPONSE: The NJPDES Stormwater Permitting Program has been implemented as a result of mandates within the Federal Clean Water Act and United States Environmental Protection Agency (USEPA) rules. New Jersey is one of 39 states approved by the USEPA to issue National Pollutant Discharge Elimination System (NJPDES) permits for discharges to surface water, including discharges of stormwater. In 1990, as one of the USEPA's first steps in establishing its current stormwater permit requirements, the USEPA adopted rules defining the term "storm water discharge associated with industrial activity" (40 CFR 122.26(b)(14)). New Jersey has over 27,000 industries that are potentially affected by these Federal requirements, although the vast majority will not need to receive permits.

In order to effectively and efficiently regulate the industrial facilities that do need permits, the Department followed the USEPA lead, and issued in 1992 a general NJPDES permit (NJPDES Permit No. NJ0088315; N.J.A.C. 7:14A-3 Appendix A) which would cover most of the industrial facilities requiring permits. This Industrial Stormwater General Permit encourages industry to prevent pollutants from entering stormwater by using pollution prevention techniques, rather than costly treatment and end-of-pipe methods. This permit does not impose numerical effluent limitations, nor does it have on-site monitoring requirements. Instead, this permit requires the facilities to complete and implement a simple Stormwater Pollution Prevention Plan.

Although the comment did not name the constituent who objects to the annual permit fee of $500.00, the Department assumes that the constituent is one of the approximately 1,300 industries covered by this Industrial Stormwater General Permit. This fee is established by current regulation at N.J.A.C. 7:14A-1.8(i), and cannot be changed for the Fiscal Year 1994 (FY94) budget. (This fee is also equivalent to the minimum annual fee of $500.00 established by current regulation at N.J.A.C. 7:14A-1.8(h) for most other NJPDES Discharge to Surface Water permits.) If, instead, the constituent is one of the over 200 industries covered by an individual NJPDES permit (or the "5G" general permit issued in 1987) for industrial stormwater, then the $500.00 annual fee is the minimum annual fee that can be charged under current regulations at N.J.A.C. 7:14A-1.8(a) and (h). That fee likewise cannot be reduced for the FY94 budget.

While the Department is strongly in favor of strengthening Legislative financial support for the Department, the Department does not anticipate a time when there will be no fees for permittees. The $500.00 annual fee is consistent with fees charged by other states for stormwater permits, and is significantly lower than most of the other permit fees of the Department. Given the nature of the USEPA rules, the NJPDES Stormwater Permitting Program is required to regulate many industries which in the past have never obtained a Department permit. For this reason, the imposition of any permit fee is negatively perceived by some of these industries. As indicated in the 1994 Annual Fee Report and Fee Schedule for the NJPDES Stormwater Permitting Program, the $500.00 annual fee is only used to support the costs of that Program. However, these fees do not cover the entire costs of that Program at this time. Therefore, the Department has begun efforts to reduce the staff associated with that Program. It is anticipated that the staff will be reduced by 10 to 20 percent within Fiscal Year 1995. The Department has worked very hard with the affected industries to make that Program as industry-friendly as possible. The Department will continue to make every effort to provide environmental protection in a manner that does not inhibit economic progress.

(b)

SITE REMEDIATION PROGRAM

Notice of Availability of *Known Contaminated Sites in New Jersey*

Take notice that the Department of Environmental Protection (DEP) has released the first edition of the *Known Contaminated Sites in New Jersey.* The document provides a listing of approximately 6,000 known sites in the State where contamination of soil or groundwater has been confirmed and where cleanup efforts have either begun or are pending. Each site record includes information on the site's name and location and the bureau within the Department where remedial information can be obtained about the nature and extent of contamination, health risks and environmental damages. The document has been produced in response to the requirements of N.J.S.A. 58:10-23.16 through 23.17, and will be updated annually in printed format. Quarterly updates will be available in electronic format on diskette as of September 19, 1994.

Copies of the document may be reviewed at the State library depositories and the DEP Information Resource Center (609)-984-2249.

Interested parties may obtain a copy of the *Known Contaminated Sites in New Jersey* in either hard copy or on diskette by writing:

New Jersey Department of Environmental Protection
Bureau of Revenue
Maps and Publications Sales Office
CN 417
Trenton, New Jersey 08625-0417
609-777-1038 or 609-777-1039

The cost of the document is $15.00, made payable to Treasurer, State of New Jersey, and should be mailed to Maps and Publications with the request.

(c)

DIRECTOR OF LEGISLATIVE AND INTERGOVERNMENTAL AFFAIRS

Notice of Acceptance of Applications for State Grant Funds

Matching Grants Program for Local Environmental Agencies

Take notice that, in compliance with N.J.S.A. 52:14-34.4, 34.5 and 34.6, the Department of Environmental Protection hereby announces the acceptance of applications for the following State grant funds:

A. Name of program: Matching Grants Program for Local Environmental Agencies.

B. Purpose: The purpose of this matching grants program is to assist local environmental agencies in inventorying and documenting environmental resources; preparing policy recommendations to protect those resources; and preparing and disseminating information to the public concerning the ways in which the public can participate in protecting the environment.

C. Amount of money in the program: The exact amount is not known at this time; the State budget authorizes up to $200,000 be allocated to the program. In past years, funding has ranged from $150,000 to $200,000. The maximum grant will be $2,500. The applicant must agree to fund at least 50 percent of the cost of the eligible project.

D. Organizations which may apply for funding under this program: A municipal environmental commission or joint environmental commission of two or more municipalities established by ordinance reflecting State enabling legislation, N.J.S.A. 40:56A; county environmental commissions; and soil conservation districts are eligible to apply for a matching grant.

E. Qualifications needed by an applicant to be considered for the program: An applicant must be a "local environmental agency" as defined in N.J.S.A. 13:1H-1 et seq. An applicant must use funds for a project having the purposes described in section B above. Detailed specifications of eligible projects and costs will be provided with the application as defined below.

F. Procedure for eligible organizations to apply: Request a copy of the Matching Grants Program Guide and Application Form ("Application") from:

New Jersey Department of Environmental Protection
Office of Environmental Services
CN-402, 401 East State Street, 7th Floor
Trenton, New Jersey 08625
(609) 984-0828

Complete the application and submit it to the address listed directly above.

G. Application deadline: Applications must be delivered to the Office of Environmental Services or postmarked by December 1, 1994.

H. Date of notification of approval or disapproval: On or about April 1, 1995.

(a)

OFFICE OF LAND AND WATER PLANNING

Amendment to the Northeast Water Quality Management Plan

Public Notice

Take notice that the New Jersey Department of Environmental Protection is exercising a modified process for the review and approval of this Water Quality Management Plan amendment for which minimal modifications at most are expected to be necessary for Department approval. For this amendment, the Department is starting the public comment period earlier than normal in the review process. This amendment has not been fully reviewed by the Department. Be advised that publication of this notice in no way promises that the Department will approve this amendment without requirement for modifications. The Department is currently revising the Statewide Water Quality Management Planning rules (N.J.A.C. 7:15); this modified process will be examined on its benefits and may be incorporated within the rules at a later date. The Department reserves the right to require the submittal of additional or modified information in response to public comment or Department review. Where modifications to the amendment are considered minor or non-substantive, the Department will move to a final decision without a new public comment process. However, the Department does reserve the right to require a new public comment process in the case where major modifications occur to the amendment. Any interested party with questions about this process should contact the Office of Land and Water Planning at (609) 633-1179.

The Department is seeking public comment on a proposed amendment to the Northeast Water Quality Management (WQM) Plan. This amendment proposal was submitted by the Bergen County Utilities Authority (BCUA). The proposal would amend the BCUA Wastewater Management Plan (WMP) to allow for an increase in the future sewer service area to the BCUA sewage treatment plant (STP) to include the currently unserved area in the northeast portion of Old Tappan Borough. With the addition of this area, the entire Borough would be delineated as within either the existing or future sewer service areas to the BCUA STP (discharge is to the Hackensack River, classified per N.J.A.C. 7:9B as SE-2). The service area will be expanded in part to include the proposed Woods Edge planned residential development (133 townhouse units, and seven single family homes), Greenwoods Estates (12 single family homes), and Dorotockey's Run (72 townhouses and eight single family homes). The 2010 projected wastewater flow from Old Tappan specified in the BCUA WMP will be increased from 0.440 million gallons per day (mgd) to 0.463 mgd and the projected population from 6175 to 6500 to address the existing and expanded sewer service areas within the Borough. With regard to water supply, it is anticipated that new developments in the Borough will be served by the Hackensack Water Company.

This amendment represents only one part of the permit process and other issues will be addressed prior to final permit issuance. Additional issues which were not reviewed in conjunction with this amendment but which may need to be addressed may include, but are not limited to, the following: antidegradation; effluent limitations; water quality analysis; exact locations and designs of future treatment works (pump stations, interceptors, sewers, outfalls, wastewater treatment plants); and development in wetlands, flood prone areas, designated Wild and Scenic River areas, or other environmentally sensitive areas which are subject to regulation under Federal or State statutes or rules.

This notice is being given to inform the public that a plan amendment has been proposed for the Northeast WQM Plan. All information related to the WQM Plan and the proposed amendment is located at the NJDEP, Office of Land and Water Planning, CN423, 401 East State Street, 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 Office of Land and Water Planning at (609) 633-1179.

Interested persons may submit written comments on the proposed amendment to Dr. Daniel J. Van Abs, at the NJDEP address cited above with a copy sent to Mr. Jerome F. Sheehan, Chief Engineer, BCUA, Box 122, Foot of Mehrhof Road, Little Ferry, New Jersey 07643. All comments must be submitted within 30 days of the date of this public notice. All comments submitted by interested persons in response to this notice, within the time limit, shall be considered by NJDEP with respect to the amendment request.

Any interested persons may request in writing that NJDEP hold a nonadversarial public hearing on the amendment or extend the public comment period in this notice up to 30 additional days. These requests must state the nature of the issues to be raised at the proposed hearing or state the reasons why the proposed extension is necessary. These requests must be submitted within 30 days of this public notice to Dr. Van Abs at the NJDEP address cited above. If a public hearing for the amendment is held, the public comment period in this notice shall be extended to close 15 days after the public hearing.

(b)

OFFICE OF LAND AND WATER PLANNING

Amendment to the Upper Raritan Water Quality Management Plan

Public Notice

Take notice that on August 18, 1994, 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 expands the sewer service area of the Environmental Disposal Corporation sewage treatment plant, located in Bedminster Township, to include the Gill St. Bernard's School property which straddles the Chester Township (Lot 1, Block 5) and Borough of Peapack-Gladstone (Lot 1, Block 2.02) municipal boundary. This will be accomplished via connection to the existing Peapack-Gladstone sanitary sewer system. This proposal amends the Chester Township, Bedminster Township, and Borough of Peapack-Gladstone Wastewater Management Plans.

This amendment represents only one part of the permit process and other issues will be addressed prior to final permit issuance. Additional issues which were not reviewed in conjunction with this amendment but

which may need to be addressed may include, but are not limited to, the following: antidegradation; effluent limitations; water quality analysis; exact locations and designs of future treatment works (pump stations, interceptors, sewers, outfalls, wastewater treatment plants); and development in wetlands, flood prone areas, designated Wild and Scenic River areas, or other environmentally sensitive areas which are subject to regulation under Federal or State statutes or rules.

(a)

OFFICE OF LAND AND WATER PLANNING

Amendment to the Monmouth County Water Quality Management Plan

Public Notice

Take notice that the New Jersey Department of Environmental Protection (NJDEP) is seeking public comments on a proposed amendment to the Monmouth County Water Quality Management (WQM) Plan. This amendment proposal was submitted on behalf of the Western Monmouth Utilities Authority (WMUA). The amendment would update the WMUA and Bayshore Regional Sewerage Authority (BRSA) Wastewater Management Plans (WMPs) in Marlboro Township. The WMPs identify a sewer service area expansion to the BRSA Union Beach Sewage Treatment Plant (STP) to serve the proposed Woodbury Oaks single family home development to be located at Block 120, Lots 32.02, 64 and 67 in the Morganville section of Marlboro. The projected wastewater planning flow from this site is 30,000 gallons per day. This brings the projected wastewater planning flow need of the BRSA Union Beach STP for Marlboro Township to 917,000 gallons per day.

This amendment represents only one part of the permit process and other issues will be addressed prior to final permit issuance. Additional issues which were not reviewed in conjunction with this amendment but which may need to be addressed may include, but are not limited to, the following: antidegradation; effluent limitations; water quality analysis; exact locations and designs of future treatment works (pump stations, interceptors, sewers, outfalls, wastewater treatment plants); and development in wetlands, flood prone areas, designated Wild and Scenic River areas, or other environmentally sensitive areas which are subject to regulation under Federal or State statutes or rules.

This notice is being given to inform the public that a plan amendment has been proposed for the Monmouth County WQM Plan. All information related to the WQM Plan and the proposed amendment is located at the NJDEP, Office of Land and Water Planning, CN-423, 401 East State Street, Trenton, N.J. 08625. It is available for inspection between 8:30 A.M. and 4:00 P.M., Monday through Friday. An appointment to inspect the documents may be arranged by calling the Office of Land and Water Planning at (609) 633-1179.

Interested persons may submit written comments on the proposed amendment to Dr. Daniel J. Van Abs, at the NJDEP address cited above with a copy sent to Mr. Kevin F. Toolan, Western Monmouth Utilities Authority Engineer, T & M Associates, Eleven Tindall Road, Middletown, New Jersey 07748. All comments must be submitted within 30 days of the date of this public notice. All comments submitted by interested persons in response to this notice, within the time limit, shall be considered by NJDEP with respect to the amendment request.

Any interested person may request in writing that NJDEP hold a nonadversarial public hearing on the amendment or extend the public comment period in this notice up to 30 additional days. These requests must state the nature of the issues to be raised at the proposed hearing or state the reasons why the proposed extension is necessary. These requests must be submitted within 30 days of the date of this public notice to Dr. Van Abs at the NJDEP address cited above. If a public hearing for the amendment is held, the public comment period in this notice shall be extended to close 15 days after the public hearing.

HUMAN SERVICES

(b)

DIVISION OF FAMILY DEVELOPMENT

Notice of Receipt of Petition for Rulemaking

Petitioner: Wilson H. Beebe Jr., Executive Director, New Jersey State Funeral Directors Association, Inc. and the New Jersey Cemetery Association.

Take notice that on July 11, 1994 a petition for rulemaking was received from Wilson H. Beebe Jr., Executive Director, New Jersey Funeral Directors Association, Inc., and the New Jersey Cemetery Association concerning this Division's rules on funeral and burial payments.

Petitioner recommended that the rules be amended to:

1. Permit outside persons and organizations to supplement the current funeral and cemetery payments by the State, up to a maximum of 75 percent of current retail value consistent with N.J.S.A. 44:1-157.1 and 44:7-13; and

2. Discontinue the practice of deducting from current State payments to funeral directors and cemeteries other resources as defined.

Petitioner contents that the level of payments by the Department for the rendering of funeral and cemetery goods and services has declined from the 75 percent level defined by statute.

The affected Administrative Code sections are: N.J.A.C. 10:81-7.24 et seq.; 10:85-4.8 et seq.; and 10:100-3.7 et seq.

This petition for rulemaking will receive further review by the Department of Human Services. Following this review, the Department shall mail to the petitioner, and file with the Office of Administrative Law, a notice of action on the petition, in accordance with the provisions of N.J.A.C. 1:30-3.6.

(c)

DIVISION OF FAMILY DEVELOPMENT

Notice of Availability of Grant Funds Family Development Program—Jersey City Performance-Based Contract for Job Placement.

Take notice that, in compliance with N.J.S.A. 52:14-34.4, 34.5 and 34.6, the New Jersey Department of Human Services hereby announces the availability of the following grant program funds:

A. Name of Program: Family Development Program—Jersey City Performance-Based Contract for Job Placement.

B. Purpose: The purpose for which the program funds are issued is to promote self sufficiency for Aid to Families With Dependent Children (AFDC) Family Development Program (FDP) recipients in the City of Jersey City, Hudson County. These funds are to be used for full-time unsubsidized employment placement services, employment-directed activities and monitoring services. The project emphasis includes placing AFDC recipients, 18 years of age and older, into full-time permanent, unsubsidized jobs with earnings sufficient to enable the AFDC family to terminate welfare assistance; and, monitoring the family's progress following job placement. It seeks to utilize "short-term" interventions to assist the individual in securing and maintaining such employment.

C. Amount of available funding for the program: The total amount of funding available in SFY 1995 for administration and services under this RFP will be $500,000. This amount will be subject to available funding and will be distributed to the successful bidder(s).

The applicant agency will be reimbursed based upon a cost per case basis and partially reimbursed on the following milestones, as stated in the following schedule: up to 50 percent of the per capita case costs will be awarded an applicant agency at the point of placement of individuals in unsubsidized jobs; up to 30 percent of the per capita case costs to be awarded the applicant agency for successful placements of three months duration in unsubsidized full-time employment; and the remaining 20 percent of the total per capita case monies to the applicant agency for successful placements of six months duration in full-time unsubsidized employment.

The Grant Period is January 1, 1995 through December 31, 1995.

D. Organizations which may apply for funding under this program: Eligible applicants are public, or for profit, or not-for-profit agencies, organizations, or corporate bodies, which can administer any or all of

the aforementioned services (full-time job placement, employment-directed activities, monitoring activities and job development) of the Family Development Program.

E. Qualifications of organizations that apply for funding under this program: Through written proposals, agencies must demonstrate the capacity to develop and carry out the proposed service delivery of the Family Development Program as described above and outlined in the final proposal guidelines. Applicants must demonstrate their ability to work cooperatively with the existing FDP structure of Hudson County to ensure proper and timely delivery of all services.

F. Procedure for eligible organizations to apply: Interested agencies may request, in writing, a copy of the Request For Proposal from the Department of Human Services, Division of Family Development, Office of the Acting Deputy Director, CN 716, Trenton, New Jersey 08625, or by telephone (609) 588-2411. Packages will be available on Monday, October 3, 1994.

Additional information and technical assistance will be provided to interested applicants at a **Bidders' Conference** to be held at the Division of Family Development, Quakerbridge Plaza, Building 6, Third-Floor, Board Rooms A and B, Trenton, New Jersey, on Thursday, October 6, 1994, at 10:00 A.M.

RFP packages will also be available, upon request, at the Bidders' Conference.

G. Address to which applications must be submitted: Applicants should submit one signed original and seven copies of the completed Request for Proposal document and all support materials to:

Marion E. Reitz, Director
Division of Family Development
Department of Human Services
CN 716
Trenton, New Jersey 08625

H. Deadline by which applications must be submitted: Friday, November 4, 1994 (4:00 P.M.). No applications will be accepted after 4:00 P.M.

I. Date the applicant is to be notified of acceptance or rejection: No later than Tuesday, November 29, 1994.

LAW AND PUBLIC SAFETY

(a)

DIVISION OF MOTOR VEHICLES

Notice of Contract Carrier Applicant

Take notice that C. Richard Kamin, Director, Division of Motor Vehicles, pursuant to the authority of N.J.S.A. 39:5E-11, hereby lists the name and address of an applicant who has filed for a Contract Carrier Permit:

CONTRACT CARRIER (NON-GRANDFATHER)
Terrance L. Payne, Jr., Inc.
72 Buttermilk Bridge Road
Washington, NJ 07882

Protests in writing and verified under oath may be presented to the Director, Division of Motor Vehicles, 225 E. State St., CN 162, Trenton, NJ 08666, within 20 days (October 23, 1994) following the publication of an application.

(b)

DIVISION OF MOTOR VEHICLES

Notice of Contract Carrier Applicant

Take notice that C. Richard Kamin, Director, Division of Motor Vehicles, pursuant to the authority of N.J.S.A. 39:5E-11, hereby lists the name and address of an applicant who has filed for a Contract Carrier Permit:

CONTRACT CARRIER (NON-GRANDFATHER)
Tri-County Oil Company
P.O. Box 51, 204 Woodstown Road
Salem, NJ 08079

Protests in writing and verified under oath may be presented to the Director, Division of Motor Vehicles, 225 E. State St., CN 162, Trenton, NJ 08666, within 20 days (October 23, 1994) following the publication of an application.

TREASURY-GENERAL

(c)

STATE EMPLOYEES CHARITABLE CAMPAIGN

Notice of Acceptance of Applications from Charitable Fund-Raising Organizations and Agencies for Participation in State Employees Charitable Fund-Raising Campaign for Fall of 1995

Take notice that Brian Clymer, Treasurer, State of New Jersey, pursuant to the Public Employees Charitable Fund-Raising Act, P.L. 1985, c.140 (N.J.S.A. 52:14-15.9c1 et seq.) and State Employees Charitable Fund-Raising Rules (N.J.A.C. 17:28-3.2(b)(1)), announces that the Department of the Treasury will be accepting applications via the Division of Consumer Affairs, c/o Anne Mallett, State Coordinator, PO Box 45025, Newark, NJ 07101 until December 1, 1994 from the charitable fund-raising organizations and agencies for participation in the State Employees Charitable Fund-Raising Campaign for Fall of 1995.

For the purposes of this notice, "Charitable fund-raising organization" shall mean a voluntary not-for-profit organization which receives and distributes voluntary charitable contributions. A charitable fund-raising organization, if eligible, shall participate on the Steering Committee. "Charitable fund-raising agency" shall mean a voluntary not-for-profit organization which provides health, welfare, or human care services to individuals. A Charitable organization or agency shall be eligible to participate in the 1995 Campaign if it meets the following requirements and submits the required documents listed in the rules:

a. The organization/agency is exempt from Federal income tax under Section 501(c)(3) of the Internal Revenue Code;

b. The organization/agency qualifies for tax deductible contributions under Section 170(b)(1)(A)(vi) or (viii) of the Internal Revenue Code;

c. The organization/agency is not a private foundation as described in Section 509 of the Internal Revenue Code;

d. The organization/agency is incorporated under or subject to the provisions of Title 15 of the Revised Statutes of Title 15A of the New Jersey Statutes and the "Charitable Registration and Investigation Act," P.L. 1994, c.16 (N.J.S.A. 45:17A-18 et seq.);*

e. The organization/agency demonstrates to the satisfaction of the State Treasurer that a significant portion of funds raised in each of its two fiscal years preceding its application to participate in a campaign consist of individual contributions from citizens of the State.

f. If an organization, it shall have raised at least $60,000 and distributed that sum among at least 15 charitable agencies in each of its two fiscal years preceding its application to participate in a State Campaign; if an agency, it shall have raised at least $15,000 from individual citizens of New Jersey in each of its two fiscal years preceding its application to participate in a State Campaign.

Copies of the application may be obtained from the Division of Consumer Affairs at the address listed below and submitted with:

1. A cover letter which includes the name and address of the organization/agency;
2. Verification that the organization/agency meets the requirements as spelled out in a through f above;
3. A copy of the IRS form 990 for the preceding two years;
4. A copy of the independent auditor's report for the preceding two years;
5. A statement that the governing body has no conflict of interest in their service;
6. A list of the current governing body and identification of its officers;
7. A list of agencies to which the organization gave its funds in the two fiscal years prior to application and a list of agencies to which it

*This Act has replaced the Charitable Fund-Raising Act of 1971 which was repealed on August 10, 1994.

anticipates giving funds received in this campaign, and a description of the health, welfare, or human care services that each provides, if applicable; and

8. Verification that each agency is registered under the Charitable Fund-Raising Act of 1994* except for those that are exempt under law.

Additional information may be requested from each organization/agency by the Treasurer.

Requests for application forms should be addressed to:

Anne Mallett
State Coordinator
New Jersey State Employees Charitable Campaign
PO Box 45025
Newark, NJ 07101

Applications can also be requested by calling (201) 504-6550.

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 August 1, 1994 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.1994 d.1 means the first rule filed for 1994.

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 JULY 18, 1994

NEXT UPDATE: SUPPLEMENT AUGUST 15, 1994

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
25 N.J.R. 4541 and 4694	October 4, 1993	26 N.J.R. 1555 and 1738	April 18, 1994
25 N.J.R. 4695 and 4812	October 18, 1993	26 N.J.R. 1739 and 1904	May 2, 1994
25 N.J.R. 4813 and 4980	November 1, 1993	26 N.J.R. 1905 and 2166	May 16, 1994
25 N.J.R. 4981 and 5382	November 15, 1993	26 N.J.R. 2167 and 2510	June 6, 1994
25 N.J.R. 5383 and 5728	December 6, 1993	26 N.J.R. 2511 and 2692	June 20, 1994
25 N.J.R. 5729 and 6084	December 20, 1993	26 N.J.R. 2693 and 2828	July 5, 1994
26 N.J.R. 1 and 280	January 3, 1994	26 N.J.R. 2829 and 3102	July 18, 1994
26 N.J.R. 281 and 520	January 18, 1994	26 N.J.R. 3103 and 3230	August 1, 1994
26 N.J.R. 521 and 878	February 7, 1994	26 N.J.R. 3231 and 3504	August 15, 1994
26 N.J.R. 879 and 1178	February 22, 1994	26 N.J.R. 3505 and 3780	September 6, 1994
26 N.J.R. 1179 and 1272	March 7, 1994	26 N.J.R. 3781 and 3916	September 19, 1994
26 N.J.R. 1273 and 1416	March 21, 1994	26 N.J.R. 3917 and 4120	October 3, 1994
26 N.J.R. 1417 and 1554	April 4, 1994		

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
ADMINISTRATIVE LAW—TITLE 1				
1:10-1.1, 14.2, 14.3	Family Development hearings: reproposal	26 N.J.R. 1744(b)	R.1994 d.417	26 N.J.R. 3441(a)
1:12	Department of Labor hearings	26 N.J.R. 2174(a)	R.1994 d.406	26 N.J.R. 3154(a)
1:12A	Department of Labor hearings	26 N.J.R. 2174(a)	R.1994 d.406	26 N.J.R. 3154(a)
1:14-10	BRC ratemaking hearings: discovery	26 N.J.R. 3(a)		
1:14-10	BRC ratemaking hearings: extension of comment period regarding discovery process	26 N.J.R. 883(a)		
1:14-10	Board of Regulatory Commissioners ratemaking hearings: discovery	26 N.J.R. 2513(a)	R.1994 d.451	26 N.J.R. 3705(a)
	Most recent update to Title 1: TRANSMITTAL 1994-3 (supplement June 20, 1994)			
AGRICULTURE—TITLE 2				
2:3	Livestock and poultry importation	26 N.J.R. 1908(a)	R.1994 d.399	26 N.J.R. 3159(a)
2:5	Quarantines and embargoes on animals	26 N.J.R. 1908(b)		
2:6	Animal health: biological products for diagnostic or therapeutic purposes	26 N.J.R. 3784(a)		
2:33	Agricultural fairs	26 N.J.R. 285(a)		
2:71-2.2, 2.4, 2.5, 2.6	Jersey Fresh Quality Grading Program: cut flowers, fresh market tomatoes	26 N.J.R. 2831(a)	R.1994 d.485	26 N.J.R. 3828(a)
2:76	Agriculture Development Committee	26 N.J.R. 1419(a)	R.1994 d.393	26 N.J.R. 3159(b)
2:76-6.11	Farmland Preservation Program: correction to proposal and extension of comment period regarding acquisition of development easements	25 N.J.R. 4697(a)		
	Most recent update to Title 2: TRANSMITTAL 1994-4 (supplement June 20, 1994)			
BANKING—TITLE 3				
3:1-4.5	Governmental unit deposit protection: public funds exceeding 75 percent of capital funds	26 N.J.R. 2832(a)		
3:1-6.6	Department examination charges	26 N.J.R. 1560(b)		
3:1-16.2, 16.5	Mortgage commitments, lender advertising and licensure, surety bond amounts	26 N.J.R. 3234(a)		
3:2-1.4	Mortgage commitments, lender advertising and licensure, surety bond amounts	26 N.J.R. 3234(a)		
3:4-3	Banking institutions: sale of alternative investments	25 N.J.R. 5733(a)		
3:6-15.2	Disqualification of savings bank directors	25 N.J.R. 3586(b)	R.1994 d.397	26 N.J.R. 3163(a)
3:11-7.11	Disqualification of bank directors	25 N.J.R. 3586(b)	R.1994 d.397	26 N.J.R. 3163(a)
3:22	Insurance premium finance companies	26 N.J.R. 2697(a)		
3:33	Acquisitions by out-of-State entities: application requirements	26 N.J.R. 3235(a)		
3:38-5.3	Mortgage referrals by real estate agents	26 N.J.R. 6(a)		
3:38-5.3	Mortgage referrals by real estate agents: extension of comment period	26 N.J.R. 884(a)		
3:40-6	New Jersey Cemetery Board: applications	26 N.J.R. 3785(a)		
3:41-12	Cemetery Board: service contractors and service contracts	26 N.J.R. 6(b)		
3:41-13.8–3.10	New Jersey Cemetery Board: applications	26 N.J.R. 3785(a)		
	Most recent update to Title 3: TRANSMITTAL 1994-5 (supplement July 18, 1994)			

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
CIVIL SERVICE—TITLE 4				
	Most recent update to Title 4: TRANSMITTAL 1992-1 (supplement September 21, 1992)			
PERSONNEL—TITLE 4A				
4A:1-2.3	Department use of Social Security numbers	26 N.J.R. 287(a)		
4A:2-2.3	Sexual harassment	26 N.J.R. 3507(a)		
4A:2-3.1	Department use of Social Security numbers	26 N.J.R. 287(a)		
4A:2-3.1	Performance evaluations	26 N.J.R. 3509(a)		
4A:3-3.1	Department use of Social Security numbers	26 N.J.R. 287(a)		
4A:3-4.6	Voluntary furlough program for State employees	26 N.J.R. 2179(a)		
4A:4-1.10	Personnel action freezes	26 N.J.R. 3510(a)		
4A:4-2.1	Department use of Social Security numbers	26 N.J.R. 287(a)		
4A:4-2.15, 5.2	Voluntary furlough program for State employees	26 N.J.R. 2179(a)		
4A:4-4.8	Non-selection of eligible in same rank	26 N.J.R. 2697(b)	R.1994 d.507	26 N.J.R. 3941(a)
4A:6-1.1, 1.3, 1.6, 1.8, 1.10, 1.21, 1.21B, App.	Family and medical leave	26 N.J.R. 3511(a)		
4A:6-1.2, 1.3, 1.5, 1.23, 2.4	Voluntary furlough program for State employees	26 N.J.R. 2179(a)		
4A:6-4.2	Department use of Social Security numbers	26 N.J.R. 287(a)		
4A:6-5.3	Performance evaluations	26 N.J.R. 3509(a)		
4A:7-1.3, 3.3, 3.4	Sexual harassment	26 N.J.R. 3507(a)		
4A:8	Layoffs	26 N.J.R. 3518(a)		
4A:8-2.1	Layoff rights	26 N.J.R. 2182(a)	R.1994 d.441	26 N.J.R. 3705(b)
4A:8-2.4	Voluntary furlough program for State employees	26 N.J.R. 2179(a)		
4A:8-2.4	Family and medical leave	26 N.J.R. 3511(a)		
	Most recent update to Title 4A: TRANSMITTAL 1994-4 (supplement June 20, 1994)			
COMMUNITY AFFAIRS—TITLE 5				
5:18-2.12, 2.21, App. 3-A	Uniform Fire Code: cigarette lighters	26 N.J.R. 2182(b)		
5:23-2.5	Uniform Construction Code: increase in dwelling size	26 N.J.R. 1910(a)	R.1994 d.433	26 N.J.R. 3706(a)
5:23-2.23, 4.20	UCC: testing of backflow preventers	26 N.J.R. 1911(a)	R.1994 d.434	26 N.J.R. 3706(b)
5:23-3.4, 3.20A	Indoor air quality subcode	25 N.J.R. 5918(a)		
5:23-3.14, 7	Uniform Construction Code: Barrier Free Subcode	26 N.J.R. 2698(a)		
5:23-3.14, 7	Barrier Free Subcode: correction of public hearing date	26 N.J.R. 3524(a)		
5:23-5.19	UCC: elevator inspector HHS requirements	26 N.J.R. 1912(a)	R.1994 d.435	26 N.J.R. 3706(c)
5:23-8.10	Asbestos Hazard Abatement Subcode: asbestos safety technician	26 N.J.R. 2183(a)	R.1994 d.436	26 N.J.R. 3707(a)
5:23-10	Radon Hazard Subcode: administrative change	_____	_____	26 N.J.R. 3707(b)
5:23-10.1, 10.3, 10.4	Radon Hazard Subcode: schools and residential buildings in tier one areas	26 N.J.R. 2704(a)		
5:25-2.5	New home warranties and builder registration: denial of registration	26 N.J.R. 1913(a)		
5:25A-1.3, 2.1, 2.5, 2.6	FRT plywood roof sheathing failures: alternative claim procedures	26 N.J.R. 2706(a)	R.1994 d.506	26 N.J.R. 3941(b)
5:34-7.2, 7.5, 7.6, 7.8, 7.9	Local government finance: renewal of registration of Cooperative Purchasing System	26 N.J.R. 2707(a)		
5:37	Municipal, county and authority employees deferred compensation plans	26 N.J.R. 2708(a)		
5:80-3.2	Housing and Mortgage Finance Agency: return on equity for housing project sponsors	26 N.J.R. 1186(a)	R.1994 d.398	26 N.J.R. 3163(b)
5:80-5.10	Housing and Mortgage Finance Agency: prepayment of project mortgage	26 N.J.R. 1187(a)		
5:93-3.6, 5.6	New Jersey Council on Affordable Housing: reductions for substantial compliance; zoning for inclusionary development	26 N.J.R. 2514(a)		
	Most recent update to Title 5: TRANSMITTAL 1994-6 (supplement July 18, 1994)			
MILITARY AND VETERANS' AFFAIRS—TITLE 5A				
	Most recent update to Title 5A: TRANSMITTAL 1994-1 (supplement June 20, 1994)			
EDUCATION—TITLE 6				
6:1 et seq.	Extension of Executive Order No. 66(1978) expiration dates	_____	_____	26 N.J.R. 3942(a)
6:7	State-operated school districts	26 N.J.R. 3524(b)		
6:21	Pupil transportation	26 N.J.R. 1997(a)	R.1994 d.404	26 N.J.R. 3164(a)
6:26	Intervention and referral services for general education pupils	26 N.J.R. 2004(a)	R.1994 d.403	26 N.J.R. 3170(a)
6:30-2.1	Adult basic skills programs: professional staff certification	26 N.J.R. 2184(a)	R.1994 d.443	26 N.J.R. 3707(c)
6:70	Library network services	26 N.J.R. 2184(b)	R.1994 d.444	26 N.J.R. 3708(a)
	Most recent update to Title 6: TRANSMITTAL 1994-5 (supplement July 18, 1994)			

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
ENVIRONMENTAL PROTECTION—TITLE 7				
7:0	Management of waste oil: request for public comment	26 N.J.R. 1466(a)		
7:1G-2.1, 3.1	Community Right to Know: EPA list of regulated substances for accidental release prevention; hazardous substance reporting threshold	26 N.J.R. 2833(a)		
7:1H	County Environmental Health Act rules: pre-proposal	26 N.J.R. 3526(a)		
7:4A	Historic Preservation Grant Program	26 N.J.R. 3105(a)		
7:4A-2.3	Historic Preservation Bond Program	26 N.J.R. 3253(b)		
7:4B-3.1	Historic Preservation Bond Program	26 N.J.R. 3253(b)		
7:4C	Historic Preservation Bond Program	26 N.J.R. 3253(b)		
7:5C	Endangered Plant Species Program	26 N.J.R. 3790(a)		
7:5D	State Trails System	26 N.J.R. 1459(a)		
7:7-8	Coastal Permit Program: enforcement	26 N.J.R. 1745(a)	R.1994 d.413	26 N.J.R. 3188(a)
7:7E-5.5	Coastal zone management: administrative correction regarding development potential	———	———	26 N.J.R. 3943(a)
7:9A	Individual subsurface sewage disposal systems	26 N.J.R. 2715(a)	R.1994 d.469	26 N.J.R. 3829(a)
7:10	Safe Drinking Water Act rules	26 N.J.R. 2720(a)	R.1994 d.482	26 N.J.R. 3833(a)
7:13	Flood hazard area control	26 N.J.R. 1009(a)		
7:13-7.1	Flood plain redelineation of Pascack and Fieldstone brooks in Montvale	26 N.J.R. 2834(a)		
7:14A	New Jersey Pollutant Discharge Elimination System	26 N.J.R. 1332(a)		
7:14A-2.15, 6.14, 6.17, 12.4	Contaminated site remediation: NJPDES permit program	26 N.J.R. 158(a)	R.1994 d.448	26 N.J.R. 3709(a)
7:15	Statewide Water Quality Management Planning Rules: public meetings and opportunity for comment on draft amendments	26 N.J.R. 792(a)		
7:15	Statewide water quality management planning	26 N.J.R. 3106(a)		
7:22A	Sewage Infrastructure Improvement Act grants	26 N.J.R. 3793(a)		
7:24A	Dam Restoration and Inland Waters Projects Loan Program	26 N.J.R. 2228(a)		
7:25-4	Implementation of Wild Bird Act of 1991	26 N.J.R. 1040(a)		
7:25-5	1994-95 Game Code	26 N.J.R. 1913(b)	R.1994 d.412	26 N.J.R. 3193(a)
7:25-6	1995-96 Fish Code	26 N.J.R. 2835(a)		
7:25-6.9	1995-96 Fish Code: administrative correction	26 N.J.R. 3258(a)		
7:25-18.1, 18.5	Directed conch fishery	26 N.J.R. 1931(a)		
7:25-24.7, 24.9	Leasing of Atlantic coast bottom for aquaculture	26 N.J.R. 3109(a)		
7:25A-1.2, 1.4, 1.9, 4.3	Oyster management	26 N.J.R. 1562(a)	R.1994 d.450	26 N.J.R. 3714(a)
7:26-1.4	Hazardous waste transportation: informal meeting on draft "10-day in-transit holding rule"	26 N.J.R. 294(a)		
7:26-8.2, 8.14	Hazardous waste from specific sources: removal of K053 through K059 and K074 from list	26 N.J.R. 1464(a)	R.1994 d.411	26 N.J.R. 3211(a)
7:26C	Site Remediation Program: opportunity for comment on draft remedial priority system	25 N.J.R. 4551(c)		
7:27-1, 8, 18, 22	Air pollution control: facility operating permits	25 N.J.R. 3963(a)	R.1994 d.502	26 N.J.R. 3943(b)
7:27-1, 8, 18, 21, 22	Air pollution control: extension of comment period regarding facility operating permits, emission statements, and penalties	25 N.J.R. 4836(a)		
7:27-1, 8, 18, 22	Air Operating Permits and Reconstruction Permits: public roundtable on proposed new rules and amendments	26 N.J.R. 793(a)		
7:27-15	Motor vehicle enhanced inspection and maintenance program	26 N.J.R. 3258(b)		
7:27-15.4	Air quality management: enhanced Inspection and Maintenance program	25 N.J.R. 5130(a)		
7:27-16.1	Control and prohibition of air pollution by VOS	25 N.J.R. 6002(a)		
7:27-19	Control and prohibition of air pollution from oxides of nitrogen	26 N.J.R. 3298(a)		
7:27-21.1–21.5, 21.8, 21.9, 21.10	Air pollution control: facility emission statements	25 N.J.R. 4033(a)	R.1994 d.500	26 N.J.R. 4026(a)
7:27-25.1, 25.3	Oxygenated fuels program	26 N.J.R. 1148(a)		
7:27-25.1, 25.3, 25.8	Control and prohibition of air pollution by vehicular fuels	26 N.J.R. 1048(a)	R.1994 d.483	26 N.J.R. 3835(a)
7:27-25.3	Oxygen program exemptions	26 N.J.R. 3835(a)		
7:27-26	Low Emission Vehicles Program	26 N.J.R. 1467(a)		
7:27-27	Control and prohibition of mercury emissions	26 N.J.R. 1050(a)		
7:27A	Air pollution control: civil administrative penalties	26 N.J.R. 3566(a)		
7:27A-3.2, 3.5, 3.10	Air pollution control: administrative penalties and requests for adjudicatory hearings	25 N.J.R. 4045(a)	R.1994 d.501	26 N.J.R. 4030(a)
7:27A-3.10	Air pollution control: facility emission statement penalties	25 N.J.R. 4033(a)	R.1994 d.500	26 N.J.R. 4026(a)
7:27A-3.10	Air quality management: enhanced Inspection and Maintenance program	25 N.J.R. 5130(a)		
7:27A-3.10	Control and prohibition of air pollution by VOS	25 N.J.R. 6002(a)		
7:27A-3.10	Control and prohibition of mercury emissions	26 N.J.R. 1050(a)		

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
7:27A-3.10	Motor vehicle enhanced inspection and maintenance program	26 N.J.R. 3258(b)		
7:27A-3.10	Control and prohibition of air pollution from oxides of nitrogen	26 N.J.R. 3298(a)		
7:27B-4	Motor vehicle enhanced inspection and maintenance program	26 N.J.R. 3258(b)		
7:27B-4.5, 4.6, 4.9	Air quality management: enhanced Inspection and Maintenance program	25 N.J.R. 5130(a)		
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8:8	Collection, processing, storage and distribution of blood	26 N.J.R. 2025(a)	R.1994 d.350	26 N.J.R. 3171(a)
8:8-8.3, 8.5, 8.8	Collection of human blood	26 N.J.R. 3141(a)		
8:18	Catastrophic Illness in Children Relief Fund Program	26 N.J.R. 3573(a)		
8:18	Catastrophic Illness in Children Relief Fund Program: corrections to proposal statements	26 N.J.R. 3805(a)		
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8:31B-3.3, 3.70	Health care financing: monitoring and reporting	26 N.J.R. 12(a)		
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8:36-1.8, 9.3	Assisted living residences and comprehensive personal care homes: personal care assistants; administration of medications	26 N.J.R. 2187(a)	R.1994 d.496	26 N.J.R. 4046(a)
8:39	Long-term care facilities: standards for licensure	26 N.J.R. 1772(c)		
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8:44-2.11	Clinical laboratories: reopening of comment period on reporting of blood lead levels	26 N.J.R. 1190(a)		
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8:57-5	Confinement of persons with tuberculosis: public hearing	26 N.J.R. 3574(a)		
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8:71	Interchangeable drug products (see 25 N.J.R. 6060(c))	25 N.J.R. 3906(a)	R.1994 d.39	26 N.J.R. 364(a)
8:71	Interchangeable drug products (see 26 N.J.R. 362(b), 1347(b), 2095(a))	25 N.J.R. 4844(a)	R.1994 d.457	26 N.J.R. 3717(a)
8:71	List of Interchangeable Drug Products (see 26 N.J.R. 1348(a), 2096(a))	26 N.J.R. 13(b)	R.1994 d.456	26 N.J.R. 3716(a)
8:71	List of Interchangeable Drug Products	26 N.J.R. 14(a)	R.1994 d.244	26 N.J.R. 2039(a)
8:71	List of Interchangeable Drug Products	26 N.J.R. 69(a)	R.1994 d.243	26 N.J.R. 2028(a)
8:71	Interchangeable drug products (see 26 N.J.R. 2025(b), 2901(a))	26 N.J.R. 1190(b)	R.1994 d.455	26 N.J.R. 3715(b)
8:71	Interchangeable drug products (see 26 N.J.R. 2897(a))	26 N.J.R. 1821(a)	R.1994 d.459	26 N.J.R. 3719(a)
8:71	Interchangeable drug products (see 26 N.J.R. 2898(a))	26 N.J.R. 1822(a)	R.1994 d.458	26 N.J.R. 3717(b)
8:71	Interchangeable drug products	26 N.J.R. 2723(a)	R.1994 d.460	26 N.J.R. 3720(a)
8:71	Interchangeable drug products	26 N.J.R. 3583(a)		
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10:15C	Child Care Services Manual	26 N.J.R. 3327(a)		
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10:37D	Division of Mental Health and Hospitals: management and governing body standards for provider agencies	26 N.J.R. 1277(a)	R.1994 d.464	26 N.J.R. 3726(a)
10:37E	Division of Mental Health and Hospitals: outpatient service standards	26 N.J.R. 3608(a)		
10:43	Division of Developmental Disabilities: determination of need for guardian	26 N.J.R. 2838(a)		
10:43	Division of Developmental Disabilities: extension of comment period concerning determination of need for guardian	26 N.J.R. 3341(a)		
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10:46A	Family Support Service System: administrative correction and extension of comment period	26 N.J.R. 3610(a)		
10:46B	Division of Developmental Disabilities: placement of eligible persons	26 N.J.R. 3611(a)		
10:48-1	Division of Developmental Disabilities: appeal procedure	26 N.J.R. 1280(a)	R.1994 d.475	26 N.J.R. 3861(a)
10:48-4	Eligibility for services	26 N.J.R. 1752(a)		
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10:49-5.2, 5.3, 5.4	Medicaid reimbursement for infertility-related services	26 N.J.R. 3345(a)		
10:49-14.1	Medicaid benefits: recovery from estates of payments correctly made	26 N.J.R. 2757(a)		
10:49-14.4	Medical assistance recoveries involving county welfare agencies	26 N.J.R. 3348(a)		
10:49-17.5	Home care services: Traumatic Brain Injury Program	26 N.J.R. 1566(a)	R.1994 d.426	26 N.J.R. 3466(b)
10:50-1.2, 1.3, 1.4, 1.6, 1.7, 2.2	Transportation services for Medicaid recipients	26 N.J.R. 1425(a)	R.1994 d.402	26 N.J.R. 3211(b)
10:51-1.12	Medicaid reimbursement for infertility-related services	26 N.J.R. 3345(a)		
10:51-1.12, 2.11, 4.13	Medicaid and PAAD programs: unit-dose-packaged drugs	26 N.J.R. 3349(a)		
10:52-1.3, 1.7, 1.8	Medicaid reimbursement for infertility-related services	26 N.J.R. 3345(a)		
10:52-8.2	Manual of Hospital Services: disproportionate share adjustment for Other Uncompensated Care component	26 N.J.R. 2239(a)		
10:52-8.2	Manual for Hospital Services: payments for beds for mentally ill and developmentally disabled clients	26 N.J.R. 2241(a)	R.1994 d.432	26 N.J.R. 3473(a)
10:52-8.2	Charity care component of Health Care Subsidy Fund	Emergency (expires 9-30-94)	R.1994 d.440	26 N.J.R. 3485(a)
10:53-1.6, 1.7	Medicaid reimbursement for infertility-related services	26 N.J.R. 3345(a)		
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10:54-1.2	Medicaid reimbursement for infertility-related services	26 N.J.R. 3345(a)		
10:58-1.3	Medicaid reimbursement for infertility-related services	26 N.J.R. 3345(a)		
10:59-1.9	Medical Supplier Manual: reimbursement for certain services	26 N.J.R. 2839(a)		
10:60-1.3	Home Care Services: accreditation of private duty nursing agencies	26 N.J.R. 2840(a)		
10:60-5	Home care services: Traumatic Brain Injury Program	26 N.J.R. 1566(a)	R.1994 d.426	26 N.J.R. 3466(b)
10:61-1.3, 3.2	Medicaid reimbursement for infertility-related services	26 N.J.R. 3345(a)		
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10:66-2.3	Medicaid reimbursement for infertility-related services	26 N.J.R. 3345(a)		
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10:71-4.8, 5.4, 5.5, 5.6, 5.9	Medicaid Only: eligibility computation amounts	26 N.J.R. 1754(a)	R.1994 d.428	26 N.J.R. 3478(a)

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10:81	Public Assistance Manual	26 N.J.R. 1573(a)	R.1994 d.429	26 N.J.R. 3479(a)
10:81-2.2, 2.3, 5.1, 7.40-7.47, 15	Fraudulent receipt of AFDC assistance; disqualification penalties	25 N.J.R. 3408(a)	Expired	
10:81-11.2, 11.4, 11.18A	Public Assistance Manual: assignment of right to support; wage withholding	26 N.J.R. 896(a)	R.1994 d.463	26 N.J.R. 3729(a)
10:81-11.6A, 11.6B, 11.15	Child Support Hotline; locator processing fees	26 N.J.R. 3353(a)		
10:81-11.9	Public Assistance Manual: $50 disregarded child support payment	26 N.J.R. 1937(a)		
10:82	Aid to Families with Dependent Children (AFDC)	26 N.J.R. 1584(a)	R.1994 d.430	26 N.J.R. 3483(a)
10:82-2.3	Assistance Standards Handbook: administrative correction regarding income from noneligible individual	———	———	26 N.J.R. 4047(a)
10:85	General Assistance Manual	26 N.J.R. 2757(b)		
10:85-4.6	General Assistance Program: extension of temporary rental assistance benefits	26 N.J.R. 1756(a)		
10:87-12	Food Stamp Program: income eligibility, deductions, coupon allotments	———	———	26 N.J.R. 3901(a)
10:95	Commission for the Blind and Visually Impaired: Vocational Rehabilitation Services Program	26 N.J.R. 2242(a)		
10:126-1.2, 1.4, 2.2–2.4, 2.6, 3.2, 4.1, 4.2, 4.6, 4.8, 5.1–5.4, 5.6–5.10, 6.1–6.6, 6.8, 6.9, 6.13, 6.18, 6.20	Manual of Requirements for Family Day Care Registration	26 N.J.R. 3144(a)		
10:129A	Child protective services investigations and determinations of abuse and neglect	26 N.J.R. 3700(a)		
10:133-1.3	DYFS: initial response and service delivery definitions	26 N.J.R. 1285(a)		
10:133A-1.7, 1.9, 1.10, 1.11, 1.12	Division of Youth and Family Services: initial reponse	26 N.J.R. 3355(a)		
10:133C-2	Eligibility for DYFS services	26 N.J.R. 897(a)		
10:133H-3	Review of children in out-of-home placement	25 N.J.R. 5752(a)		

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10A:31-1.3, 8.4, 8.6	Adult county correctional facilities: strip and body cavity searches	26 N.J.R. 2841(a)	R.1994 d.484	26 N.J.R. 3863(a)
10A:71-3.15, 3.16	State Parole Board: parole hearings	26 N.J.R. 2189(a)		
10A:71-3.21	State Parole Board: future parole eligibility terms	25 N.J.R. 4703(a)		
10A:71-7.16, 7.16A	Parole Board panel action: establishment of parole release date upon revocation of parole for technical violations	26 N.J.R. 2516(a)		

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11:3-16.7	Automobile insurers rate filing requirements	26 N.J.R. 900(a)		
11:3-20.6	Private passenger automobile insurers: reporting financial disclosure and excess profits	26 N.J.R. 1938(b)	R.1994 d.425	26 N.J.R. 3441(b)
11:3-28.2, 28.14–28.17	Unsatisfied Claim and Judgment Fund: uninsured motorists case assignment procedures	26 N.J.R. 2190(a)		
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11:3-29.6	Personal auto injury fee schedule: physician's services	25 N.J.R. 4554(a)		
11:3-32	Automobile and motor vehicle insurers: certification of compliance with mandatory liability coverages	26 N.J.R. 1939(a)	R.1994 d.477	26 N.J.R. 3866(a)
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11:5-1.2, 1.4, 1.5, 1.19, 1.29	Real Estate Commission: licensing requirements	26 N.J.R. 3111(a)		
11:5-1.7	Real Estate Commission: preproposal concerning mass marketing and brokerage licensure requirement	26 N.J.R. 3110(a)		
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11:15	Group self-insurance	26 N.J.R. 2518(a)		
11:15	Group self-insurance: extension of comment period	26 N.J.R. 3356(a)		
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11:15-2	Joint insurance funds for local governmental units: extension of comment period	26 N.J.R. 3592(a)		
11:17-3, 5.1–5.4, 5.6, 5.7	Professional qualifications of insurance producers	26 N.J.R. 1289(a)	R.1994 d.438	26 N.J.R. 3731(a)
11:17A-1.2, 1.7	Automobile insurance: provision of coverage to all eligible persons	26 N.J.R. 3591(a)		
11:18	Medical Malpractice Reinsurance Recovery Fund surcharge	26 N.J.R. 2195(a)		
11:19-4	Financial Examinations Monitoring System: data submission requirements for domestic life/health insurers	26 N.J.R. 1195(a)		
11:20-9.6	Individual Health Coverage Program: good faith marketing report	26 N.J.R. 3809(a)		
11:20-App. Exh. A–F, M, N, O, P	Individual Health Coverage Program: policy forms, PPO and POS standard plan provisions, schedule of benefits	26 N.J.R. 3356(b)		
11:21-1.2, 1.3, 2.2, 3A, 7.1, 7.2, 7.3, 7.5–7.9, 7.12, 7.13, 7A, App. Exh. N, O, Q, R, S, T	Small Employer Health Benefits Program: standard and non-standard plans	26 N.J.R. 3421(a)	R.1994 d.499	26 N.J.R. 4047(b)
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11:21-Exh. A–AA	Small Employer Health Benefits Program: plan exhibits	26 N.J.R. 2843(a)	R.1994 d.498	26 N.J.R. 4066(a)

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12:16-13.7	Unemployment Insurance and Disability Insurance Financing: magnetic media wage reporting	26 N.J.R. 2863(a)		
12:18-2.6, 2.38, 2.41–2.48	Temporary Disability Benefits appeal hearings	26 N.J.R. 2195(b)	R.1994 d.407	26 N.J.R. 3178(b)
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12:20	Department of Labor hearings	26 N.J.R. 2174(a)		
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12:23-5.9	Workforce Development Partnership Program: overpayments of additional unemployment benefits	26 N.J.R. 2198(a)	R.1994 d.409	26 N.J.R. 3180(a)
12:23-7	Workforce Development Partnership Program: occupational safety and health training services	26 N.J.R. 2774(a)	R.1994 d.490	26 N.J.R. 3870(a)
12:41-1.2, 1.14	Job Training Partnership Act: non-criminal complaints and appeals	26 N.J.R. 2864(a)	R.1994 d.491	26 N.J.R. 3872(a)
12:56-6.1, 7.5, 7.6	Wage and Hour compliance: limousine operators	26 N.J.R. 94(a)		
12:90	Division of Workplace Standards: boilers, pressure vessels, refrigeration	26 N.J.R. 3810(a)		
12:100	Safety and Health Standards for Public Employees	26 N.J.R. 2776(a)	R.1994 d.492	26 N.J.R. 3872(b)
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12:195-1.9	Carnival-amusement rides: inspection and permit fees	26 N.J.R. 3594(a)		
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12:235-9.4	Workers' Compensation: appeals regarding discrimination complaints	26 N.J.R. 1591(b)	R.1994 d.431	26 N.J.R. 3459(a)
12:235-9.4	Workers' Compensation: extension of comment period regarding discrimination complaint determinations	26 N.J.R. 2777(a)		
12:235-14.7	Uninsured Employer's Fund: attorney fees	26 N.J.R. 2199(a)		

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12A:10-2	Minority and female contractor and subcontractor participation in State construction contracts	25 N.J.R. 4461(b)		
12A:31-1.4	Development Authority for Small Businesses, Minorities' and Women's Enterprises: allocation of direct loan assistance	25 N.J.R. 5759(a)		
12A:31-1.4	Development Authority for Small Businesses, Minorities' and Women's Enterprises: reopening of comment period regarding allocation of direct loan assistance	26 N.J.R. 1434(a)		
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13:4	Housing discrimination	26 N.J.R. 1942(a)		
13:9-1.1	Housing discrimination	26 N.J.R. 1942(a)		
13:13	Housing discrimination	26 N.J.R. 1942(a)		
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13:19	Division of Motor Vehicles: Driver Control Service	26 N.J.R. 2738(a)	R.1994 d.468	26 N.J.R. 3873(a)
13:19-1.1	Division of Motor Vehicles: applicability of administrative hearings	26 N.J.R. 2522(a)	R.1994 d.486	26 N.J.R. 3874(a)
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13:24	Division of Motor Vehicles: equipment for emergency and other specified vehicles	26 N.J.R. 2865(a)		
13:25-1.1, 2.1, 2.2, 3.1, 3.3	Division of Motor Vehicles: motorized bicycle permits and licenses	26 N.J.R. 2522(a)	R.1994 d.486	26 N.J.R. 3874(a)
13:27-6.2	Board of Architects: administrative correction regarding depiction of existing conditions on a site plan	————	————	26 N.J.R. 3180(b)
13:28-5.1	Board of Cosmetology and Hairstyling: fee schedule	26 N.J.R. 1947(a)	R.1994 d.415	26 N.J.R. 3181(a)
13:30-8.18	Board of Dentistry: licensee continuing education	26 N.J.R. 1948(a)		
13:31-1.9	Board of Examiners of Electrical Contractors: identification of licensee vehicles	26 N.J.R. 1218(b)	R.1994 d.487	26 N.J.R. 3877(a)
13:31-1.11, 1.16	Board of Examiners of Electrical Contractors: fee schedule; requirement of ID card defined	26 N.J.R. 2742(a)		
13:33-4.1	Board of Ophthalmic Dispensers and Ophthalmic Technicians: contact lens dispensing	26 N.J.R. 1595(a)		
13:35	Board of Medical Examiners rules	26 N.J.R. 2526(a)		
13:35-2B, 6.14	Board of Medical Examiners: physician assistants	25 N.J.R. 5099(b)		
13:35-3.12	Board of Medical Examiners: licensure of physicians with post-secondary educational deficiencies	26 N.J.R. 2742(b)		
13:35-5.1	Board of Medical Examiners: release of contact lens specification to patient	26 N.J.R. 1219(a)		
13:35-6.17	Board of Medical Examiners: professional fees and investments	25 N.J.R. 5441(a)		
13:35-6.21	Board of Medical Examiners: withdrawal of stay of operative date for hair replacement techniques	————	————	26 N.J.R. 4083(a)
13:35-8.7, 8.8	Board of Medical Examiners: fitting and dispensing of deep ear canal hearing aid devices	26 N.J.R. 1301(b)		
13:36	Board of Mortuary Science rules	26 N.J.R. 2536(a)		
13:38-6.1	Board of Optometrists: release of contact lens specification to patient	26 N.J.R. 1220(a)		
13:39	Board of Pharmacy rules: administrative correction to expiration date	————	————	26 N.J.R. 3878(a)
13:39-1.2, 6.7, 9.1, 9.7, 10.4, 11.1	Board of Pharmacy: pharmacy technicians	26 N.J.R. 2743(a)		
13:39-10.2, 11	Board of Pharmacy: sterile admixture services in retail pharmacies	26 N.J.R. 1303(a)	R.1994 d.476	26 N.J.R. 3878(b)
13:39A-2.3	Board of Physical Therapy: public forum on direct supervision of physical therapist assistants	26 N.J.R. 1604(a)		
13:40-7.2	Board of Professional Engineers and Land Surveyors: administrative correction regarding depiction of existing conditions on a site plan	————	————	26 N.J.R. 3180(b)
13:40A-2A.3	Board of Real Estate Appraisers: certification as residential appraiser	26 N.J.R. 902(a)	R.1994 d.420	26 N.J.R. 3460(a)
13:41-4.2	Board of Professional Planners: depiction of existing conditions on a site plan	26 N.J.R. 1221(a)	R.1994 d.394	26 N.J.R. 3181(b)
13:42-1.1, 1.2, 4.5, 9.9	Board of Psychological Examiners rules	25 N.J.R. 4937(a)		

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13:44	Board of Veterinary Medical Examiners: practice standards	26 N.J.R. 1951(a)	R.1994 d.442	26 N.J.R. 3737(a)
13:44D	Board of Public Movers and Warehousemen: licensee standards	26 N.J.R. 1758(a)	R.1994 d.395	26 N.J.R. 3182(a)
13:44D-2.2, 2.6	Board of Public Movers and Warehousemen: licensee mailing address and permanent place of business	26 N.J.R. 2745(a)		
13:44D-4.1, 4.2	Advisory Board of Public Movers and Warehousemen: bill of lading and insurance legal liability	25 N.J.R. 5449(a)		
13:44E-1.1	Board of Chiropractic Examiners: scope of chiropractic practice	25 N.J.R. 3931(b)		
13:44E-2.1	Board of Chiropractic Examiners: licensee advertising	25 N.J.R. 3932(a)		
13:44E-2.2	Board of Chiropractic Examiners: patient records and cessation of practice	26 N.J.R. 2866(a)		
13:44E-2.6	Board of Chiropractic Examiners: practice identification educational requirements	25 N.J.R. 3934(a)		
13:44E-2.8	Board of Chiropractic Examiners: duties of unlicensed assistants	25 N.J.R. 3935(a)		
13:44E-2.13	Board of Chiropractic Examiners: overutilization; excessive fees	26 N.J.R. 1231(b)		
13:45A-16.1	Home improvement practices: security protection devices	26 N.J.R. 1605(a)	R.1994 d.396	26 N.J.R. 3183(a)
13:45A-27	Division of Consumer Affairs: licensee duty to cooperate with licensing board or agency	26 N.J.R. 3128(a)		
13:45A-28	Motor vehicle leasing	26 N.J.R. 3243(a)		
13:46-2	Athletic Control Board: participant health and safety in boxing and combative sports events	25 N.J.R. 4717(a)		
13:47A-1.10A, 2.6A, 13, 14	Bureau of Securities: rules of practice	26 N.J.R. 3814(a)		
13:48	Charitable fund raising	26 N.J.R. 2746(a)	R.1994 d.494	26 N.J.R. 3882(a)
13:59	State Police: criminal history background checks for non-criminal justice purposes	26 N.J.R. 3595(a)		
13:70-8.18	Thoroughbred racing: items included in jockey's weight	26 N.J.R. 3130(a)		
13:70-8.18	Thoroughbred racing: overweight of jockey after race	26 N.J.R. 3130(b)		
13:70-14A.1	Thoroughbred racing: administration of phenylbutazone on day of race	26 N.J.R. 1955(a)		
13:70-14A.8	Thoroughbred racing: possession of drugs or drug instruments	26 N.J.R. 1315(a)		
13:70-14A.9	Thoroughbred racing: administration of phenylbutazone on day of race	26 N.J.R. 1956(a)		
13:70-19.44	Thoroughbred racing: conflicts of interest involving veterinary practitioner and spouse	25 N.J.R. 5107(a)		
13:71-9.5	Harness racing: conflicts of interest involving veterinary practitioner and spouse	25 N.J.R. 5108(a)		
13:71-23.1	Thoroughbred racing: administration of phenylbutazone on day of race	26 N.J.R. 1956(b)		
13:71-23.8	Thoroughbred racing: administration of phenylbutazone on day of race	26 N.J.R. 1957(a)		
13:71-23.9	Harness racing: possession of drugs or drug instruments	26 N.J.R. 1316(a)		
13:72-2.11, 4.10	Racing Commission: casino simulcasting and cancellation of incorrect pari-mutuel tickets	26 N.J.R. 2546(a)		

Most recent update to Title 13: TRANSMITTAL 1994-7 (supplement July 18, 1994)

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14:0	Intrastate dial-around compensation: preproposal	25 N.J.R. 4586(a)		
14:18-3.24	Cable television: late fees and charges	26 N.J.R. 105(a)		

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Most recent update to Title 14A: TRANSMITTAL 1994-1 (supplement February 22, 1994)

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15:10-8	Certification of electronic voting systems	25 N.J.R. 4587(a)		
15:10-8	Certification of electronic voting systems: public hearing and extension of comment period	25 N.J.R. 4864(a)		

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PUBLIC ADVOCATE—TITLE 15A

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16:1A-1.2	Organization of Department of Transportation	Exempt	R.1994 d.453	26 N.J.R. 3740(a)
16:6	Relocation assistance and right-of-way acquisition	26 N.J.R. 1958(a)	R.1994 d.400	26 N.J.R. 3183(b)
16:21A	Bridge Rehabilitation and Improvement Fund: State aid to counties and municipalities	26 N.J.R. 3246(a)		

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16:26	Bureau of Electrical Engineering	26 N.J.R. 1764(a)	R.1994 d.401	26 N.J.R. 3183(c)
16:28-1.5	Speed limit zones along Route 37 in Ocean County	26 N.J.R. 1958(b)	R.1994 d.381	26 N.J.R. 3183(d)
16:28-1.6	School zone along U.S. 40 in Woodstown Borough, Salem County	26 N.J.R. 3131(a)		
16:28-1.10	Speed limit zones along U.S. 46, including U.S. 1, 9 and 46, in Washington Township	26 N.J.R. 1959(a)	R.1994 d.383	26 N.J.R. 3184(b)
16:28-1.10	Speed limit zones along U.S. 46, including U.S. 1, 9 and 46, in Dover	26 N.J.R. 1960(a)	R.1994 d.382	26 N.J.R. 3184(a)
16:28-1.10	Speed limits along entire length of U.S. 46, including U.S. 1, 9 and 46	26 N.J.R. 3600(a)		
16:28-1.25	Speed limit zones along Route 23 in Franklin Borough, Sussex County	26 N.J.R. 2749(a)	R.1994 d.465	26 N.J.R. 3887(a)
16:28-1.41	Speed limit zones along U.S. 9 in Ocean County	26 N.J.R. 1960(b)	R.1994 d.385	26 N.J.R. 3184(c)
16:28-1.41	Speed limit zones along U.S. 9 in Galloway Township, Atlantic County	26 N.J.R. 3132(a)		
16:28-1.53	Speed limit zone along Route 165 in Lambertville	26 N.J.R. 3602(a)		
16:28-1.72	Speed limit zones along U.S. 206, including U.S. 206 and 130, in Morris County	26 N.J.R. 1961(a)	R.1994 d.386	26 N.J.R. 3185(a)
16:28-1.77	Speed limits along Route 29 in Mercer and Hunterdon counties	26 N.J.R. 3821(a)		
16:28-1.79	Speed limit zones along Route 94 in Sussex County	26 N.J.R. 3133(a)		
16:28-1.79	Speed limits along Route 94 in Warren and Sussex counties	26 N.J.R. 3603(a)		
16:28-1.96	Speed limit zones along Route 45 in Gloucester County	26 N.J.R. 1962(a)	R.1994 d.387	26 N.J.R. 3185(b)
16:28-1.106	Speed limit zones along Route 31 in Clinton Township	26 N.J.R. 1963(a)	R.1994 d.388	26 N.J.R. 3186(a)
16:28-1.132	Speed limit zones along Route 47 in Dennis Township, Cape May	26 N.J.R. 2867(a)	R.1994 d.478	26 N.J.R. 3887(b)
16:28-1.158	Speed limits along Route 179 in Lambertville	26 N.J.R. 3820(b)		
16:28A-1.19	Handicapped parking along Route 28 in Elizabeth	26 N.J.R. 3605(a)		
16:28A-1.23	No stopping or standing zones along Route 33 in Manalapan Township	26 N.J.R. 1963(b)	R.1994 d.384	26 N.J.R. 3186(b)
16:28A-1.25	No stopping or standing zones along Route 35 in Berkeley Township	26 N.J.R. 2749(b)	R.1994 d.466	26 N.J.R. 3887(c)
16:28A-1.33	Parking restrictions along Route 47 for entire length	26 N.J.R. 2867(b)	R.1994 d.479	26 N.J.R. 3888(a)
16:28A-1.41	Time limit parking on Route 77 in Bridgeton: correction to proposal	25 N.J.R. 3944(a)		
16:28A-1.44	No stopping or standing zones along Route 88 in Lakewood Township, Ocean County	26 N.J.R. 3135(a)		
16:28A-1.57	No stopping or standing along U.S. 206 in Mount Olive	26 N.J.R. 2200(a)	R.1994 d.421	26 N.J.R. 3460(b)
16:28A-1.57	Bus stop on U.S. 206 in Princeton Township	26 N.J.R. 3820(a)		
16:28A-1.98	No stopping or standing zones along Route 56 in Deerfield Township, Cumberland County	26 N.J.R. 3136(a)		
16:28A-1.113	No stopping or standing zones along Route 33 (Business) in Manalapan Township	26 N.J.R. 1964(a)	R.1994 d.391	26 N.J.R. 3186(c)
16:30-3.11	Left turn lane along Route 38 in Lumberton and Southampton townships: correction to proposal and extension of comment period	26 N.J.R. 1317(a)		
16:30-7.6	Limited access prohibitions along Route 18 Freeway in Monmouth and Middlesex counties	26 N.J.R. 1965(a)	R.1994 d.389	26 N.J.R. 3187(a)
16:30-7.7	Limited access prohibitions along Route 42 Freeway in Gloucester and Camden counties	26 N.J.R. 1964(b)	R.1994 d.390	26 N.J.R. 3187(b)
16:30-3.12	Left turn center lane along Rising Sun Road, Bordentown	26 N.J.R. 3247(a)		
16:31-1.1	Left turn prohibition on U.S. 206 at Valley Road in Hillsborough Township	26 N.J.R. 2547(a)	R.1994 d.439	26 N.J.R. 3740(b)
16:31-1.8	Left turn prohibitions along Route 47 in Vineland	26 N.J.R. 3822(a)		
16:31-1.17	Left turn prohibition along Route 73 in Berlin Township, Camden County	26 N.J.R. 3137(a)		
16:31-1.22	Turn prohibitions along U.S. 130 in Burlington and Mercer counties	26 N.J.R. 2870(a)	R.1994 d.480	26 N.J.R. 3890(a)
16:31-1.29	Left turn prohibitions along U.S. 9 in Lakewood Township, Ocean County	26 N.J.R. 3137(b)		
16:31-1.35	U turn prohibitions along Route 42 in Gloucester County	26 N.J.R. 2750(a)	R.1994 d.467	26 N.J.R. 3890(b)
16:31-1.36	Turn prohibitions along U.S. 40/322 in Egg Harbor Township	26 N.J.R. 2871(a)	R.1994 d.481	26 N.J.R. 3891(a)
16:45	Construction control	26 N.J.R. 2547(b)	R.1994 d.454	26 N.J.R. 3740(c)
16:47-1.1, 3.5, 3.8, 3.9, 3.12, 3.16, 4.3, 4.6, 4.7, 4.9, 4.10, 4.12, 4.14, 4.24, 4.25, 4.26, 4.27, 4.29, 4.33, 4.34, 4.35, 4.36, 4.37, 5.2, App. B, C, E, L	State Highway Access Management Code	26 N.J.R. 2549(a)		

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16:50-8.9, 11	Employer Trip Reduction Program: employee transportation coordinator training; disclosure of information	25 N.J.R. 5452(a)		
16:50-15	Employer Trip Reduction Program tax credit	26 N.J.R. 756(a)		
16:51	Regulation of autobuses and transportation public utilities: pre-proposal	26 N.J.R. 1317(b)		
16:53D	Regulation of autobuses and transportation public utilities: pre-proposal	26 N.J.R. 1317(b)		
16:53D-1.1	Autobus carrier Zone of Rate Freedom	26 N.J.R. 3247(b)		
16:82	Examination and duplication of NJ TRANSIT records	26 N.J.R. 2871(b)		
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17:1-1.16	State-administered retirement systems: lost pension checks	26 N.J.R. 2200(b)	R.1994 d.416	26 N.J.R. 3460(c)
17:1-4.32	Workers' Compensation: reduction of retirement allowance	26 N.J.R. 2201(a)	R.1994 d.424	26 N.J.R. 3461(a)
17:2-4.3	Public Employees' Retirement System: school year members	26 N.J.R. 3823(a)		
17:3-4.3	Teachers' Pension and Annuity Fund: school year members	26 N.J.R. 3606(a)		
17:9-4.1, 4.5	State Health Benefits Program: appointive officer eligibility	26 N.J.R. 109(a)		
17:9-4.2, 8.3, 9.1	State Health Benefits Program: continued coverage under voluntary furlough program	26 N.J.R. 2202(a)		
17:12	Purchase Bureau	26 N.J.R. 3248(a)		
17:13	Goods and services contracts for small businesses, minority businesses, and female businesses	25 N.J.R. 4889(a)		
17:14	Minority and female contractor and subcontractor participation in State construction contracts	25 N.J.R. 4461(b)		
17:16-20.2	State Investment Council: permissible international investments by State-administered pension funds	26 N.J.R. 2751(a)	R.1994 d.445	26 N.J.R. 3742(a)
	Most recent update to Title 17: TRANSMITTAL 1994-5 (supplement July 18, 1994)			
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18:1	Organization of Division of Taxation	26 N.J.R. 2752(a)	R.1994 d.503	26 N.J.R. 4087(a)
18:7-15.1–15.5	Corporation Business Tax: urban enterprise zone credits	26 N.J.R. 2203(a)	R.1994 d.419	26 N.J.R. 3462(a)
	Most recent update to Title 18: TRANSMITTAL 1994-4 (supplement June 20, 1994)			
TITLE 19—OTHER AGENCIES				
19:2	South Jersey Transportation Authority: rules of operation; Atlantic City Expressway	26 N.J.R. 1966(a)	R.1994 d.462	26 N.J.R. 3742(b)
19:3, 3A, 4, 5	Hackensack Meadowlands Development District rules	26 N.J.R. 1970(a)		
19:8-1.1, 1.12, 2.1, 2.13, 2.14, 2.15	Garden State Parkway: transporting of hazardous materials	26 N.J.R. 3249(a)		
19:8-1.8	Garden State Parkway: prohibited parking, stopping or standing	26 N.J.R. 3251(a)		
19:8-13	Garden State Parkway: fees for construction and utility installation permits	26 N.J.R. 3252(a)		
19:9-1	Turnpike Authority: traffic control	26 N.J.R. 337(a)	R.1994 d.414	26 N.J.R. 3463(a)
19:10	Public Employment Relations Commission: definitions, service, construction	26 N.J.R. 2205(a)	R.1994 d.437	26 N.J.R. 3745(a)
19:25-1.7, 6.5–6.9	ELEC: permissible uses of candidate funds	26 N.J.R. 2753(a)		
19:25-9, 10	Reporting by continuing political committees, political party committees, and legislative leadership committees	26 N.J.R. 3138(a)		
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19:40-1.2	Gaming chips and plaques	26 N.J.R. 1441(b)		
19:40-1.2	Slot tokens, prize tokens, slot machine hoppers	26 N.J.R. 2872(a)	R.1994 d.504	26 N.J.R. 4089(a)
19:40-1.2	Removal of coin, slot tokens and slugs from slot machines	26 N.J.R. 1620(a)	R.1994 d.423	26 N.J.R. 3465(a)
19:40-1.2	Slot tokens, prize tokens, slot machine hoppers: administrative correction	———	———	26 N.J.R. 3253(a)
19:40-4.1, 4.2, 4.8	Confidential information	26 N.J.R. 1434(a)		
19:41-1.3	Keno	26 N.J.R. 2218(a)		
19:41-1.5A, 1.8, 1.9	Qualification standards for casino employees and gaming school instructors	26 N.J.R. 2207(a)	R.1994 d.447	26 N.J.R. 3746(b)
19:41-1.6	Casino employee license position endorsements	26 N.J.R. 910(a)		
19:41-5.13	Key Standard Qualifier Renewal Form	26 N.J.R. 3824(a)		
19:41-6.1–6.5	Statements of compliance	26 N.J.R. 1319(a)		

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19:41-7.2A	Applicant identification for license or registration	26 N.J.R. 2565(a)	R.1994 d.470	26 N.J.R. 3891(b)
19:41-8.8	Reapplication for license, registration, qualification or approval after denial or revocation	26 N.J.R. 1993(a)		
19:43-2.7A	Key Standard Qualifier Renewal Form	26 N.J.R. 3824(a)		
19:44-5.2, 8.3, 8.6	Qualification standards for casino employees and gaming school instructors	26 N.J.R. 2207(a)		
19:45-1	Slot tokens, prize tokens, slot machine hoppers	26 N.J.R. 2872(a)	R.1994 d.504	26 N.J.R. 4089(a)
19:45-1	Slot tokens, prize tokens, slot machine hoppers: administrative correction	————	————	26 N.J.R. 3253(a)
19:45-1.1	Gaming chips and plaques	26 N.J.R. 1441(b)		
19:45-1.1, 1.1A, 1.2, 1.8, 1.10, 1.11, 1.12, 1.15, 1.19, 1.25, 1.33, 1.46–1.51	Keno	26 N.J.R. 2218(a)		
19:45-1.1, 1.9B, 1.24, 1.26, 1.27, 1.29	Use of cash complimentary gifts	26 N.J.R. 2212(a)	R.1994 d.471	26 N.J.R. 3891(c)
19:45-1.1, 1.15, 1.20, 1.25, 1.39B, 1.52	Caribbean stud poker: temporary adoption	————	————	26 N.J.R. 3464(a)
19:45-1.1, 1.26, 1.26A	Substitution and redemption of patron checks	26 N.J.R. 3825(a)		
19:45-1.17, 1.42	Storage of empty drop boxes and slot cash storage boxes	26 N.J.R. 3606(b)		
19:45-1.24A	Release of wire transfer funds: patron identification procedure	26 N.J.R. 3140(a)		
19:45-1.1, 1.25	Exchange of annuity jackpot checks	26 N.J.R. 2211(a)		
19:45-1.1, 1.37A, 1.39	Electronic transfer credit systems at slot machines; progressive slot machines	26 N.J.R. 2214(a)		
19:45-1.1, 1.41A	Removal of coin, slot tokens and slugs from slot machines	26 N.J.R. 1620(a)	R.1994 d.423	26 N.J.R. 3465(a)
19:45-1.17, 1.42	Temporary storage of slot cash storage boxes and slot drop boxes	26 N.J.R. 2213(a)	R.1994 d.422	26 N.J.R. 3464(a)
19:45-1.24A	Wire transfer fees	26 N.J.R. 2215(a)	R.1994 d.472	26 N.J.R. 3892(a)
19:45-1.25	Exchange of counter checks	26 N.J.R. 1994(a)		
19:45-1.25	Repurchase of cash equivalents by patrons	26 N.J.R. 2216(a)	R.1994 d.473	26 N.J.R. 3893(a)
19:45-1.36	Recording of bill changer entries	26 N.J.R. 2217(a)	R.1994 d.474	26 N.J.R. 3894(a)
19:45-1.40B	Temporary investment of annuity jackpot trust funds	26 N.J.R. 1996(a)	R.1994 d.405	26 N.J.R. 3187(c)
19:45-1.46	Inventory of coin coupons	26 N.J.R. 1322(a)		
19:46-1.1, 1.2, 1.4, 1.5	Gaming chips and plaques	26 N.J.R. 1441(b)		
19:46-1.5, 1.6, 1.20, 1.26, 1.33–1.36	Slot tokens, prize tokens, slot machine hoppers	26 N.J.R. 2872(a)	R.1994 d.504	26 N.J.R. 4089(a)
19:46-1.5, 1.6, 1.20, 1.26, 1.33–1.36	Slot tokens, prize tokens, slot machine hoppers: administrative correction	————	————	26 N.J.R. 3253(a)
19:46-1.5, 1.20, 1.33	Keno	26 N.J.R. 2218(a)		
19:46-1.13F, 1.17, 1.19	Double Down Stud	26 N.J.R. 1323(a)		
19:46-1.13G, 1.17, 1.19	Caribbean stud poker: temporary adoption	————	————	26 N.J.R. 3464(a)
19:47-15	Keno	26 N.J.R. 2218(a)		
19:47-16	Caribbean stud poker: temporary adoption	————	————	26 N.J.R. 3464(a)
19:47-17	Double Down Stud	26 N.J.R. 1323(a)		
19:51-1.1, 1.2	Slot tokens, prize tokens, slot machine hoppers	26 N.J.R. 2872(a)	R.1994 d.504	26 N.J.R. 4089(a)
19:51-1.1, 1.2	Slot tokens, prize tokens, slot machine hoppers: administrative correction	————	————	26 N.J.R. 3253(a)
19:51-1.3A, 1.3B	Application for initial casino service industry license and license renewal	26 N.J.R. 2886(a)	R.1994 d.505	26 N.J.R. 4100(a)
19:51-1.8	Duration of licenses; renewal: administrative correction	————	————	26 N.J.R. 3466(a)
19:51-1.8	Renewal of casino service industry enterprise licenses: administrative change	————	————	26 N.J.R. 3894(b)
19:53-1.2, 5.5, 5.7	Disbursement credit for goods and services with certified MBEs and WBEs; commercial buyers	26 N.J.R. 785(a)		
19:54-1.6	Slot tokens, prize tokens, slot machine hoppers	26 N.J.R. 2872(a)	R.1994 d.504	26 N.J.R. 4089(a)
19:54-1.6	Slot tokens, prize tokens, slot machine hoppers: administrative correction	————	————	26 N.J.R. 3253(a)
19:54-1.8, 1.10	Annual gross revenue tax examinations; tax deficiency penalties and sanctions	26 N.J.R. 1994(a)		
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